



ORGANIZATION OF AMERICAN STATES

INTER-AMERICAN JURIDICAL COMMITTEE

IAJC

65th REGULAR SESSION
August 2 to 20, 2004
Rio de Janeiro, Brazil

OEA/Ser.Q/VI.35
CJI/doc.174/04
20 August 2004
Original: Spanish

ANNUAL REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE TO THE GENERAL ASSEMBLY

2004

EXPLANATORY NOTE

Until 1990, the OAS General Secretariat had published the *Minutes of meetings* and *Annual Reports* of the Inter-American Juridical Committee under the series classified as *Reports and Recommendations*. In 1997, the International Law Department of the Secretariat for Legal Affairs of the OAS General Secretariat now published those documents under the title *Annual report of the Inter-American Juridical Committee to the General Assembly*.

Under the *Classification manual for the OAS official records series*, the Inter-American Juridical Committee is assigned the classification code OEA/Ser.Q, followed by CJI, to signify documents issued by this body (see attached lists of resolutions and documents).

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INTRODUCTION

The Inter-American Juridical Committee is honored to present its *Annual Report to the General Assembly of the Organization of American States*. This report concerns the Committee's activities in 2004, and is presented pursuant to the provisions of Article 91.f of the *Charter of the Organization of American States*, Article 13 of the Committee's Statutes, and to the instructions contained in General Assembly resolutions AG/RES.1452 (XXVII-O/97), AG/RES.1669 (XXIX-O/99), AG/RES.1735 (XXX-O/00), AG/RES.1787 (XXXI-O/01), AG/RES.1883 (XXXII-O/02), AG/RES.1952 (XXXIII-O/03) and AG/RES.2042 (XXXIV-O/04), all of which concern the preparation of the annual reports submitted to the General Assembly by the Organization's organs, agencies and entities.

During the period covered in this *Annual Report*, the Inter-American Juridical Committee's agenda included topics, such as the following: legal aspects of compliance within the States with decisions of international courts or tribunals or other international organs with jurisdictional functions; legal aspects of inter-American security; implementation of the Inter-American Democratic Charter; joint efforts of the Americas in the struggle against corruption and impunity; preparation for the Centennial commemorations of the Inter-American Juridical Committee; right to information: access to and protection of information and personal data; improving the systems of administration of justice in the Americas: access to justice; Seventh Inter-American Specialized Conference on Private International Law – CIDIP VII; and preparation of a draft inter-American convention against racism and all form of discrimination and intolerance.

This *Annual Report* contains mostly the work done on the studies associated with the aforementioned topics and is divided into three chapters. The first discusses the origin, legal bases and structure of the Inter-American Juridical Committee and the period covered in this *Annual Report*. The second chapter considers the issues that the Inter-American Juridical Committee discussed at the regular sessions in 2004, and the texts of the resolutions adopted at both regular sessions and related documents. Lastly, the third chapter concerns the Juridical Committee's other activities and resolutions adopted by it. Budgetary matters are also discussed. Annexed to the *Annual Report* are lists of the resolutions and documents adopted, subject and name indexes, to facilitate the reader in locating documents in this *Report*.

Dr. Mauricio Herdocia Sacasa, Chairman of the Inter-American Juridical Committee, approved the language of this *Annual Report*.

CHAPTER I

1. The Inter-American Juridical Committee: its origin, legal bases, structure and purposes

The forerunner of the Inter-American Juridical Committee was the International Commission of Jurists in Rio de Janeiro, created by the Third International Conference of American States in 1906. Its first meeting was in 1912, although the most important was in 1927. There, it approved twelve draft conventions on public international law and the Bustamante Code in the field of private international law.

Then in 1933, the Seventh International Conference of American States, held in Montevideo, created the national commissions on codification of international law and the Inter-American Committee of Experts. The latter's first meeting was in Washington, D.C. in April 1937.

The First Meeting of Consultation of Ministers of Foreign Affairs of the American Republics, held in Panama, September 26 through October 3, 1939, established the Inter-American Neutrality Committee, which was active for more than two years. Then in 1942, the Third Meeting of Consultation of Ministers of Foreign Affairs, held in Rio de Janeiro, adopted resolution XXVI, wherein it transformed the Inter-American Neutrality Committee into the Inter-American Juridical Committee. It was decided that the seat of the Committee would be in Rio de Janeiro.

In 1948, the Ninth International Conference of American States, convened in Bogotá, adopted the *Charter of the Organization of American States*, which inter alia created the Inter-American Council of Jurists, with one representative for each Member State, advisory functions, and the mission to promote legal matters within the OAS. Its permanent committee would be the Inter-American Juridical Committee, consisting of nine jurists from the Member States. It enjoyed widespread technical autonomy to undertake the studies and preparatory work that certain organs of the Organization entrusted to it.

Almost twenty years later, in 1967, the Third Special Inter-American Conference, convened in Buenos Aires, Argentina, and adopted the *Protocol of Amendments to the Charter of the Organization of American States* or *Protocol of Buenos Aires*, which eliminated the Inter-American Council of Jurists. The latter's functions passed to the Inter-American Juridical Committee. Accordingly, the Committee was promoted as one of the principal organs of the OAS.

Under Article 99 of the *Charter*, the purpose of the Inter-American Juridical Committee is as follows:

... to serve the Organization as an advisory body on juridical matters; to promote the progressive development and the codification of international law; and to study juridical problems related to the integration of the developing countries of the Hemisphere and, insofar as may appear desirable, the possibility of attaining uniformity in their legislation.

Under Article 100 of the *Charter*, the Inter-American Juridical Committee is to:

...undertake the studies and preparatory work assigned to it by the General Assembly, the Meeting of Consultation of Ministers of Foreign Affairs, or the Councils of the Organization. It may also, on its own initiative, undertake such studies and preparatory work as it considers advisable, and suggest the holding of specialized juridical conferences.

Although the seat of the Committee is in Rio de Janeiro, in special cases it may meet elsewhere that may be appointed after consulting the Member State concerned. The Committee consists of eleven jurists who are nationals of the Member States of the Organization. Together, those jurists represent all the States. The Committee also enjoys as much technical autonomy as possible.

2. Period covered in this Annual Report of the Inter-American Juridical Committee

A. Sixty-fourth regular session

The 64th regular session of the Inter-American Juridical Committee took place between March 8 and 19, 2004, at its seat in the city of Rio de Janeiro, Brazil.

The members of the Inter-American Juridical Committee attending that regular session were the following, listed in the order of precedence determined by lots drawn at the session's first meeting and pursuant to Article 28(b) of the *Rules of Procedure of the Inter-American Juridical Committee*:

Brynmor Thornton Pollard (Chairman)
Luis Marchand Stens
Mauricio Herdocia Sacasa
João Grandino Rodas
Ana Elizabeth Villalta Vizcarra (Vice-Chairman)
Jean-Paul Hubert
Felipe Paolillo
Eduardo vio Grossi
Luis Herrera Marcano

Drs. Kenneth O. Rattray and Alonso Gómez-Robledo Verduzco were unable to attend this regular session.

On behalf of the General Secretariat, technical and administrative support was provided by Dr. Enrique Lagos, Assistant Secretary for Legal Affairs; Dr. Jean-Michel Arrighi, Director of the Department of International Law; and Dr. Manoel Tolomei Moletta and Dr. Dante M. Negro, principal legal officers with the Department of International Law.

The Chairman of the Inter-American Juridical Committee, Dr. Brynmor T. Pollard, pursuant to Article 12 of the *Rules of Procedure of the Inter-American Juridical Committee*, gave his report on the activities of the Committee since its last meeting.

He also welcomed Dr. Mauricio Herdocia who was elected member of the Juridical Committee during the XXXIII OAS General Assembly (Santiago, Chile, June 2003), and Dr. Jean-Paul Hubert, elected by the Permanent Council of the Organization in December 2003 to fill the vacancy and complete the term of office of Dr. Jonathan Fried.

During the regular session, the Inter-American Juridical Committee proceeded to elect its Vice-Chairman to complete the term of Dr. Carlos Manuel Vázquez, whose term-of-office as Committee member ended on December 31, 2003. This election was held pursuant to Article 9 of the Committee's *Rules of Procedures*, which states that "The Chairman and Vice-Chairman will hold their office for a two-year term... In the event of a definitive absence of the Vice-Chairman, a new election will be held to complete the remaining term of office". After voting, Dr. Ana Elizabeth Villalta was elected Vice-Chairman of the Inter-American Juridical Committee until July 2004.

The Inter-American Juridical Committee decided at this regular session to adopt resolution CJI/RES.71 (LXIV-O/04), *Homage to Dr. Jonathan Fried*, expressing its sincere appreciation for his dedication and invaluable and substantial contribution to the work of the Juridical Committee when he was a member of this Committee.

CJI/RES.71 (LXIV-O/04)

TRIBUTE TO DR. JONATHAN T. FRIED

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that the term of office of Dr. Jonathan T. Fried as a member of the Inter-American Juridical Committee concluded on September 30, 2003, date in which he presented his resignation due to new responsibilities with the Government of Canada;

AWARE of the valuable and substantial contribution of Dr. Jonathan T. Fried to the work of the Inter-American Juridical Committee during his term of office as a member of the Committee extending over several years, including his term of office as Chairman of the Committee;

ACKNOWLEDGING the special attributes of Dr. Jonathan T. Fried in readily undertaking assignments as rapporteur for subjects studied or researched by the Juridical Committee in response to mandates from the political organs of the Organization of American States or on its own initiative,

RESOLVES:

1. To express its deep appreciation to Dr. Jonathan T. Fried for his dedication and for his sterling and substantial contribution to the work of the Inter-American Juridical Committee.

2. To record the gratitude of the Inter-American Juridical Committee for Dr. Jonathan T. Fried's substantial interest in and support for the continuing development of the library services offered by the Committee.

3. To acknowledge also the valuable contributions of Dr. Jonathan T. Fried to the development of the Course on International Law conducted annually under the auspices of the Inter-American Juridical Committee.

4. To convey to Dr. Jonathan T. Fried the Committee's best wishes in his future endeavors.

5. To transmit this resolution to Dr. Jonathan T. Fried and to the organs of the Organization.

This resolution was adopted unanimously at the session on March 17, 2004, in the presence of the following members: Drs. Brynmor T. Pollard, Luis Marchand Stens, Mauricio Herdocia, João Grandino Rodas Ana Elizabeth Villalta Vizcarra, Jean-Paul Hubert, Felipe Paolillo, Eduardo vio Grossi and Luis Herrera Marcano.

Lastly, the Inter-American Juridical Committee decided to adopt resolution CJI/RES.68 (LXIV-O/04), *Date and venue of the 65th regular session of the Inter-American Juridical Committee*, by which it resolves to hold its 65th regular session at its seat in the city of Rio de Janeiro between August 2 and 27, 2004.

CJI/RES.68 (LXIV-O/04)

**DATE AND VENUE OF THE 65TH REGULAR SESSION OF
THE INTER-AMERICAN JURIDICAL COMMITTEE**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that article 15 of its *Statute* provides for holding regular sessions every year;

BEARING IN MIND that article 14 of its *Statute* provides that the Inter-American Juridical Committee is based in the city of Rio de Janeiro,

RESOLVES to hold the 65th regular session in the offices of the Inter-American Juridical Committee in the city of Rio de Janeiro, August 2-27, 2004.

The resolution herein was approved unanimously at the session on March 17, 2004, in the presence of the following members: Drs. Brynmor T. Pollard, Luis Marchand Stens, Mauricio Herdocia, João Grandino Rodas Ana Elizabeth Villalta Vizcarra, Jean-Paul Hubert, Felipe Paolillo, Eduardo vio Grossi and Luis Herrera Marcano.

At this regular session, the Inter-American Juridical Committee discussed the following agenda, adopted by resolution CJI/RES.66 (LXIII-O/04), *Agenda for the 64th regular session of the Inter-American Juridical Committee*:

CJI/RES.66 (LXIII-O/03)
AGENDA FOR THE 64TH REGULAR SESSION OF THE
INTER-AMERICAN JURIDICAL COMMITTEE
(Rio de Janeiro, Brazil, March 8 to 19, 2004)

A. Topic under consideration

1. Seventh Inter-American Specialized Conference on Private International Law – CIDIP-VII [AG/RES.1844 (XXXII-O/02) and AG/RES.1846 (XXXII-O/02)]
Rapporteurs: Dr. Ana Elizabeth Villalta Vizcarra and João Grandino Rodas
2. Legal aspects of compliance with international sentences and awards within the States
Coordinator: Dr. Luis Herrera Marcano
3. Legal aspects of Inter-American security
Rapporteurs: Drs. Eduardo Vio Grossi, Luis Marchand Stens and Ana Elizabeth Villalta Vizcarra.

B. Topics for follow-up

1. Improving the system of administration of justice in the Americas: access to justice [AG/RES.1844 (XXXII-O/02)]
Rapporteurs: Drs. Jonathan T. Fried, Brynmor T. Pollard and Ana Elizabeth Villalta Vizcarra
2. Application of the Inter-American Democratic Charter
Rapporteur: Dr. Eduardo Vio Grossi
3. Preparations for the commemoration of the centennial of the Inter-American Juridical Committee [AG/RES.1844 (XXXII-O/02)]
Coordinators: Drs. Eduardo Vio Grossi, Luis Herrera Marcano and João Grandino Rodas
4. Elaboration of a draft Inter-American convention against racism and all forms of discrimination and intolerance
Rapporteur: Dr. Felipe Paolillo
4. The right to information: access to protection of information and personal data
Rapporteur: Dr. Antonio Gómez Robledo

This resolution was adopted unanimously at the session held on 28 August 2003 in the presence of the following members: Drs. João Grandino Rodas, Luis Marchand Stens, Eduardo Vio Grossi, Ana Elizabeth Villalta Vizcarra, Carlos Manuel Vázquez and Luis Herrera Marcano.

B. Sixty-fifth regular session

The 65th regular session of the Inter-American Juridical Committee took place from August 2 to 20, 2004, at its seat in the city of Rio de Janeiro, Brazil.

The members of the Inter-American Juridical Committee attending the regular session were the following, listed in the order of precedence determined by lots drawn at the session's first meeting and in accordance with Article 28(b) of *the Rules of Procedure of the Inter-American Juridical Committee*:

Alonso Gómez-Robledo Verduzco

Brynmor T. Pollard

Ana Elizabeth Villalta Vizcarra

Luis Marchand Stens

Luis Herrera Marcano

Mauricio Herdocia Sacasa

Jean-Paul Hubert

Eduardo Vio Grossi

Felipe Paolillo

João Grandino Rodas

Dr. Kenneth O. Rattray was unable to attend.

On behalf of the General Secretariat, technical and administrative support was provided by Dr. Enrique Lagos, Assistant Secretary for Legal Affairs; Dr. Jean-Michel Arrighi, Director of the Department of International Law; and Manoel Tolomei Moletta and Dante M. Negro, principal legal officers with the Department of International Law.

The Chairman of the Inter-American Juridical Committee, pursuant to Article 12 of the Committee's Rules of Procedure, gave his report on its activities since the last meeting.

The Chairman of the Inter-American Juridical Committee also reported that at the XXXIV regular session of the OAS General Assembly (Quito, June 2004), Drs. Galo Leoro Franco, of Ecuador, and Antonio Fidel Pérez, of the United States of America, were elected to serve as members of the Juridical Committee, and that Dr. Jean-Paul Hubert, of Canada, was reelected. These members will begin their new terms of office on January 1, 2005, for a four-year period.

At this regular session, on August 6, 2004, the Inter-American Juridical Committee proceeded to elect the Chairman and Vice-Chairman of the Committee, who were Drs. Mauricio Herdocia as Chairman and Jean-Paul Hubert as Vice-Chairman, in the place of Drs. Brynmor Pollard and Ana Elizabeth Villalta, respectively.

The letter dated August 12, 2004, was received from Dr. Kenneth O. Rattray, in which he resigns from the Inter-American Juridical Committee for health reasons. The Juridical Committee decided to draft a resolution, taking note of the letter, expressing recognition for his work on the Committee, wishing Dr. Rattray a speedy recovery and informing the Permanent Council of the vacancy. On October 22, 2004, the OAS Permanent Council elected doctor Stephen Vascciannie, from Jamayca, to complete the term of mandate of doctor Kenneth Rattray.

The Inter-American Juridical Committee on this matter also adopted resolution CJI/RES.79 (LXV-O/04). The resolution text is transcribed below:

CJI/RES.79 (LXV-O/04)

RESIGNATION OF DR. KENNETH O. RATTRAY

THE INTER-AMERICAN JURIDICAL COMMITTEE,

BEARING IN MIND the letter dated 12th August 2004 from Dr. Kenneth O. Rattray to Dr. Brynmor T. Pollard, former Chairman of the Inter-American Juridical Committee, in which he communicates his resignation as member of the Committee for health reasons,

RESOLVES:

1. To accept the resignation of Dr. Kenneth O. Rattray, to date member of the Inter-American Juridical Committee, for health reasons.
2. To convey to Dr. Kenneth O. Rattray its heartfelt desire for a speedy recovery, and thank him for the valuable contributions to the Inter-American Juridical Committee during the three terms of office when he was a member of the Committee.
3. To request Dr. Mauricio Herdocia Sacasa, Chairman of the Inter-American Juridical Committee, to send a letter to the Chairman of the Permanent Council, informing him of the contents of the present resolution in order to fill this vacancy.

This resolution was unanimously adopted at the session held on 16 August 2004, in the presence of the following members: Drs. Mauricio Herdocia Sacasa, Jean-Paul Hubert, Brynmor T. Pollard, Ana Elizabeth Villalta Vizcarra, Luis Marchand Stens, Luis Herrera Marcano and João Grandino Rodas.

The Inter-American Juridical Committee also adopted resolutions CJI/RES.72 (LXV-O/04) and CJI/RES.73 (LXV-O/04), wherein recognition is done to Drs. Felipe Paolillo and Brynmor Pollard, who end their work in the Inter-American Juridical Committee on December 31, 2004.

CJI/RES.72 (LXV-O/04)**RECOGNITION TO DR. FELIPE PAOLILLO**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that Dr. Felipe Paolillo's term of office as a member of the Inter-American Juridical Committee will come to an end on 31 December 2004;

BEARING IN MIND the valuable contribution lent by Dr. Felipe Paolillo to International Law during his mandate;

AWARE of Dr. Felipe Paolillo's active participation in the discussion of the topics analyzed during his term of office;

RECALLING the contribution made by Dr. Felipe Paolillo as lecturer in the Course on International Law organized each year by the Juridical Committee;

ACKNOWLEDGING the outstanding personal attributes of Dr. Felipe Paolillo, which have facilitated the development of the debates and work of this collegiate body,

RESOLVES:

1. To express the deep appreciation of the Inter-American Juridical Committee to Dr. Felipe Paolillo for his dedicated and generous participation in the work and activities as a member of the organ since 2001, and also for his participation as lecturer in the Course on International Law.

2. To declare the gratitude of the Inter-American Juridical Committee for Dr. Felipe Paolillo's substantial contribution in the study of the different topics included in the Committee's agenda, especially as regards the drafting of an Inter-American Convention against racism and any other form of discrimination and intolerance.

3. To transmit this resolution to Dr. Felipe Paolillo and to the other units of the Organization.

This resolution was adopted unanimously at the session on August 6, 2004, in the presence of the following members: Drs. Alonso Gómez-Robledo V., Brynmor T. Pollard, Ana Elizabeth Villalta Viscarra, Luis Marchand Stens, Luis Herrera Marcano, Mauricio Herdocia Sacasa, Jean-Paul Hubert, Eduardo vito Grossi and João Grandino Rodas.

CJI/RES.73 (LXV-O/04)**RECOGNITION TO DR. BRYNMOR THORNTON POLLARD**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that Dr. Brynmor T. Pollard's term of office as a member of the Inter-American Juridical Committee expires on December 31, 2004;

IN VIEW OF the active participation played by Dr. Brynmor T. Pollard in the discussion of topics under study during the period he performed his duties as a member and Chairman of Juridical Committee;

ACKNOWLEDGING the high regard and esteem in which he is held by his colleagues on the Committee;

RESOLVES:

1. To express its deep appreciation for the valuable contributions made by Dr. Brynmor T. Pollard towards advancing the work of the Inter-American Juridical Committee;

2. To acknowledge the extraordinary contribution made by Dr. Pollard to this Committee, both as a member since 1997 and as Chairman for the last few years, a period during which he toiled hard and used his exceptional prestige both inside and outside the Organization of the American States;

3. To express the gratitude of the Inter-American Juridical Committee, especially for Dr. Pollard's participation as lecturer in the Course on International Law, and also for his contributions to the topic of the agenda related to improving the systems of administration of justice in the Americas;

4. To transmit this resolution to Dr. Brynmor Pollard and to the organs of the Organization.

This resolution was unanimously adopted at the session held on 6 August 2004, in the presence of the following members: Drs. Alonso Gómez Robledo Verduzco, Ana Elizabeth Villalta Viscarra, Luis Marchand Stens, Luis Herrera Marcano, Mauricio Herdocia Sacasa, Jean-Paul Hubert, Eduardo vio Grossi, Felipe Paolillo and João Grandino Rodas.

At the 65th regular session, the Inter-American Juridical Committee examined the following agenda, approved by resolution CJI/RES.70 (LXIV-O/04), *Agenda for the 65th regular session of the Inter-American Juridical Committee*.

CJI/RES.70 (LXIV-O/04)

**AGENDA FOR THE 65TH REGULAR SESSION
OF THE INTER-AMERICAN JURIDICAL COMMITTEE**

(Rio de Janeiro, Brazil, August 2 to 27, 2004)

A. Topics under consideration

1. Legal aspects of compliance within the States with decisions of international courts or tribunals or other international organs with jurisdictional functions
Coordinator: Dr. Luis Herrera Marcano
2. Legal aspects of inter-American security
Rapporteurs: Drs. Eduardo vio Grossi, Luis Marchand Stens, Ana Elizabeth Villalta Vizcarra and Mauricio Herdocia Sacasa
3. Preparations for the commemoration of the Inter-American Juridical Committee centennial anniversary [AG/RES.1844 (XXXII-O/02)]
Coordinators: Drs. Eduardo vio Grossi, João Grandino Rodas, Mauricio Herdocia Sacasa and Luis Herrera Marcano
4. Seventh Inter-American Specialized Conference on Private International Law – CIDIP-VII [AG/RES.1844 (XXXII-O/02) and AG/RES.1846 (XXXII-O/02)]
Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and João Grandino Rodas

B. Topics for follow-up

1. Improving the system of administration of justice in the Americas: access to justice [AG/RES.1844 (XXXII-O/02)]
Rapporteurs: Drs. Brynmor T. Pollard and Ana Elizabeth Villalta Vizcarra
2. Application of the Inter-American Democratic Charter
Rapporteur: Dr. Eduardo vio Grossi
4. Preparation of a draft Inter-American convention against racism and any kind of discrimination and intolerance
Rapporteur: Dr. Felipe Paolillo
5. Right to information: access and protection of information and personal data
Rapporteur: Dr. Antonio Gómez Robledo

This resolution was adopted unanimously at the session held on March 18, 2004 in the presence of the following members: Drs. Brynmor T. Pollard, Luis Marchand Stens, Mauricio Herdocia Sacasa, João Grandino Rodas, Ana Elizabeth Villalta Vizcarra, Jean-Paul Hubert, Felipe Paolillo, Eduardo vio Grossi and Luis Herrera Marcano.

At this regular session, the Inter-American Juridical Committee also adopted its agenda for the 66th regular session, in resolution CJI/RES.78 (LXV-O/04), *Agenda for the 66th regular session of the Inter-American Juridical Committee*, and decided, under resolution CJI/RES.74 (LXV-O/04), *Date and venue of the 66th regular session of the Inter-American Juridical Committee*, to hold that regular session at the seat of the Juridical Committee in the city of Rio de Janeiro, from February 28 to March 11, 2005, without detriment to delegating to the Committee Chairman the decision to change the venue should

some OAS member State offer on the occasion a different venue for that regular session. On November 3rd, 2004 the Chair of the Inter-American Juridical Committee, doctor Mauricio Herdocia, informed the other members of the Committee of the decision of the Government of Nicaragua to host the above mentioned regular session. On December 6, 2004, it was signed the Agreement between the General Secretariat of the Organization of American States and the Government of the Republic of Nicaragua related to the holding of the 66th regular session of the Inter-American Juridical Committee in Managua, Nicaragua, between February 28 and March 11, 2005.

CJI/RES.78 (LXV-O/04)

**AGENDA FOR THE 66TH REGULAR SESSION OF THE
INTER-AMERICAN JURIDICAL COMMITTEE**

(Rio de Janeiro, Brazil, February 28 to March 11, 2005)

A. Topics under consideration

1. Legal aspects of compliance within the States with decisions of international courts or tribunals or other international organs with jurisdictional functions
Coordinator: Dr. Luis Herrera Marcano
2. Legal aspects of inter-American security
Rapporteurs: Drs. Eduardo vio Grossi, Luis Marchand Stens, Ana Elizabeth Villalta Vizcarra and Mauricio Herdocia Sacasa
3. Joint efforts of the Americas in the struggle against corruption and impunity
Rapporteur: Dr. Ana Elizabeth Villalta Vizcarra
4. Legal aspects of the interdependence between democracy and economic and social development
Rapporteurs: Dr. Jean-Paul Hubert
5. Right to information: access and protection of information and personal data
Rapporteur: Dr. Alonso Gómez Robledo
6. Preparations for the commemoration of the Inter-American Juridical Committee centennial
Coordinators: Drs. Eduardo vio Grossi, João Grandino Rodas, Mauricio Herdocia Sacasa and Luis Herrera Marcano
7. Reexamination of the conventions on private international law
Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and João Grandino Rodas

B. Topics for follow-up

1. Application of the Inter-American Democratic Charter
Rapporteur: Dr. Eduardo vio Grossi
2. Seventh Inter-American Specialized Conference on Private International Law – CIDIP-VII
Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and João Grandino Rodas
5. Preparation of a draft Inter-American convention against racism and any kind of discrimination and intolerance
Rapporteur: Dr. Felipe Paolillo

This resolution was adopted unanimously at the session held on August 13, 2004 in the presence of the following members: Drs. Mauricio Herdocia Sacasa, Jean-Paul Hubert, Brynmor T. Pollard, Ana Elizabeth Villalta Vizcarra, Felipe Paolillo, Eduardo vio Grossi and Luis Herrera Marcano.

CJI/RES.74 (LXV-O/04)

**DATE AND VENUE OF THE 66TH REGULAR SESSION OF THE
INTER-AMERICAN JURIDICAL COMMITTEE**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that article 15 of its *Statute* provides for holding regular sessions every year;

BEARING IN MIND that article 14 of its *Statute* provides that the Inter-American Juridical Committee is based in the city of Rio de Janeiro,

RESOLVES to hold the 66th regular session in the offices of the Inter-American Juridical Committee in the city of Rio de Janeiro, from February 28th to March 11th, 2005, without detriment to delegating to the Chairman of the Juridical Committee the decision to hold said regular session at another venue should this be proposed by some other government.

This resolution was adopted unanimously at the session on August 4, 2004, in the presence of the following members: Drs. Brynmor T. Pollard, Ana Elizabeth Villalta Vizcarra, Alonso Gómez-Robledo, Luis Herrera Marcano, Mauricio Herdocia Sacasa, Jean-Paul Hubert, Eduardo vio Grossi, Felipe Paolillo, and João Grandino Rodas.

CHAPTER II

**TOPICS DISCUSSED BY THE INTER-AMERICAN JURIDICAL COMMITTEE
AT THE REGULAR SESSIONS HELD IN 2004**

In 2004, the Inter-American Juridical Committee held two regular sessions in 2004. Both were held in its seat in the city of Rio de Janeiro, Brazil, in March and August. During both meetings, the Juridical Committee had the following topics on its agenda: legal aspects of compliance within the States of the decisions of international tribunals and courts or other international organs with jurisdictional functions; legal aspects of inter-American security; implementation of the Inter-American Democratic Charter, joint efforts of the Americas in the struggle against corruption and impunity; preparations for the Centennial commemorations of the Inter-American Juridical Committee; right to information: access to and protection of information and personal data; improving the systems of administration of justice in the Americas; access to justice; Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII), and preparation of a draft inter-American convention against racism and all forms of discrimination and intolerance.

A description of each of these topics follows. Where appropriate, the documents prepared and adopted by the Inter-American Juridical Committee on the subject matter are included.

1. Legal aspects of compliance within the States with decisions of international courts or tribunals or other international organs with jurisdictional functions

Resolution

CJI/RES.82 (LXV-O/04) *Legal aspects of compliance within the States with decisions of international courts or tribunals or other international organs with jurisdictional functions*

Documents

CJI/doc.146/04 rev.2 *Legal aspects of compliance within the States with decisions of international courts or tribunals or other international organs with jurisdictional functions*
(presented by Dr. Luis Herrera Marcano)

CJI/doc.167/04 rev.2 *Report on the current status of the topic on: "Legal aspects of compliance within the States with decisions of international courts or tribunals or other international organs with jurisdictional functions"*
(presented by Dr. Luis Herrera Marcano)

During the 64th regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2004), the Committee analyzed document CJI/doc.146/04, *Legal aspects of compliance with international sentences and awards within the States of sentences of international courts and other international organs with legal functions*, presented by doctor Luis Herrera Marcano.

Dr. Mauricio Herdocia expressed his concern on the convenience of describing the aims of the topic in more detail. He mentioned that one of those aims was to establish the current juridical status of the OAS member States in relation to the law and to arbitration courts. He mentioned the need to have an updated list of each of the organs to be studied, identifying the source of the international mandatory nature of its decisions and the basis of its jurisdiction. He also recommended the need to collect the regulations and practices governing all OAS member States regarding such decisions, and to undertake a general assessment on the existence or not of internal legal regulations and on the difficulties that the States most often face on this matter, including an assessment of procedures and modi operandi. At a more general level, he said that it was necessary to stress the pacta sunt servanda principle since the mandatory nature of the sentences derives from international law, regardless of the internal laws of the States. Yet in the cases where there are no precise regulations in internal law, conventional law would consider the mandatory nature.

Dr. Felipe Paolillo referred to the need for an overview of the legislation prevailing in the countries before conclusions are drawn, and to have information on how certain decisions were made in the past in the framework of such legislation.

Dr. Jean-Paul Hubert pointed out that, no matter how far the topic goes, the important thing is to have basic documentation. He asked whether the reason why this topic had been raised in the Committee was because the legal advisors of the Ministries of Foreign Affairs who had met the Juridical Committee members last year felt that these decisions were not being enforced in the OAS member States. He said that in Canada the problem refers to the federative nature, which is, for example, the reason why some inter-American treaties have not yet been ratified, due to possible disputes in their implementation.

Dr. Brynmor Pollard referred to article 84 of the Constitution of the former Federation of the West Indies, saying that it is recommendable to include such provision in future instruments. The draft Statute of the future Caribbean Court of Justice also had a similar provision that, in general, assures compliance with and enforcement of international decisions by the internal courts of the States.

Dr. João Grandino Rodas recalled the need to develop a prospective part so that the study is not only historic or embodies a verification of the status quo, but to go farther in terms of conclusions, although not necessarily resulting in a draft article. The proliferation of international courts nowadays, he said, seems to portray the great importance of this study for the current lack of doctrinal development on the matter.

Dr. Eduardo Vio Grossi said that this is a complex matter and that possible problems might arise on this matter. He said that the problems varied according to the nature of the court involved. Mediation between two countries differs in its political nature to the enforcement of court decisions in terms of human rights, for example. He made a distinction between enforcement of foreign and of international decisions, and on the latter he said that possibly, in the future, people could be entitled to adopt international decisions with regard to themselves, which today they are not entitled to do within the State framework. The end objective of the Juridical Committee's work should be to strengthen the international jurisdictional system, regardless of the study of the status quo in the first part of the analysis, he said. He also stressed that the Committee should not address the whole group of jurisdictional entities in its study (most do not belong to the system, and those that do, do not comprise all OAS member States, because of lack of accession or because they are sub-regional or bilateral). The final report of the Juridical Committee would have to be restricted then to assessing and recommending general guidelines on this matter and suggest a line of action. Secondly, an organ such as the Juridical Committee could well provide such recommendations since it is an entity outside those in the study. He also stressed the importance of distinguishing between the problem of enforcing an international decision from the general problem of the liaison between domestic and international law, that is, to see which mechanisms are adopted to enforce the international decision. Therefore, he visualized four elements to be developed: to determine the conventional regulations governing the enforcement of international decisions (work that could be entrusted to the Secretariat General); to determine the domestic legal acts of the States required to enforce an international decision – constitutional amendment, legal intervention, enactment of a decree, and so on, which concerns the heart of the problem (work to be entrusted to the legal advisors of the Ministries of Foreign Affairs); and to determine in which cases individuals required enforcement of international decisions in the internal framework. He suggested that the Inter-American Juridical Committee prepare at this regular session a chart with the information provided by the various members for a more systematized appreciation on the discussions that have been raised and which show the current progress of the work.

In turn, Dr. Luis Herrera Marcano, coordinator of the topic, recalled that the Chairman of the Inter-American Court of Human Rights had suggested it on a visit to the Juridical Committee. On that occasion, the distinction was made between the decisions ordering compensation to individuals, and those that imply constitutional amendments in the event of non-enforcement. The topic was presented to the legal advisors of the Ministries of Foreign Affairs during their last Joint Meeting with the Inter-American Juridical Committee, causing considerable interest among them. He quoted as an example a decision of an international court affecting the principle of *res judicata* in the national laws of the countries. He also recalled that the objective is to draw up an inventory on the topic and gradually create questions leading to a reconsideration of the question. He also pointed out that the topic is confined solely to both international legal and arbitration decisions, and that the only point in which there could be some kind of overlap would be with regard to foreign and international decisions of arbitration, a subject which will be considered later herein in more detail. For the present regular session, he proposed to analyze the replies from the various members in their reports, and to study such replies for each organ in turn. Dr. Luis Herrera added that it was relevant to examine the concrete cases where international decisions had been enforced or not, determining the legal obstacles existing or that had existed in failure to enforce, ignoring political reasons. He also suggested that in this regular session a questionnaire should be drafted to be able to compile information that the Juridical Committee may use to carry on with its work.

Accordingly, several members of the Juridical Committee made the presentation of lengthy and detailed reports at the 64th regular session.

Dr. Luis Herrera said that in Venezuelan law no regulation is applicable to enforcing every international court decision. In some specific cases, compliance is subject to the action of the Executive with the participation of the Legislative, if necessary. However, in some cases, there is a specific obligation to directly enforce certain decisions. He quoted the example of decisions of the Inter-American Court of Human Rights and of the International Center for Settlement of Investment Disputes (ICSID).

Dr. Mauricio Herdocia mentioned that the Nicaraguan Constitution states that an attribute of the National Assembly is to approve or reject the treaties, acknowledging that they bind the legal system of the State. He said that in the case of international court decisions, the legislation refers to the provisions in the international treaties. He concluded that in Nicaragua there is no single system for enforcement but that it depends on the nature of the decision or opinion. There are cases where the action of the Executive is sufficient while in others it requires the concurrence of the Legislative to issue the relevant laws. He also again insisted on the concept that the mandatory nature of the enforcement of such decisions within the American countries lies in conventional international law. Lastly, he called the attention of the other members of the Inter-American Juridical Committee to the difference regarding the nature in some countries between the international law courts and arbitration tribunals.

Dr. Felipe Paolillo said that there is very little Uruguayan jurisprudence on this subject. He said that Uruguay was never party to a dispute submitted to the jurisdiction of the International Court of Justice, nor to the knowledge of any international arbitration tribunal. He said that these disputes have always been resolved through diplomatic means.

Dr. Jean-Paul Hubert said that Canadian courts apply the laws approved by the Legislative, the regulations of the Executive and common law, in which case they presume that the internal law is in accordance with the Canadian international obligations (it should be borne in mind that while the Executive may sign binding international agreements or enforce the decision made by an international body, any legislative change to implement them requires Parliament's approval). He also said that if internal legislation is explicitly opposed to an international agreement, the internal legislation prevails.

Dr. Ana Elizabeth Villalta concluded that since there is no standard procedure in most of the States for compliance with and enforcement of the decisions of international courts and international organs with jurisdictional functions, it would be convenient for the Juridical Committee to prepare a regulatory procedure. She suggested using as a basis the initiatives that several American States currently adopted to implement the *Statute of the International Criminal Court*. She said that in El Salvador there is no such procedure to access international courts and other international organs with jurisdictional functions. Accordingly, it would have to resort directly to applying its constitutional rule and regulations.

The Inter-American Juridical Committee also decided to fine-tune the title of the subject both in Spanish and English, the final title being:

Legal aspects of compliance within the States with decisions of international courts or tribunals or other international organs with jurisdictional functions.

Aspectos jurídicos del cumplimiento en el ámbito interno de los Estados de las decisiones de tribunales o cortes internacionales u otros órganos internacionales con funciones jurisdiccionales.

At the end of the regular session, the Inter-American Juridical Committee reviewed the revised version of document CJI/doc.146/04 rev.1 *Legal aspects of compliance within the States with decisions of international courts or other international organs with jurisdictional functions*, submitted by Dr. Luis Herrera, with a revised version of the questionnaire on the topic.

Finally, it was decided that Dr. Luis Herrera, coordinator of the topic, was to incorporate all proposals submitted. He was also requested to send to the General Secretariat a revised questionnaire and a draft covering letter to be forwarded to the members of the Juridical Committee for revision and subsequent remittance to the legal advisors at the Fifth Joint Meeting, and to the other legal advisors, explaining that these are informal replies, whose sources would not be disclosed. The idea was purely to assist in the work of the Juridical Committee in this area.

On April 15, 2004, Dr. Luis Herrera sent the document to the Secretariat, which was then forwarded to the other Juridical Committee members on April 16, 2004 (document CJI/doc.146/04 rev.2). After three weeks without comment on the document from any member, the Secretariat forwarded it to the legal advisors of the Ministries of Foreign Affairs of the OAS member States.

In turn, the General Assembly, at its XXXIV regular session (Quito, June 2004), by resolution AG/RES.2042 (XXXIV-O/04), took note of the inclusion of this topic in the agenda of the Inter-American Juridical Committee, requesting its inclusion in the 2004 report, as a study on the progress of the matter.

At the 65th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2004), Dr. Luis Herrera said that to date, and in response to the questionnaire distributed on the matter, six replies had been received from the Juridical Committee members with regard to: Uruguay, Peru, Canada, El Salvador, Venezuela and Nicaragua. He also said that replies had been received from the following countries: Paraguay, Uruguay, Peru, Panama, Guatemala, Canada, United States and Belize.

He continued with an account of the reports presented by each country and jurisdictional international agencies, identifying how a progress report on the matter could be made. In general, Dr. Luis Herrera pointed out that the Central American Court of Justice and the Caribbean Court represent cases where their decisions have immediate internal implementation without the need to undergo an incorporation process. However, he said that these are exceptions. The other case is that of the Inter-American Court of Human Rights, in the pecuniary part. The problem relating to implementation lies in the non-pecuniary part, that is, with regard to measures to be adopted by the States, since very often it requires a constitutional amendment. Lastly, he mentioned Canadian law on international crimes that permits direct enforcement of the International Criminal Court decisions, indicating that it was this field and of human rights which most evolved in recent years in terms of the implementation of international decisions.

In the course of the discussions, Dr. Mauricio Herdocia said that the lack of effective mechanisms was evident in general to implement international decisions in the internal system of the countries. He pointed out especially the progress in Peruvian laws, which may be considered when the Juridical Committee proposes a similar exercise. He commented that a basic starting point is to establish that the mandatory nature of the decisions in question is based on the treaty that creates such bodies and there is or not an internal rule for each case. He pointed out, on the other hand, the various problems for the States to become party to some of these treaties that establish jurisdictional organs, such as, for example, the *Statute of the International Criminal Court*, and that it would be important to examine the way in which some countries resolved them to be, say, an example to others. He lastly mentioned that it would be important to analyze the relationship between treaty-constitution-law and the hierarchy between them in the different countries, to the extent that the mandatory nature of the decisions comes from the treaties that constitute the organs in question.

Dr. Ana Elizabeth Villalta, in turn, referred to the fact that there are several treaties on corruption and impunity in which the jurisdiction of the International Criminal Court is acceptable. She also mentioned that the consultative opinions of the Central American Court of Justice are mandatory, unlike the other international jurisdictional agencies. Finally, she suggested an analysis of the Peruvian law regulating the procedure for implementing decisions made by supranational courts, in order to have an idea of a possible mechanism to be adopted.

Dr. Alonso Gómez Robledo referred to a series of arbitrational and legal international decisions involving Mexico and which were especially important, and Dr. Eduardo vito believed that it would be important for the Juridical Committee, in its report, not only to mention what the law on the matter currently states, but also that an assessment of the *status quo* should be made, that is, to indicate whether it has been enforced or not. Dr. Felipe Paolillo also gave a similar opinion, that is, that cases of failure to comply should be investigated in more depth, so that, therefore, the report of the Committee is of some practical use. Dr. Luis Herrera mentioned that the general rule has been to comply, except in the case of some decisions of the Inter-American Court on Human Rights, which have not been enforced.

With regard to methodology, Dr. Mauricio Herdocia suggested that in the first part of the report there is not much detail about how the topic has progressed in the Committee; in the second part, preliminary and cautious comments are made on the subject; and in the third part, there is a rough outline of the bases of the Committee's future work.

On those points, Dr. Luis Herrera drafted document CJI/doc.167/04, Report on the current status of the topic on “*Legal aspects of compliance within the States with decisions of international courts or tribunals or other international organs with jurisdictional functions*”. Some Juridical Committee members commented and recommended some amendments. One of the basic comments suggested that checking whether international decisions are being implemented or not, to be included in the report, should be considered as something very preliminary. Dr. Luis Herrera was of the opinion that it is still too early to reach a conclusion on this issue, however preliminary it may be, due to the need for the member States to gather more information.

He also suggested that a paragraph be added, considering that although most countries do not have a specific legal regulation to enforce international decisions in general in the internal sphere, the States recognize the mandatory nature of such decisions in virtue of the conventional law or treaties constituting the jurisdictional organs.

He also suggested that not only are answers are expected from the OAS member States to the distributed questionnaire, but that the academic and other sectors could be approached. Dr. Luis Herrera asked the Committee members to take the necessary measures to obtain as many answers as possible. He also suggested sending the progress report to the legal advisors and encourage more answers, and to approach academic circles, using the good offices of the Secretariat, through the inter-American network, suggesting names of professors to be contacted. He also requested the Secretariat to investigate the decisions to which the OAS member States have been party since the 19th century.

The progress report presented by Dr. Luis Herrera in its revised 2 version was approved by the Inter-American Juridical Committee, is included below, preceded by the questionnaire in document CJI/doc.146/04 rev.2. In that regards, the Inter-American Juridical Committee approved resolution CJI/RES.82 (LXV-O/04) also included below.

On September 21, 2004, the General Secretariat sent to the Legal Advisors of the Ministries of Foreign Affairs the progress report CJI/doc.167/04 rev.2, as well as resolution CJI/RES.82 (LXV-O/04).

CJI/RES.82 (LXV-O/04)

**LEGAL ASPECTS OF COMPLIANCE WITHIN THE STATES
WITH DECISIONS OF INTERNATIONAL COURTS OR TRIBUNALS
OR OTHER INTERNATIONAL ORGANS WITH
JURISDICTIONAL FUNCTIONS**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

BEARING IN MIND the resolution of the General Assembly AG/RES.2042 (XXXIV-O/04), by which the Inter-American Juridical Committee was asked to include a study in its next annual report for 2004 on the status of the topic of the legal aspects of compliance within the States with decisions of international Courts or Tribunals or other international organs with jurisdictional functions; and

TAKING INTO ACCOUNT the report on the current status of the matter presented by Dr. Luis Herrera Marcano, coordinator on the topic, during this regular session, and the remarks and comments of the members of the Inter-American Juridical Committee that are included therein,

RESOLVES:

1. To approve the document entitled *Report on the current status of the topic of Legal aspects of compliance within the States with decisions of international Courts or Tribunals or other international organs with jurisdictional functions* (CJI/doc.167/04 rev.2).
2. To thank Dr. Luis Herrera Marcano and the members Mauricio Herdocia Sacasa, Jean-Paul Hubert, Luis Marchand Stens, Felipe Paolillo and Ana Elizabeth Villalta Vizcarra for the reports presented on the topic.
3. To ask the Secretariat of Legal Affairs to again contact those legal advisors who have not yet answered the questionnaire prepared by the Committee on this topic and, using the contacts made with various educational and research centers in the field of international law on the continent,

to ask for those opinions and information on the matters to which the questionnaire refers.

This resolution was approved unanimously at the session on August 19, 2004, in the presence of the following members: Drs. Jean-Paul Hubert, Brynmor T. Pollard, Ana Elizabeth Villalta Vizcarra, Luis Marchand Stens, Luis Herrera Marcano and João Grandino Rodas.

CJI/doc.146/04 rev.2

**LEGAL ASPECTS OF COMPLIANCE WITHIN THE STATES
WITH DECISIONS OF INTERNATIONAL COURTS
OR TRIBUNALS OR OTHER INTERNATIONAL ORGANS
WITH JURISDICTIONAL FUNCTIONS**

(presented by Dr. Luis Herrera Marcano)

1. SCOPE

The purpose of this study is to consider, from a strictly legal perspective, the laws, regulations and practices of OAS Member States relating to compliance with the following decisions:

- sentences of international courts
- Awards of arbitration tribunals in controversies between States
- Awards of arbitration tribunals in controversies between States and investors of other States
- Decisions by panels of international trade organizations or under free trade treaties

To this end, the following aspects should be examined:

- The jurisdictions of what international courts, tribunals and other similar organs has each State accepted, by treaty or by any other international instrument.
- Constitutional and other legal provisions, as well as administrative practices, that mandate, permit, or facilitate compliance with decisions of the kind considered in this study.
- International sentences, awards, and other similar decisions in cases in which the State has been a party, with a brief summary of their most important provisions.
- The way in which these decisions have been complied with, including specific legal measures for this purpose (laws, decrees, judicial decisions, administrative acts, etc.).
- In the event of non-compliance, the legal causes for such failure to comply.

The following aspects are excluded from the scope:

- Mandatory decisions of non-jurisdictional organs, such as the United Nations Security Council.
- Decisions by foreign courts, meaning domestic courts of other States.
- International arbitration decisions between private parties, or between private parties and a State acting as a private party.
- International consequences of failure to comply, such as international responsibility of the State.

The study will cover compliance with decisions of the following:

International Permanent Courts

- International Court of Justice
- International Court of the Law of the Sea
- Inter-American Court of Human Rights
- International Criminal Court
- Court of Justice of the Andean Community
- Central American Court of Justice
- Court of Justice of the Caribbean Community

Temporary International Tribunals

- International Criminal Tribunal for the former Yugoslavia
- International Criminal Tribunal for Rwanda

International Public Law arbitration between States

Including arbitration in the Permanent Court of Arbitration, by *ad hoc* tribunals, by mixed committees and by single arbiters.

Arbitration on investment disputes between a State and a national of another State under an investment protection treaty or similar international instrument:

- International Center for Settlement of Investment Disputes (CIADI/ICSID)
- Arbitration under UNCITRAL provisions
- Arbitration under International Chamber of Commerce Regulations

International organs with legal functions:

- World Trade Organization panels
- North American Free Trade Agreement - NAFTA panels
- Panels of other free trade agreements between American States

2. QUESTIONNAIRE

A. International Court of Justice

Did your country accept the mandatory jurisdiction of the Court? With restrictions? Which?

Did your country accept the mandatory jurisdiction of the Court under the Inter-American Treaty of Pacific Settlement of Disputes?

Does your country have constitutional or legislative provisions or administrative practices applicable to compliance with Court awards?

Has your country ever been the object of some award or provisional measure of the Court? If so, list the awards, briefly summarize their provision and explain how they were complied with, including the specific legal measures adopted to that end, or the legal reasons for failure to comply.

B. International Tribunal for the Law of the Sea

Has your country ratified the United Nations Convention on the Law of the Sea?

Is it under the jurisdiction of the International Tribunal for the Law of the Sea, or does it reserve jurisdiction for the International Court of Justice, or mandatory arbitration pursuant to article 287 of the Convention?

Does your country have constitutional or legislative provisions or administrative practices that can be applied to complying with the Tribunal's awards?

Has your country ever been the object of some award or provisional measure of the Tribunal? If so, list the awards, briefly summarize their provision and explain how they were complied with, including the specific legal measures adopted to that end, or the legal reasons for failure to comply.

C. Inter-American Court of Human Rights

Has your country ratified the American Convention of Human Rights?

Has your country accepted the mandatory jurisdiction of the Court? With reservations? Which?

Does your country have constitutional or legislative provisions or administrative practices applicable to compliance with the Court awards?

Has your country ever been the object of some award or provisional measure of the Court? If so, list the awards, briefly summarize their provision and explain how they were complied with, including the specific legal measures adopted to that end, or the legal reasons for failure to comply.

D. International Criminal Court

Has your country ratified the Statutes of the International Criminal Court?

Has your country provided for prison sentences awarded by the court to be served in its territory?

Does your country have constitutional or legislative provisions or administrative practices applicable to the compliance with the Court awards?

E. Court of Justice of the Andean Community

Is your country party to the Treaty establishing the Court of Justice of the Andean Community?

Does your country have constitutional or legislative provisions or administrative practices applicable to the compliance with the Court awards?

Has your country ever been the object of some award or provisional measure of the Court? If so, list the awards, briefly summarize their provision, and explain how they were complied with, including the specific legal measures adopted to that end, or the legal reasons for failure to comply.

F. Central American Court of Justice

Is your country party to the Statutes of the Central American Court of Justice?

Does your country have constitutional or legislative provisions or administrative practices applicable to the compliance with the Court awards?

Has your country ever been the object of some award or provisional measure of the Court? If so, list the awards, briefly summarize their provision and explain how they were complied with, including the specific legal measures adopted to that end, or the legal reasons for failure to comply.

G. Court of Justice of the Caribbean Community

Has your country ratified the treaty that created the Court of Justice of the Caribbean Community?

Does your country have constitutional or legislative provisions or administrative practices applicable to the compliance with the Court awards?

Has your country ever been the object of some award or provisional measure of the Court? If so, list the awards, briefly summarize their provisions and explain how they were complied with, including the specific legal measures adopted to that end, or the legal reasons for failure to comply.

H. International Criminal Tribunals for the former Yugoslavia and for Rwanda

Does your country have constitutional or legislative provisions or administrative practices applicable to the compliance with the awards of these tribunals?

Has your country ever received an order from these Courts regarding their trials?

Has your country ever been the subject of some order of the Court? If so, briefly summarize their provisions and explain how they were complied with, including the specific legal measures adopted to that end, or the legal reasons for failure to comply.

I. International Public Law arbitration between States

Has your country ratified the 1907 Convention of The Hague for the Pacific Settlement of International Disputes, establishing the Permanent Court of International Arbitration?

Does your country have constitutional or legislative provisions or administrative practices applicable to the compliance with public law arbitration decisions, issued by the Permanent Court of International Arbitration, *ad hoc* arbitration courts, arbitration commissions, or single arbiters?

Has your country ever been the object of some award or provisional measure of the Permanent Court of International Arbitration? If so, list the awards, briefly summarize their provisions and explain how they were complied with, including the specific legal measures adopted to that end, or the legal reasons for failure to comply.

J. Decisions on investments between one State and a national of another State covered by an investment protection treaty or similar

Did your country assume the obligation to resort to international arbitration with foreign investors based on some investment protection or free trade treaty? Does the jurisdiction of such arbitral tribunals extend to examining *jure imperii* acts of the State to determine whether they conform to the provisions of an investment treaty or similar international obligation?

To which of these arbitration procedures has your country agreed to submit: International Center for Settlement of Investment Disputes (CIADI/ICSID), Rules of Arbitration of the United

Nations Commission on International Trade Law (UNCITRAL), Rules of Arbitration of the International Chamber of Commerce?

Has your country ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States?

Does your country have constitutional or legislative provisions or administrative practices applicable to the compliance with decisions of this kind?

Has your country ever been the object of some decision of this kind? If so, list the decisions, briefly summarize their provisions and explain how they were complied with, including the specific legal measures adopted to that end, or the legal reasons for failure to comply.

K. International organs with legal functions

Is your country party to the World Trade Organization?

Is your country party to the North American Free Trade Agreement or some other free trade agreement that provides for dispute settlement by means of panels?

Does your country have constitutional or legislative provisions or administrative practices applicable to compliance with decisions of this kind?

Has your country ever been the object of decisions of this kind? If so, list the decisions, briefly summarize their provisions, and explain how they were complied with, including the specific legal measures adopted to that end, or the legal reasons for failure to comply.

CJI/doc.167/04 rev.2

**REPORT ON THE CURRENT STATUS OF THE TOPIC ON:
“LEGAL ASPECTS OF COMPLIANCE WITHIN THE STATES
WITH DECISIONS OF INTERNATIONAL COURTS OR TRIBUNALS
OR OTHER INTERNATIONAL ORGANS WITH
JURISDICTIONAL FUNCTIONS”**

(presented by Dr. Luis Herrera Marcano)

In its session of August 2003, the Inter-American Juridical Committee decided to include in the agenda the topic *Legal Aspects of Compliance within the States with decisions of international Courts or Tribunals or other international organs with jurisdictional functions*.

The decision was taken as a result of a presentation made to the Committee by the then Chairman of the Inter-American Court on Human Rights, Dr. Antonio Augusto Cançado Trindade, in which he referred to certain drawbacks found when complying with the decisions ruled by that Court.

The Committee agreed that all its members participate coordinated by member Dr. Luis Herrera Marcano.

The Committee made good use of the meeting held during the aforementioned regular session with the legal advisors of the Ministries of Foreign Affairs of the Member States to exchange views on the matter. The advisors present agreed that the topic was of interest and offered to cooperate with the Committee.

In the March 2004 regular session, after further analysis of the topic on the basis of information provided by some of its members, the Committee drafted a detailed questionnaire distributed among the members and also forwarded to the legal advisors of the Ministries of Foreign Affairs of the Member States. In the message to the legal advisors it was underscored that the answers to the questionnaire would be informal and that the Committee would not published, quote in writing or attribute them to their authors.

In its August 2004 session, the Committee analyzed the topic once again, taking into consideration the answers to the questionnaire received.

For the time being, the answers to the questionnaire were received from eleven member States: Belize, Canada, El Salvador, Guatemala, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay and Venezuela. In some cases, the questionnaire has been answered by a member of the Committee, and in others by a legal advisor or by both.

After examining the answers received, the Committee makes the following preliminary comments.

The significant number of replies received so far, amounting to about one third of the Member States, is still not enough to draw definitive conclusions. Nevertheless, it is a valuable contribution towards directing the study of the topic.

With the exception of Peru, the countries examined so far did not have a specific legal norm to regulate, in general, the internal compliance with all international decisions. Peru enacted a "law regulating the procedure to fulfill sentences passed by supranational courts".

Two countries (Canada, United States) have adopted specific legal provisions to enable enforcement of the decisions of some international criminal courts.

In the case of some international decisions (Inter-American Court for Human Rights, arbitration in the International Center for Settlement of Investment Disputes (ICSID), and arbitration under the rules of UNCITRAL), the part of the sentence that determines the compensation can, in fact, be carried out directly internally as if it were a decision of a national court or tribunal.

Some international courts (The Central-American Court of Justice, The Caribbean Court of Justice) in addition to the international jurisdiction, exercise direct jurisdiction in member States in other matters (constitutional matters in the former case, civil and criminal issues in the latter).

Some treaties relating to trade (World Trade Organization), integration (Andean Community) or free trade (North American Free Trade Area and others) provide that, in the event of failure to comply with a decision of the particular dispute settlement body, the application of trade sanctions by the other member States may be authorised.

The Inter-American Juridical Committee hopes to receive more responses to its questionnaire by its next session, in view of the offer made by several members of the Committee and legal advisors to complete the questionnaire as soon as possible. The Committee also hopes to undertake a more in-depth investigation of the subject with the support of its members and the Secretariat for Legal Affairs. For that purpose, it intends to use existing contacts with various higher educational and research institutions in the field of international law.

The Committee hopes to analyze some specific matters, for example, those rendering international decisions that require action not only by the Executive but also by the Legislature or the Judiciary of the States or provinces within a federal State, or even the constituent power.

The Committee hopes that, when this study is concluded, it may be useful for the member States to ascertain the problems experienced by the other States when complying with international decisions and the manner of resolving them.

2. Legal aspects of inter-American security

Resolution

CJI/RES.75 (LXV-O/04) Legal aspects of inter-american security

Documents

CJI/doc.147/04 rev.1 *Legal aspects of hemispheric security (working document for the preparation of a draft resolution on the action of the Organization of American States on matters related to international peace and security)* (presented by Dr. Eduardo Vio Grossi)

CJI/doc.159/04 rev.1 - *Legal aspects of the inter-american security: principles or general regulations about the action of the Organization of the American States in terms of international peace and security* (presented by Dr. Eduardo Vio Grossi)

At the 64th regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2004), Dr. Eduardo Vio Grossi presented document CJI/doc.147/04, *Legal aspects of hemispheric security: working document for the preparation of a draft resolution on the action of the Organization of American States on matters related to international security and peace*, referring to some of the provisions to be included in a forthcoming resolution on the matter.

Dr. Vío said that the exercise suggested by the document could be as useful as the one carried out previously on the approval of the *Inter-American Democratic Charter*, and that the aim would be to systematically provide the regulations applicable to the activities of the OAS in the area of peace and international security. He also said that a systematic body of regulations would allow their fine-tuning and development to strengthen the Organization. Finally, Dr. Vio mentioned that, without ignoring the multidimensional nature of hemispheric security, the purpose of his report was to mention the regulations governing the activities in which the OAS is involved with regard to international peace and security.

Dr. Vío pointed out that the Special Conference on Security held in Mexico in October of 2003 did not assign any special task to the Juridical Committee. However, it decided that the Committee should continue to review the topic. In the rapporteur's opinion, the declaration adopted as a result of this Conference, whilst encompassing a multidimensional concept, was difficult to interpret, especially since it contains no reference to specific regulations of the *Charter* or other legal instruments. In this area, the rapporteur explained, the Committee could try to provide a substantial contribution, defining the topic of peace and international security.

The rapporteur then explained the framework of the document submitted, which will lead to the adoption of a future resolution. The sphere of adoption of said resolution would be limited to OAS activities as an organization, excluding actions to be taken by only some member States within the *Rio Treaty*, for example. He also said that the new threats, concerns and other challenges against security were the competence of other specialized *fora* within the OAS, as determined by the *Declaration of Mexico*, reserving the competence on matters relating to armed attack (article 65 of the *OAS Charter*) to the Permanent Council. Dr. Vío also proposed that, in the event of a possible resolution, it should be established that the prime objective of the OAS is to keep and restore peace and international security in the Hemisphere. This is a general vocation, the rapporteur said, because at present, peace and international security are concepts encompassing various aspects. However, the Juridical Committee should not lose sight of the most specific and relevant purpose.

The third article contained in the rapporteur's draft resolution refers to the obligation of refraining from using force, as a result of the aim mentioned in the preceding paragraph. He pointed out that peace means the absence of use of force, the negation of war. Dr. Eduardo Vío also stressed that the draft resolution tried to distinguish peace from security. The security of the Hemisphere consists in eliminating threats to peace throughout the Continent, he said. And the main threat to peace is the threat of the use of force. This topic is discussed in his draft proposal for Article 4. In this concept, the

use or threat of violence against the territory of any American State, without jeopardizing, as established by the draft Article 10, the right of sovereignty of the member States. He also stressed that it must not be ignored that a certain situation may cause the OAS to issue a declaration on certain phenomena, in addition to keeping peace, such as peaceful settlement of disputes, effective exercise of democracy, or respect for human rights (proposed Article 6).

Concerning the actions to be taken by the OAS, the rapporteur stressed that the organization had no supranational nature, because it does not replace the States in the exercise of certain responsibilities. On the contrary, it is a coordinating entity for the cooperation between States, since the latter act on their own. It is, therefore, important to point out that what the OAS can do in this regard is of a political or diplomatic, but not coercive, nature. However, this does not ignore the measures that the OAS may adopt, he explained. Articles 12 and 13 in the draft detail what actions of that nature the Organization can take.

As far as the actions to be taken in case of aggression, the rapporteur proposed three texts for the article. He indicated that this issue was related to the topic on the *Rio Treaty*. In principle, the OAS should have to determine when there is an act of aggression (that is, it would not be of the sole competence of the States party to the *Rio Treaty*), as well as take the corresponding measures.

Concerning the actions within the UN framework, the proposed articles provide that only in the case of the OAS acting under the protection of the UN Security Council may it use force, and this governs all aspects relating to the use of force.

Lastly, the proposed provisions address institutional aspects. The rapporteur pointed out that he had not taken into consideration aspects discussed in detail, such as the role of the Inter-American Defense Board or of the *Rio Treaty*, to refer solely to the role of the OAS through the General Assembly or the Consultation Meetings of Ministers of Foreign Affairs. The proposed provisions also underline the authority of the Secretary General to convey to the General Assembly of the Permanent Council any matter relating to peace and international security in the Americas.

Dr. Mauricio Herdocia said, in the first instance, that it would be appropriate to submit all elements referring to the latest viewpoints on security matters contained in the *Declaration of Mexico* to the new legal initiatives within the Juridical Committee.

Dr. Herdocia then referred to some areas to be addressed in depth by the Committee, such as the separation in the rapporteur's document of the *OAS Charter* and the *Rio Treaty*, bearing in mind that in the former there is an express reference to the *Rio Treaty*; the dissociation of the use of force and legitimate defense, when Article 22 of the *Charter* also expressly refers to it; the consideration in the rapporteur's report concerning political and diplomatic measures as the only element provided to the OAS, which is detrimental to individual and collective legitimate defense; and lastly, the fact that Article 2 of the *OAS Charter* established several purposes and principles, in addition to the consolidation of peace and security in the continent, as the rapporteur seems to be proposing in his document.

Dr. Herdocia said that the project adopts a strict traditional focus. He also pointed out that he would rather find certain aspects, such as the multidimensional viewpoint on security, which would be important to analyze as part of the progressive development of international law. He expressed that a limited viewpoint with regard to the use of force belongs to the past, no longer corresponding to the present, when member States agreed to lend a new and far broader focus on international security. He also referred to the set of confidence measures, which have been adopted in the framework of the OAS in recent years, among them the regional agreements on security, which are not included in the rapporteur's report, and which should not be ignored.

Dr. Felipe Paolillo expressed his doubts about proceeding with a general exercise on the subject. He recalled that the political organs of the Organization had expressed their doubts that the Juridical Committee was reviewing the subject, since it had not been consulted during the process of drafting the *Declaration on Hemispheric Security*. He also added that the mandate approved by the Juridical Committee itself on the subject during the last regular session was not a document containing rules but rather of a descriptive nature.

Dr. Luis Herrera recommended not reaching an anticipated decision if the final product is a draft resolution, legal opinion or similar. He said that it would be useful to analyze the reasons provided by the rapporteur on the concept of international security, as well as the relationship with the more restrictive concept of peace, such as the absence of armed conflict, which he is proposing. He explained that there are three kinds of armed conflict: disputes between OAS member States, disputes between an American State and an extra-continental State, and thirdly, disputes within an American State. The three categories deserve careful analysis. He also suggested analyzing the current legal relationships between the *OAS Charter* and *Rio Treaty*, the latter with very concrete objectives in the event of armed conflict.

Dr. Ana Elizabeth Villalta also referred to the latest viewpoints on security as shown in the Declaration of Mexico, which in her opinion is not reflected in the rapporteur's work. She stressed the importance of treaties such as the Framework Treaty on Democratic Security in Central America, which should be taken into consideration in the final report.

Dr. Jean-Paul Hubert said that this is a complex matter, since there exist both political and legal elements. He stressed the multidimensional nature of security and that this view should be taken into consideration, even when the intention is to address the topic from a legal viewpoint. He also mentioned that the latest concepts on security continue to evolve, and that the traditional legal tools cannot avoid such development. He also referred to certain key issues not included in the rapporteur's report, such as the concept of human security and the right of intervention in the event of flagrant violation of human rights in any given country.

Dr. Brynmor Pollard expressed his doubts about the suitability of producing a report such as the one submitted by the rapporteur, and wondered about the added value of this document for the political organs of the OAS.

After listening to these viewpoints, the rapporteur, Dr. Eduardo Vío, pointed out that the submitted report was a legal instrument and not a political report. He said that the *Declaration of Mexico* was a political commitment and important as such, but restricted to that area. Moreover, he stressed that the topic of security is not a closed issue in the Organization, as it is still in progress. Hence the importance for the Inter-American Juridical Committee to establish the applicable regulations. As far as the methodology is concerned, he said that this was the first step towards the development of the topic on peace and international security, and that other topics of interest proposed by the remaining members of the Committee could be addressed later.

In light of the above, Dr. Eduardo Vío made some changes to the original document. The revised version was submitted at the regular session as document CJI/doc.147/04 rev.1. He also said that the purpose of this new document was to encourage dialogue between the Committee members to adopt the key decision to continue or not with the topic. He stressed again that the draft provisions contained in his document portray what law *is* and not what it *ought to be*, and that accordingly they do not resolve every legal problem concerned (the cases of the *Rio Treaty* or the Inter-American Defense Board). He also mentioned that it was necessary to identify subjects to be methodologically addressed more clearly: peace, international security, democracy, human rights, and so forth. The topic closest to peace and international security, in his opinion, was the peaceful settlement of disputes, although of a different nature.

Dr. Luis Marchand expressed that the merit of this document was its focus on possible amendments to the *OAS Charter*, although it seemed to ignore the topic of multidimensionality. In addition, he asked some questions on the scope of some terms used by the rapporteur in his report. He also referred to the fact that only 13 member States of the OAS were party to the *Rio Treaty*, and so there was some kind of dissociation between possible resolutions proposed by the rapporteur to all member States of the OAS and the actual situation. Dr. Marchand also expressed his doubts on the role provided by the rapporteur concerning the Commission of Hemispheric Security.

Dr. Mauricio Herdocia suggested identifying some aspects of progressive development deriving from the *Declaration of Mexico on Hemispheric Security*, namely the topic on the multidimensionality of security and the topic on human security. He also mentioned some aspects to be studied in depth,

such as Article 15, as proposed in Dr. Vío's document, stating that the OAS should endeavor that only UN armed forces could intervene in the name or on behalf of the United Nations in the American continent. Dr. Herdocia mentioned that this was an interesting matter of progressive development. He also stressed the importance of highlighting the authority of international organizations in settling disputes prior to taking them before the UN Security Council. Finally, he called the attention of those present to article 22 of the *OAS Charter* (individual or collective legitimate defense).

As far as the *Rio Treaty* is concerned, Dr. Eduardo Vio said that, in his report, he introduces the idea that the OAS might do something about international security, regardless of what the *Rio Treaty* does. Referring to the Commission of Hemispheric Security, the rapporteur indicated that the *Declaration of Mexico* specifies a special duty for that Commission, and that the text should somehow reflect this. Dr. Vío pointed out that Article 29 of the *OAS Charter* already refers to aggression perpetrated by an extra-continental State. He said that, in the case of the Falklands, the fact that the OAS did not adopt a resolution does not mean that the Organization was not competent to do so. On the subject of local disputes with international impact, he said that it had to be decided by the remaining States, which may formulate such a qualification at their own discretion. Article 29, therefore, also encompasses this type of situation when it refers to a conflict that may jeopardize peace in the American territories. He also stated that his proposal does not refer to a domestic conflict, except when it may be a threat to international peace, that is, a domestic conflict is not *per se* a threat to international peace and, therefore, it deserves to be considered by the remaining States.

The rapporteur also gave his opinion that, notwithstanding the *Rio Treaty*, the OAS should act in events of threats to peace and security, in order to repel an action. As regards terrorism and settlement of disputes, the rapporteur was in favor of distinguishing and individualizing concepts to carry out a more detailed analysis. Lastly, he recalled the difference between the resolutions of the OAS General Assembly, which are not legally binding, and those of the UN Security Council, which are binding. Finally, he said that in his document he needed to further develop the topics on aggression and legitimate defense, and resolve the issue of whether the *OAS Charter* has sufficient jurisdiction to organize legitimate defense or whether it is founded on the *UN Charter*.

The Inter-American Juridical Committee decided, in the light of those comments, to re-examine the subject at the regular session in August 2004. Lastly, it was agreed that Dr. Mauricio Herdocia should be included as the new co-rapporteur of the topic jointly with Drs Eduardo Vío, Luis Marchand and Ana Elizabeth Villalta.

During the recession period of the Juridical Committee, the Secretariat sent Dr. Eduardo Vio some documents supporting the preparation of the report to be submitted at the 65th regular session.

On the other hand, the General Assembly, at its XXXIV regular session (Quito, June 2004), by resolution AG/RES.2042 (XXXIV-O/04), requested that the Inter-American Juridical Committee, in the event of new studies on this topic, consider the *Declaration on Security in the Americas* adopted by the Special Security Conference in Mexico, DF, in October 2003, namely on international peace and security.

At its 65th regular session (Rio de Janeiro, August 2004) the Inter-American Juridical Committee examined document CJI/doc.159/04, *Legal aspects of the hemispheric security: principles or general regulations about the action of the Organization of American States in terms of international peace and security*, presented by Dr. Eduardo Vío.

Dr. Vio said that this document was based on the comments made by the other Committee members at the previous regular session, and explained that he proposes to examine the possibility of systematizing the prevailing and applicable rules or principles to action the OAS in the sphere of international peace and security, in order to specify and develop them, and then perceive the role of the OAS in this matter. With this in mind, the rapporteur drafted the document based on the *OAS Charter* and its *Protocols*, and on the *Inter-American Treaty of Reciprocal Assistance (Rio Treaty)* with its *Protocol*, principally.

Dr. Vio commented that the report analyzes the role of the OAS in terms of international peace and security, and within this framework, studies the concepts of international peace and international

security, defining peace as the absence of war, which is, in turn, the use of armed force between the States (or by agencies, as some more modern writers define it). Concerning the concept of security, the rapporteur said that article 29 of the *OAS Charter* defines it as the situation in which peace is threatened. He also mentioned the *Declaration on Security in the Americas* that, in his opinion, does not address peace but rather all those circumstances that might endanger international security. Later, the report also analyzes the action of the OAS in this field, its conditioning factors, and the manner in which the OAS has taken decisions in this area, analyzing the action of the various agencies and entities of the OAS (General Assembly, Meeting of Consultation of Ministers of Foreign Affairs, Consultative Committee, Permanent Council, General Secretariat and the consultative organs, such as the Consultative Committee for Defense, Inter-American Defense Board, and the Committee on Hemispheric Security). Concerning OAS action, the rapporteur said that it should endeavor, in the event of war, to put a stop to the hostilities or use of armed force as soon as possible. It should do this by means of non-binding resolutions. Exceptions to this are the non-coercive measures within the *Rio Treaty*, which may be recommendations or obligations. Nevertheless, it only binds the States party to the *Rio Treaty*. On the other hand, coercive measures should have the consent of the States, he said. He next said that the OAS, based on the Rio Treaty, can also classify the act of a State as an aggression to another State and that therefore the possible action of the latter State is legitimate defense, until the Security Council intervenes. Another role is to organize the action of solidarity of the States in cases of aggression. He suggested that the OAS member States could take action parallel to that taken by the States party to the *Rio Treaty*, without detriment to the mandate that the UN may possibly adopt.

The rapporteur said that there are four factors involving the action of the OAS, as follows: specificity, progressive development, UN preeminence and the role of the sovereign State.

The rapporteur concluded his report by quoting 16 principles or general rules governing the action of the OAS in terms of international peace and security, mentioning that from there it is inferred that the OAS has an established system on this matter, and that it is not limited to the implementation of the *Rio Treaty*, but to adopting resolutions that, although non-binding, do not necessarily represent a flaw in the system.

He lastly affirmed that the General Assembly mandate gives the Inter-American Juridical Committee the possibility to participate again in this process, bearing in mind the *Declaration on Security in the Americas*. The report presented, he said, may be useful to political agencies to explain the legal grounds on which the inter-American system is based.

Next, some members of the Inter-American Juridical Committee asked questions and commented. Dr. Felipe Paolillo called the attention of the other members to the definitions of peace, security and armed conflict used by the rapporteur, and cautioned that they could let slip a justification for using preventive armed force. He also made some suggestions of a terminological nature and on the specificity of the report. Dr. Mauricio Herdocia suggested that, now that a summary of what inter-American law is in this area, the *ought to be* should be resumed, which is basically the *Declaration on the Security of the Americas* as a document that reflects progressive development of the law on the matter.

Dr. Eduardo Vío, rapporteur of the topic, proposed as a course of action the adoption of a resolution by which the revised document is sent to the political agencies, calling their attention to certain points, such as, for example, the possibility of progressive development in this matter based on the *Declaration on Security in the Americas*, and stressing that the OAS does not limit itself to the *Rio Treaty* and may look for other ways or mechanisms on which to act. Also, by said resolution, it could reinforce some concepts relating to the use of force, collective legitimate defense, and so forth.

After this discussion, the Inter-American Juridical Committee examined document CJI/doc.165/04 *Draft resolution: legal aspects of inter-American security*, presented by Dr. Eduardo Vío.

With the document before him, Dr. Jean-Paul Hubert commented that this matter was extremely complicated and that to say what the law is in a field that is in constant evolution is not an easy matter.

Dr. Luis Marchand recalled that since 1990 the topic of the *Rio Treaty* has been under discussion in the OAS. The same occurs with the topic of the Inter-American Defense Board, and yet in neither case has a formal decision been reached. Dr. Felipe Paolillo said that the only objective of the resolution to be approved should be that the rapporteur's report reaches the political agencies of the OAS. Then it was risky to include another kind of statement without a very careful analysis. Dr. Luis Herrera supported this position, affirming that its inclusion deserves length discussions. Dr. Ana Elizabeth Villalta also said that it was risky nowadays to make statements about the principles on the topic. Dr. Mauricio Herdocia summed up the discussions, emphasizing that it is important to send the rapporteur's report to the political agencies of the Organization, and referred to several points in the *Declaration on Security in the Americas* that cannot be excluded from the draft resolution if it was decided that these areas were to be included.

Dr. Eduardo Vio accepted the suggestions from some of the Juridical Committee members not to release, for the time being, some concepts that had been included in the draft resolution, and with all these comments the aforementioned resolution was adopted, whose text is below, followed by the two reports on the matter presented by Dr. Eduardo Vio during 2004:

CJI/RES.75 (LXV-O/04)

LEGAL ASPECTS OF INTER-AMERICAN SECURITY

THE INTERAMERICAN JURIDICAL COMMITTEE,

CONSIDERING:

The decision made on March 2003 regarding incorporating in the agenda the theme of Inter-American Security and resolution CJI/RES.65 (LXIII-O/03), of August 27, 2003;

Reports CJI/doc.38/99 rev.1, CJI/doc.9/00, CJI/doc.128/03, CJI/doc.144/03 and CJI/doc.147/04;

Paragraph 8 of General Assembly resolution AG/RES.2042 (XXXIV-O/04), dated June 8, 2004, requesting "the Inter-American Juridical Committee that if new studies on the theme *Legal Aspects of Inter-American Security* are carried out, the *Declaration on Security in the Americas* adopted by the Special Security Conference held in Mexico City should be taken into account, particularly as regards the section related to international peace and security"; and

Report CJI/doc.159/04 rev.1, dated August 9, 2004, under the title *Legal Aspects of Inter-American Security: Principles or general norms on the activities of the Organization of American States in the field of international peace and security*, presented by Dr. Eduardo Vio Grossi,

RESOLVES:

1. To thank the rapporteur, Dr. Eduardo Vio Grossi, for his report CJI/doc.159/04 corr.1, *Legal aspects of inter-American security: principles or general norms on the activities of the Organization of American States in the field of international peace and security*, providing for its inclusion in the Annual Report, as appendix, inasmuch as it is a contribution made by the rapporteur for the permanent analysis of the issue by the Organization.

2. To express that the Inter-American Peace and Security System is consubstantial with the Organization and that the *Declaration on security in the Americas* is a broad, solid expression of the political will of the member States in order to foster the process of progressive development of International Law in its environment, and especially within the new multidimensional view on security.

3. To assign the rapporteur with the drafting of a follow-up report on this theme, encompassing the resolutions to be adopted by the competent sections of the Organization on the subject.

This resolution was adopted unanimously at the session on August 11, 2004, in the presence of the following members: Drs. Brynmor T. Pollard, Ana Elizabeth Villalta Vizcarra, Luis Marchand Stens, Luis Herrera Marcano, Mauricio Herdocia Sacasa, Jean-Paul Hubert, Eduardo Vio Grossi and Felipe Paolillo.

CJI/doc.147/04 rev.1

LEGAL ASPECTS OF HEMISPHERIC SECURITY
(working document for the preparation of a draft resolution on
the action of the Organization of American States
on matters related to international peace and security)

(presented by Dr. Eduardo Vio Grossi)

Pursuant to resolution CJI/RES.65 (LXIII-O/03), this Working Document presents some of the norms that might be included in a possible future resolution or declaration on the action of the Organization of American States concerning international peace and security, to be adopted by the General Assembly of the Organization or by the Inter-American Juridical Committee itself.

The aforementioned resolution CJI/RES.65 (LXIII-O/03) provides that the study to be undertaken on the matter should endeavor to collect and systematically present the prevailing international norms on international peace and security in the Americas, covering at least the concept of inter-American peace and security and its links with other inter-American legal topics; procedures and measures likely to be adopted by the OAS in cases that affect or might affect inter-American peace and security; and, lastly, areas where this matter could foster the progressive development of International Law in the Americas and coordinate measures between the Organization and other hemispheric agencies, relating to international peace and security.

The purpose of this Working Document is to provide an initial, but obviously only partial, response to what is required.

However, this working proposal is set forth, in spite of the *Declaration on Security in the Americas* adopted at the Special Conference held on October 27-28, 2003, in Mexico City, meaning that, after adopting the aforementioned resolution, no mention is made of the need to proceed in this manner, nor is the Inter-American Juridical Committee authorized to take action accordingly.

As mentioned in earlier reports on this topic, it is estimated that the exercise below may also be as useful as that implemented earlier and in view of the adoption of the *Inter-American Democratic Charter*.

From this viewpoint, and as also mentioned in said previous reports, questions arise over the possibility of systematically and orderly expressing the norms or principles needed to bring the OAS into action in the field of international peace and security, so that its role in this matter is really perceived as necessary, and its efficiency appreciated according to the merit of the powers assigned thereto. A systematic arrangement of these norms or principles, no matter how few or brief they may be, would result in their accuracy and development, which would in itself strengthen the Organization, while help to consolidate peace and security on the continent.

This document is called a Working Document because it presents a series of draft provisions that could be included in a future resolution or declaration on the matter, together with the legal norms and, in some cases, other precedents that would act as a basis for them. Consequently, it may make it easier to undertake the proposed exercise.

There is no doubt that this Working Document has probably not included all the precedents that could justify any possible norms on this topic. In particular, norms resulting from resolutions adopted by the OAS in specific cases concerning international peace and security are missing. It is expected that in the course of discussing this document, the missing data will be added.

It should also be mentioned that this Working Document is restricted to an attempt to list the norms or principles regulating the actions of the OAS directly linked to international peace and security. And that is because, without any detriment whatsoever to the multi-dimensional approach to security adopted in the *Declaration on Security in the Americas*, it is essential, at least from the legal viewpoint, to outline in conceptual terms as far as possible what should be understood by international peace and security, and therefore, the prime objective to be achieved in this area, in order to undertake more comprehensive work including aspects not discussed enough on that occasion, such as, for example, concerning *Inter-American Reciprocal Assistance Treaty* (TIAR) or the Inter-American Defense Board.

It should also be stressed that this document includes the matters covered in the above-mentioned earlier reports on this matter, namely CJI/doc.38/99 corr.1, *Juridical aspects of*

hemispheric security: first preliminary report on the Charter of the Organization of American States: limitations and possibilities; CJI/doc.9/00, Juridical aspects of hemispheric security: second preliminary report on the Charter of the Organization of American States: concepts; and CJI/doc.128/03, Inter-American Security.

In short, what is indicated below as Draft Provisions accompanied by their relevant grounds, is merely a suggestion, not a proposal already finished or perfected, which points to the possibility of the Inter-American Juridical Committee's proposing to the Permanent Council or General Assembly of the OAS a draft resolution concerning the norms or principles governing the action of the Organization in terms of international peace and security, or rather, that the Inter-American Juridical Committee itself adopt a declaration on such principles or norms.

<u>Draft Provisions</u>	Grounds
General Norms	
<p>Article 1: The prime purpose of the Organization of the American States (OAS) is to maintain and reinstate international peace and security in the hemisphere.</p>	<p>Article 1, item 1, OAS Charter: <i>The American States establish by this Charter the international organization that they have developed to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence. Within the United Nations, the Organization of American States is a regional agency.</i></p> <p>Article 2, item a), OAS Charter: <i>The Organization of American States, in order to put into practice the principles on which it is founded and to fulfill its regional obligations under the UN Charter Nations, proclaims the following essential purposes: ... To strengthen the peace and security of the continent.</i></p> <p>Article 52, paragraph 1, UN Charter: <i>Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.</i></p>
<p>Article 2: Article 3: In view of the afore-mentioned objective, the OAS shall assure compliance by its Member States with the international legal between themselves and between one or more of them and one or more States outside the Continent.</p>	<p>Article 22, OAS Charter: <i>The American States bind themselves in their international relations not to have recourse to the use of force, except in the case of self-defense in accordance with existing treaties or in fulfillment thereof.</i></p> <p>Article 2, paragraph 4, UN Charter: <i>The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles...All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.</i></p> <p>According to the Spanish Royal Academy Dictionary of the Spanish language, <i>peace</i> means: <i>a mutual relationship and status of those who are not at war; public peace and</i></p>

	<p><i>quiet in the States, in contrast to war and turmoil.</i></p> <p>According to the Spanish Royal Academy Dictionary of the Spanish language, <i>war</i> means: <i>Discord and breach of the peace between two or more powers; armed struggle between two or more nations, or between groups in a single nation.</i></p>
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<p>Article 3: Similarly, the OAS shall strive to ensure international security in the Americas, that is, it shall eradicate threats to peace on the Continent, including specifically the threat to use armed force between the American States or between one or more of these States or one or several States outside the continent, and that arising from a dispute between the latter, or deployment or threat of deployment of violence within an American State as a means to settle national problems or any other similar situation or event.</p>	<p>Article 29, OAS Charter: <i>If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an armed attack or by an act of aggression that is not an armed attack, or by an extracontinental conflict, or by a conflict between two or more American States, or by any other fact or situation that might endanger the peace of America, the American States, in furtherance of the principles of Continental solidarity or collective self-defense, shall apply the measures and procedures established in the special treaties on the subject.</i></p> <p>According to the Spanish Royal Academy Dictionary of the Spanish language, <i>security</i> means: <i>quality of being secure or safe.</i></p> <p>According to the Spanish Royal Academy Dictionary of the Spanish language, <i>secure or safe</i> means: <i>free and exempt from all danger, damage or risk.</i></p> <p>Paragraph 1, <i>Declaration on Security in the Americas: We reaffirm that security in the Hemisphere has as a fundamental basis the respect of the principles enshrined in the UN Charter and the Charter of the Organization of American States.</i></p>
<p>Article 4: Moreover, OAS, in order to confront both the traditional and new threats against peace, must encourage compliance by its Member States of the commitments agreed in the Declaration on Security in the Americas.</p>	<p><i>Declaration on Security in the Americas</i> approved by the Special Conference on Security, in Mexico City, October 27-28, 2003, CES/dec.1/03 ver.1, October 28, 2003. Original: Spanish</p>
<p><u>OAS Actions</u></p>	
<p>Article 5: The resolutions adopted by OAS concerning international peace and security in the hemisphere will be recommendations of an essentially political or diplomatic nature.</p>	<p>Article 1, item 2, OAS Charter: <i>The Organization of American States has no powers other than those expressly conferred upon it by this Charter, none of whose provisions authorizes it to intervene in matters that are within the internal jurisdiction of the Member States.</i></p>
<p>Article 6: Such recommendations shall seek, first, to immediately put</p>	<p>Article 22, OAS Charter: <i>The American States bind themselves in their international relations</i></p>

<p>a stop to the threat or use of armed force, without affecting the rights of whoever legitimately exercises such force.</p>	<p><i>not to have recourse to the use of force, except in the case of self-defense in accordance with existing treaties or in fulfillment thereof.</i></p>
<p>Article 7: These resolutions may determine, if applicable, that one or several acts against an American state must be considered as an act of aggression to the other State on the Continent and, consequently, consider coordinating measures required to repel such acts of aggression, without detriment to those who agree under the Inter-American Reciprocal Assistance Treaty (TIAR).</p>	<p>Article 2, item d), OAS Charter: <i>The Organization of American States, in order to put into practice the principles on which it is founded and to fulfill its regional obligations under the UN Charter, proclaims the following essential purposes: ... To provide for common action on the part of those States in the event of aggression.</i></p> <p>Article 3, items g), and h), OAS Charter: <i>The American States reaffirm the following principles:... The American States condemn war of aggression: victory does not give rights; ... An act of aggression against one American State is an act of aggression against all the other American States.</i></p> <p>Article 28, OAS Charter: <i>Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States.</i></p> <p>Article 29, OAS Charter: <i>If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an armed attack or by an act of aggression that is not an armed attack, or by an extracontinental conflict, or by a conflict between two or more American States, or by any other fact or situation that might endanger the peace of America, the American States, in furtherance of the principles of continental solidarity or collective self-defense, shall apply the measures and procedures established in the special treaties on the subject.</i></p> <p>Article 65, OAS Charter: <i>In case of an armed attack on the territory of an American State or within the region of security delimited by the treaty in force, the Chairman of the Permanent Council shall without delay call a meeting of the Council to decide on the convocation of the Meeting of Consultation, without prejudice to the provisions of the Inter-American Treaty of Reciprocal Assistance with regard to the States Parties to that instrument.</i></p>
<p>Article 8: In general, the aforementioned resolutions may comprise, among others, the following measures:</p> <ul style="list-style-type: none"> a) a call to immediately cease the use of force; b) diplomatic negotiations for the same purpose; c) onsite observations of the status 	<p>Article 6, OAS Charter: <i>Any other independent American State that desires to become a Member of the Organization should so indicate by means of a note addressed to the Secretary General, in which it declares that it is willing to sign and ratify the Charter of the Organization and to accept all the obligations inherent in membership, especially those relating to collective security expressly set forth in Articles</i></p>

<p>in question and issue of consequent reports to be forwarded to the competent organ or organs;</p> <p>d) cooperation with the corresponding State or States concerning the measures to be taken by them to immediately cease the use of force;</p> <p>e) penalty for the illegal armed action deployed by the corresponding State or States and confirmation that they have failed to meet their international obligations on the matter and, particularly, the provisions in the OAS Charter; and</p> <p>f) inform the situation to the Security Council or General Assembly of the United Nations.</p>	<p><i>28 and 29 of the Charter.</i></p> <p>Article 54, item f), <i>OAS Charter: The General Assembly is the supreme organ of the Organization of American States. It has as its principal powers, in addition to such others as are assigned to it by the Charter, the following:.....</i></p> <p>To consider the reports of the Meeting of Consultation of Ministers of Foreign Affairs and the observations and recommendations presented by the Permanent Council with regard to the reports that should be presented by the other organs and entities, in accordance with the provisions of Article 91.f, as well as the reports of any organ which may be required by the General Assembly itself.</p> <p>Article 72, <i>OAS Charter: The Councils may, within the limits of the Charter and other inter-American instruments, make recommendations on matters within their authority.</i></p> <p>Article 91, item f), <i>OAS Charter: The Permanent Council shall also ... Consider the reports of the Inter-American Council for Integral Development, of the Inter-American Juridical Committee, of the Inter-American Commission on Human Rights, of the General Secretariat, of specialized agencies and conferences, and of other bodies and agencies, and present to the General Assembly any observations and recommendations it deems necessary.</i></p> <p>Paragraph 4, item l), <i>Declaration on Security in the Americas: The states of the Hemisphere recognize different perspectives regarding security threats and priorities. The security architecture in our Hemisphere should be flexible and provide for the particular circumstances of each sub-region and each State.</i></p>
<p>Article 9: These resolutions may consequently include recommendations to the OAS Member States, urging them to adopt measures encouraging the State or States that make unlawful use of armed force to stop doing so, such as forwarding notes of protest, requests for information, and even the withdrawal of Ambassadors, complete or partial suspension of diplomatic, economic, commercial, cultural and technical relations and communications with such State or States, as well as severance of such relations.</p>	<p>Article 41, <i>UN Charter: The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.</i></p> <p>Paragraph 4, item l), <i>Declaration on Security in the Americas: The states of the Hemisphere recognize different perspectives regarding security threats and priorities. The security architecture in our Hemisphere should be flexible and provide for the particular circumstances of each sub-region and each State.</i></p>
<p>Article 10: These resolutions may also bring to the attention of the</p>	<p>Paragraph 4, item m), last article, <i>Declaration on Security in the Americas: It is the</i></p>

<p>relevant States, international organizations or agencies the failure to comply with any provision agreed in the Declaration on Security in the Americas, thereby affecting international peace.</p>	<p><i>responsibility of the specialized fora of the OAS, and inter-American and international fora to develop cooperation mechanisms to address these new threats, concerns, and other challenges (to or for security), based on applicable instruments and mechanisms.</i></p>
<p>Article 11: The actions of the OAS in the sphere of international peace and security will also be undertaken without detriment to those that, jointly or separately, concern the same situation in question, and pursuant to the OAS Charter and other international legal instruments, in relation to the peaceful settlement of disputes or the effective enforcement of representative democracy or of human rights.</p>	<p>Article 2, items b, c) and e), OAS Charter: <i>The Organization of American States, in order to put into practice the principles on which it is founded and to fulfill its regional obligations under the UN Charter Nations, proclaims the following essential purposes: ... To promote and consolidate representative democracy, with due respect for the principle of nonintervention; ... To prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the Member States; ... To seek the solution of political, juridical, and economic problems that may arise among them.</i></p> <p>Article 3, items d), i) and l), OAS Charter: <i>The American States reaffirm the following principles: ... The solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy; ... Controversies of an international character arising between two or more American States shall be settled by peaceful procedures; ... The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex.</i></p>
<p><u>Action within the UN framework</u></p>	
<p>Article 12: Actions taken by the OAS in order to ensure international peace and security, at the mandate of the UN Security Council will be adapted to the terms of such commission and the respective agreement signed by both international organizations.</p>	<p>Article 24, paragraph 1, UN Charter: <i>In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.</i></p> <p>Article 25, UN Charter: <i>The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.</i></p>
<p>Article 13: Solely in compliance with the mandate issued by the UN Security Council and in compliance with the terms thereof, the OAS may have recourse to the use of armed force in order to maintain or re-establish international peace and security.</p>	<p>Article 53, paragraph 1, UN Charter: <i>The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article ...</i></p>
<p>Article 14: In this case, the armed force deployed by the OAS will</p>	<p>Article 43, UN Charter: <i>All Members of the United Nations, in order to contribute to the</i></p>

<p>consist of troops deployed by the OAS as stipulated, pursuant to the UN mandate and the respective agreement signed by both organizations and the agreements signed with its member States, as assigned thereto.</p>	<p><i>maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.</i></p> <p>2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.</p> <p>3. <i>The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.</i></p>
<p>Article 15: In such cases, the OAS will endeavor to ensure that the only armed force intervening in the American Continent on behalf of or at the mandate of the United Nations will be its own.</p>	<p>Article 48, paragraph 1, <i>UN Charter</i>: <i>The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.</i></p>
<p>Institutional Aspects</p>	
<p>Article 16. The resolutions adopted by the OAS concerning international peace and security will be enforced by its agencies and by its Member States, wherever applicable.</p>	<p>Article 6, <i>OAS Charter</i>: <i>Any other independent American State that desires to become a Member of the Organization should so indicate by means of a note addressed to the Secretary General, in which it declares that it is willing to sign and ratify the Charter of the Organization and to accept all the obligations inherent in membership, especially those relating to collective security expressly set forth in Articles 28 and 29 of the Charter.</i></p> <p>Article 28, <i>OAS Charter</i>: <i>Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States.</i></p> <p>Article 29, <i>OAS Charter</i>: <i>If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an armed attack or by an act of aggression that is not an armed attack, or by an extracontinental conflict, or by a conflict between two or more American States, or by any other fact or situation that might endanger the peace of America, the American States, in furtherance of the principles of continental solidarity or collective self-defense, shall apply the measures and</i></p>

	<p><i>procedures established in the special treaties on the subject.</i></p>
<p>Article 17: The General Assembly or the Meeting of Consultation of Ministers of Foreign Affairs will agree to OAS actions relating to international peace and security on the Continent.</p>	<p>Article 54, item a), OAS Charter: <i>The General Assembly is the supreme organ of the Organization of American States. It has as its principal powers, in addition to such others as are assigned to it by the Charter, the following: ... To decide the general action and policy of the Organization, determine the structure and functions of its organs, and consider any matter relating to friendly relations among the American States.</i></p> <p>Article 61, OAS Charter: <i>The Meeting of Consultation of Ministers of Foreign Affairs shall be held in order to consider problems of an urgent nature and of common interest to the American States, and to serve as the Organ of Consultation.</i></p> <p>Article 65, OAS Charter: <i>In case of an armed attack on the territory of an American State or within the region of security delimited by the treaty in force, the Chairman of the Permanent Council shall without delay call a meeting of the Council to decide on the convocation of the Meeting of Consultation, without prejudice to the provisions of the Inter-American Treaty of Reciprocal Assistance with regard to the States Parties to that instrument.</i></p>
<p>Article 18: In order to fulfill its duties on matters concerning international peace and security, the General Assembly or the Meeting of Consultation of Ministers of Foreign Affairs will be assisted by the Advisory Defense Committee, Inter-American Defense Board and Committee on Hemispheric Security. They may also do so with the other agencies in the Inter-American System when deemed necessary.</p>	<p>Article 66, OAS Charter: <i>An Advisory Defense Committee shall be established to advise the Organ of Consultation on problems of military cooperation that may arise in connection with the application of existing special treaties on collective security.</i></p> <p>Article 68, OAS Charter: <i>The Advisory Defense Committee shall be convoked under the same conditions as the Organ of Consultation, when the latter deals with matters relating to defense against aggression.</i></p>
<p>Article 19: The coordination of the organs of consultation of the General Assembly or the Consultation Meeting of Ministers of Foreign Affairs on matters related to international peace and security will be assigned to the Committee on Hemispheric Security, which will undertake this function with the cooperation of the General Secretariat.</p>	<p>Paragraphs 43 and 44, <i>Declaration on Security in the Americas: We recommend that, within the OAS, the Committee on Hemispheric Security coordinate cooperation among the organs, agencies, entities, and mechanisms of the Organization related to the various aspects of security and defense in the Hemisphere, respecting the mandates and areas of competence of each, in order to achieve the application, evaluation, and follow-up of this Declaration.</i></p> <p>We also recommend that the Committee on Hemispheric Security maintain the necessary liaison with other institutions and mechanisms, whether sub-regional, regional, or international, related to the various aspects of security and defense in the Hemisphere, respecting the mandates and areas of competence of each, in order to achieve the application, evaluation,</p>

	<p>and follow-up of this Declaration.</p> <p>Article 112, items b) and d), <i>OAS Charter: The General Secretariat shall also perform the following functions: ... Advise the other organs, when appropriate, in the preparation of agenda and rules of procedure; ... Provide, on a permanent basis, adequate secretariat services for the General Assembly and the other organs, and carry out their directives and assignments. To the extent of its ability, provide services for the other meetings of the Organization.</i></p> <p>Paragraph 52, <i>Declaration on Security in the Americas: We recommend that the General Assembly strengthen the capacity of the General Secretariat to better serve the member States and the political bodies of the Organization on matters of hemispheric security, including substantive and secretariat support to the Committee on Hemispheric Security.</i></p>
<p>Article 20: The Permanent Council will adopt the measures required for the preparation or implementation of the Resolutions adopted by the General Assembly or Meeting of Consultation of Ministers of Foreign Affairs. In case of armed attack, a decision will be taken on whether to convoke this latter organ.</p>	<p>Article 65, <i>OAS Charter: In case of an armed attack on the territory of an American State or within the region of security delimited by the treaty in force, the Chairman of the Permanent Council shall without delay call a meeting of the Council to decide on the convocation of the Meeting of Consultation, without prejudice to the provisions of the Inter-American Treaty of Reciprocal Assistance with regard to the States Parties to that instrument.</i></p> <p>Article 70, <i>OAS Charter: The Permanent Council of the Organization and the Inter-American Council for Integral Development are directly responsible to the General Assembly, and each has the authority granted to it in the Charter and other inter-American instruments, as well as the functions assigned to it by the General Assembly and the Meeting of Consultation of Ministers of Foreign Affairs.</i></p> <p>Article 82, <i>OAS Charter: Within the limits of the Charter and of Inter-American treaties and agreements, the Permanent Council takes cognizance of any matter referred to it by the General Assembly or the Meeting of Consultation of Ministers of Foreign Affairs.</i></p> <p>Article 91, items a) and d), <i>OAS Charter: The Permanent Council shall also: ... Carry out those decisions of the General Assembly or of the Meeting of Consultation of Ministers of Foreign Affairs the implementation of which has not been assigned to any other body; ... Prepare, at the request of the Member States and with the cooperation of the appropriate organs of the Organization, draft agreements to promote and facilitate cooperation between the Organization of American States and the United Nations or between the Organization and other American agencies of recognized international standing. These draft agreements</i></p>

	<i>shall be submitted to the General Assembly for approval.</i>
Article 21: The Secretary General may submit to the General Assembly or the Permanent Council all matters related to international peace and security in the Americas.	Article 110, paragraphs 2 and 3, OAS Charter: <i>The Secretary General may bring to the attention of the General Assembly or the Permanent Council any matter which in his opinion might threaten the peace and security of the Hemisphere or the development of the Member States. The authority to which the preceding paragraph refers shall be exercised in accordance with the present Charter.</i>
Article 22: Moreover, he will fulfill the duties assigned to him by these organs and the Meeting of Consultation of Ministers of Foreign Affairs concerning this matter.	Article 107, OAS Charter: <i>The General Secretariat is the central and permanent organ of the Organization of American States. It shall perform the functions assigned to it in the Charter, in other inter-American treaties and agreements, and by the General Assembly, and shall carry out the duties entrusted to it by the General Assembly, the Meeting of Consultation of Ministers of Foreign Affairs, or the Councils.</i>
Article 23: The information that the OAS should forward periodically to the United Nations Security Council on the activities in which it is involved, or that are being planned under the framework of the mandate assigned thereto by this organ, will be forwarded through the General Secretariat.	Article 54, UN Charter: <i>The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.</i>
Article 24: The General Secretariat will also channel communications on international peace and security directly between the OAS and other organizations.	Article 107, OAS Charter: <i>The General Secretariat is the central and permanent organ of the Organization of American States. It shall perform the functions assigned to it in the Charter, in other inter-American treaties and agreements, and by the General Assembly, and shall carry out the duties entrusted to it by the General Assembly, the Meeting of Consultation of Ministers of Foreign Affairs, or the Councils.</i> Article 109, OAS Charter: <i>The Secretary General shall direct the General Secretariat, be the legal representative thereof, and, notwithstanding the provisions of Article 91.b, be responsible to the General Assembly for the proper fulfillment of the obligations and functions of the General Secretariat.</i> Article 112, item d), OAS Charter: <i>The General Secretariat shall also perform the following functions: ... Provide, on a permanent basis, adequate secretariat services for the General Assembly and the other organs, and carry out their directives and assignments. To the extent of its ability, provide services for the other meetings of the Organization.</i> Paragraph 52, Declaration on Security in the Americas: <i>We recommend that the General Assembly strengthen the capacity of the General Secretariat to better serve the member</i>

	<p><i>States and the political bodies of the Organization on matters of hemispheric security, including substantive and secretariat support to the Committee on Hemispheric Security.</i></p>
<p>Rules of interpretation</p>	
<p>Article 25: OAS decisions regarding international peace and security must be interpreted pursuant to the principles, values and shared focuses and commitments and actions of cooperation expressed in the Declaration on Security in the Americas and, consequently, according to the multidimensional coverage of the concept of hemispheric security adopted therein.</p>	<p>Paragraphs 2 and 3, <i>Declaration on Security in the Americas</i> approved by the Special Conference on Security, Mexico City, October 27-28, 2003, CES/dec.1/03 rev.1, October 28, 2003 Original Spanish: <i>Our new concept of security in the Hemisphere is multidimensional in scope, includes traditional and new threats, concerns, and other challenges to the security of the states of the Hemisphere, incorporates the priorities of each state, contributes to the consolidation of peace, integral development, and social justice, and is based on democratic values, respect for and promotion and defense of human rights, solidarity, cooperation, and respect for national sovereignty.</i></p> <p><i>Peace is a value and a principle in itself, based on democracy, justice, respect for human rights, solidarity, security, and respect for international law. Our security architecture will help preserve it through the strengthening of cooperation mechanisms among our states to address the traditional threats and the new threats, concerns, and other challenges facing our Hemisphere.</i></p>
<p>Article 26: No provision of this resolution or declaration may be interpreted contrary to that provided in the UN Charter.</p>	<p>Article 1, item 1, <i>OAS Charter: The American States establish by this Charter the international organization that they have developed to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence. Within the United Nations, the Organization of American States is a regional agency.</i></p> <p>Article 2, item a), <i>OAS Charter: The Organization of American States, in order to put into practice the principles on which it is founded and to fulfill its regional obligations under the UN Charter Nations, proclaims the following essential purposes: ... To strengthen the peace and security of the continent.</i></p> <p>Article 131, <i>OAS Charter: None of the provisions of this Charter shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations.</i></p> <p>Article 103, <i>UN Charter: In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.</i></p>

<p>Article 27: Neither may the resolution or declaration herein be interpreted as restrictive regarding the rights and obligations of its Member States on the same matter.</p>	<p>Article 13, OAS Charter: <i>The political existence of the State is independent of recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity, and consequently to organize itself as it sees fit, to legislate concerning its interests, to administer its services, and to determine the jurisdiction and competence of its courts. The exercise of these rights is limited only by the exercise of the rights of other States in accordance with international law.</i></p> <p>Article 22, OAS Charter: <i>The American States bind themselves in their international relations not to have recourse to the use of force, except in the case of self-defense in accordance with existing treaties or in fulfillment thereof.</i></p> <p>Paragraph 4, item a), Declaration on Security in the Americas: <i>We affirm that our cooperation in addressing traditional threats and new threats, concerns, and other challenges to security is also based on shared values and common approaches recognized in the Hemisphere.</i></p> <p><i>Salient among them are: ... Each state has the sovereign right to identify its own national security priorities and to define strategies, plans, and actions for addressing threats to its security, in accordance with its legal system and with full respect for international law and the norms and principles of the Charter of the OAS and the Charter of the United Nations</i></p>
<p>Article 28: The decisions adopted as a result of this resolution or declaration may not be understood as damaging the sovereignty of the Member States of OAS.</p>	<p>Article 23, OAS Charter: <i>Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 19 and 21.</i></p> <p>Article 19, OAS Charter: <i>No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.</i></p> <p>Article 21, OAS Charter: <i>The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized</i></p>
<p>Article 29: The resolution or declaration herein excludes thereby actions that may be</p>	<p>Article 65, OAS Charter: <i>In case of an armed attack on the territory of an American State or within the region of security delimited by the</i></p>

<p>agreed with regard to international peace and security, within the framework of treaties binding only for some American States.</p>	<p><i>treaty in force, the Chairman of the Permanent Council shall without delay call a meeting of the Council to decide on the convocation of the Meeting of Consultation, without prejudice to the provisions of the Inter-American Treaty of Reciprocal Assistance with regard to the States Parties to that instrument.</i></p>
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**LEGAL ASPECTS OF THE INTER-AMERICAN SECURITY:
PRINCIPLES OR GENERAL REGULATIONS ABOUT THE ACTION OF THE
ORGANIZATION OF THE AMERICAN STATES IN TERMS OF
INTERNATIONAL PEACE AND SECURITY**

(presented by Dr. Eduardo Vio Grossi)¹

INTRODUCTION

The subject raised herein is about the possibility of systematically discussing in an orderly manner the prevailing regulations or principles applicable to the work of the Organization of American States (OAS) in the environment of international peace and security, so that it permits not only their precision and development, which, in itself, would strengthen the Organization and help consolidate peace and security on the continent, but also that the role to be played in such spheres is really perceived as necessary and its efficiency appreciated in keeping with the merit of the powers that have been granted.²

The idea, then, is not to draft regulations or principles that could be adopted by the OAS in terms of international peace and security, but to indicate which principles or regulations are currently in force on this matter.³ In short, the aim is to discuss not what could be listed as the “should be” of Inter-American Law regarding international peace and security, but simply what that Law currently “is” in

1 Abstract: INTRODUCTION. I. ROLE OF OAS IN TERMS OF INTERNATIONAL PEACE AND SECURITY. A. Grounds. B.- Conceptual environment. a) International peace. b) International security. C. Spatial environment. II. OAS ACTION IN TERMS OF INTERNATIONAL PEACE AND SECURITY. A. Prime objective. B. Non-binding resolutions. a) General regulations. b) Exception: non-coercive measure in the framework of Rio Treaty. C. Resolutions not bound to employing the armed forces. D. Resolutions relating to using the armed forces. a) Description of aggression. b) Organization of supportive action in case of aggression. c) Application of Rio Treaty. E. Resolutions concerning the use of the armed forces to support the UN. III. CONDITIONING FACTORS OF THE OAS ACTION IN TERMS OF INTERNATIONAL PEACE AND SECURITY. A. Specifics. B. Progressive development. C. D. Role of the sovereign state. IV. OAS DECISION MAKING IN TERMS OF INTERNATIONAL PEACE AND SECURITY. A. General Assembly and/or Meeting of Consultation of Ministers for Foreign Affairs. B. Advisory entity. C. Permanent Council. D. General Secretary. E. Advisory agencies. a) Advisory Committee for Defense. b) Inter-American Defense Board. c) Hemispheric Security Commission. d) Other organs, organisms or entities. V. CONCLUSIONS.

2 Considering reports CJI/doc.38/99 corr.1, “Legal Aspects of Hemispheric Security - First draft report on the Charter of the Organization of American States: restrictions and possibilities”, CJI/doc.9/00, “Legal Aspects of Hemispheric Security – Second draft report on the Charter of the Organization of American States: concepts” and CJI/doc.128/03, “Inter-American Security”, all presented by the author of the document herein, Resolution CJI/RES.65 (LXIII-O/03) made a study to systematically collect and present the international regulations prevailing with regard to international peace and security in the Americas, covering at least the concept of inter-American peace and security and their links with other inter-American legal themes; procedures and measures likely to being adopted by the OAS in cases that affect or might affect Inter-American peace and security; and, lastly, areas where progressive development, on this subject, might occur in International Law of the Americas and the coordination measures between the Organization and other hemispheric organs relating to international peace and security.

In compliance with this mandate, the author of this document CJI/doc.147/04 rev.1., “Legal Aspects on Hemispheric Security (Working document for preparing a Draft Resolution on the Action of the Organization of American States regarding International Peace and Security)” concerning some of the regulations or principles that might contain a possible Resolution or Declaration on the Action of the Organization of American States regarding international peace and security, to be adopted by the General Assembly of the Organization or by the Inter-American Juridical Committee itself.

On this occasion the present report declares its intention, on one hand, to collect the comments made by the members of the Inter-American Juridical Committee during its 64th Regular Session, on the aforementioned document CJI/doc.147/04 rev.1. and on the other, collect the decision by the General Assembly during its XXXIV Regular Session (Quito, June 2004), under Resolution AG/RES.2042 (XXXIV-O/04), by which the Inter-American Juridical Committee was asked “that, should it decide to carry out other studies on this subject, to bear in mind the Declaration on Security in the Americas adopted by the Special Conference on Security in Mexico, DF, in October 2003, particularly the part corresponding to international peace and security”.

3 It would be a similar exercise to that done prior to adopting the Inter-American Democratic Charter.

keeping with the wishes of the OAS Member States.⁴ It is already a classic statement that the OAS is what its Member States want it to be.

The theme sources of International Law for discussion will be based on the OAS Charter and its amendments,⁵ and the Inter-American Treaty of Reciprocal Assistance (Rio Treaty) with its Protocol of Amendment.⁶ It is worth now recalling that the aforementioned regulations modifying both the OAS⁷ Charter and the TIAR⁸, do not regulate all the OAS Member States, but solely those that ratified it.

When doing this work, it will be worthwhile asking first about the role of the OAS in matters of international peace and security, and then analyze successively what it can do in this field, the conditions in which it could act, and who takes the corresponding decisions.

I. ROLE OF OAS IN TERMS OF INTERNATIONAL PEACE AND SECURITY

The central theory that it intends to support is that one of the most fundamental tasks of the OAS is to consolidate peace and security on the continent, in order therefore not to avoid or omit acting in that field. This mission and prime purpose, on the other hand, must inspire its acts and be used as a rule for interpreting the overall basic text.⁹ Lastly, from such a mission and essential value powers must necessarily emerge to achieve it, otherwise there would be no sense in stipulating it in expressly and highlighted in the OAS Charter.

In order to explain this statement it is necessary to allude to the foundation of this role, its conceptual and spatial scopes.

A. Foundation

The OAS Charter leaves no doubt whatsoever about the relevance of matters affecting international peace and security have or should have for it. It is worth mentioning, first of all, the provision in the first phrase of the first item in article 1, stating that "*the American States establish by this Charter the international organization that they have developed to achieve an order of peace...*"

Of course, peace is not the sole end or objective of the Organization, but it is the first that its Charter establishes. It is in accordance, moreover, with the same terms in letter a) in its Article 2, as follows, that "*The Organization of American States, to fulfill the principles on which it is founded and meet its regional obligations pursuant to the Charter of the United Nations, it establishes the following essential proposals: ... To strengthen the peace and security of the continent.*" Strengthening international peace and security is, therefore, an essential mission of the OAS. It implies that it must affirm, assure, support, sustain or strengthen¹⁰ peace and security on the continent, but that it must

4 In this sense, this is an effort with a different perspective than that which inspires the documents OAS/Ser. Q CJI/doc.19/99, January 28, 1999, "Towards a new concept of hemispheric security"; OAS/Ser. Q CJI/doc.11/00 rev.1, July 25, 2000, "Towards a new concept of hemispheric security", y OAS/Ser. Q CJI/doc.32/00, August 10, 2000, "Legal aspects of hemispheric security", all presented by Dr. Sergio GONZÁLEZ GÁLVEZ, and OAS/Ser.Q CJI/doc 26/99 corr.1, August 25, 1999, "Hemispheric Security. Comments on the current situation of the inter-American system of security and measures of confidence", and OAS/Ser. Q CJI/doc 4/00 corr.1, March 28, 2000, "Preliminary reflections on the problem arising from the marginalization of the Inter-American Treaty of Reciprocal Assistance (Rio Treaty), feasibility of a new instrument for preserving peace in the hemisphere and the process around a new concept of security", both presented by Dr. Luis MARCHAND STENS.

5 The Protocol of Buenos Aires, 1967, Protocol of Cartagena de Indias, 1985, Protocol of Washington, 1992 and Protocol of Managua, 1993.

6 Protocol of 1975.

7 The Protocol of Buenos Aires has been ratified by 31 of the 35 member States of the Organization of the American States, the Cartagena Protocol by 29, the Washington protocol by 24 and the Managua protocol by 32.

8 While the TIAR has been ratified by 20 of the 35 Member States of the OAS, the Protocol of Amendment, which modifies it, has been ratified by eight Member States.

9 Paragraph 1 of article 31° of the Vienna Convention on the Law of Treaties provides that "*a treaty shall be interpreted of good faith according to the current meaning to attribute to the terms of the treaty in the context of the latter and bearing in mind its object and purpose.*"

10 The Spanish *Diccionario de la Lengua Española de la Real Academia Española*, hereinafter called dictionary, consolidation is the action and effect of consolidating and this implies, among other meanings, to affirm or secure, assure, support, sustain, grab, clutch, be firm or consolidate something.

do so with substantial or principal intent or spirit¹¹ or in any case substantial, permanent, invariable and characteristics of its own nature.¹²

This connotation of the essence of OAS is appropriate, moreover, with the reason why it was created. In fact, already in the second phrase of the first item of article 1 of the Organization's Charter indicates that "...*Within the United Nations, the Organization of American States is a regional agency.*" And in part of its article 2 it provides that the organization has the essential purposes indicated because of putting into practice "*the principles on which it is founded*", and to "*fulfill its regional obligations under the Charter of the United Nations.*"

So much so, therefore, that there is clear reference to the United Nations Organization (UN), whose Charter, in Chapter VIII precisely under the title of "*Regional Arrangements*" alludes to them. And it does so in terms of very closely linking them to the matters relating to keeping international peace and security. The provision in paragraph 1 of article 52 of the Charter of the United Nations is especially illustrative, on this point, when it says that "*Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations*".

OAS was, therefore, founded with the idea of being a regional arrangement or organization to which paragraph 1 of article 52 in the UN Charter refers, as follows "*for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action*".

OAS was conceived and is, then, an organization known to the doctrine as a general or political vocation, that is, whose purpose is international peace and security and that, for this very reason, can be concerned with any matter affecting or may affect them, an organization that is not specific, which can solely be addressed to the specific purpose for which it was created.

So much so, therefore, that it can be basically said that the **prime but not sole objective of the OAS**, from which it can or must not be removed, **is the maintenance and reinstatement of international peace and security in the hemisphere.**

B. Conceptual scope

When determining the foundation of what OAS can conceptually do regarding international peace and security, the scopes in which it can act are given below.

In terms of concepts, it is worth mentioning that the Organization can and must act in two different fields. One is that of peace and the other security.

On this matter, it should be said, although it seems obvious, that international peace and security are conceived as two different realities in the OAS Charter itself. Thus, the aforementioned letter a) of its article 2 alludes to strengthening "*the peace and security of the continent.*" In turn, article 23 of the same document states that "*Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 19 and 21.*" And paragraph 2 of its article 110 provides that "*The Secretary General may bring to the attention of the General Assembly or the Permanent Council any matter which in his opinion might threaten the peace and security of the Hemisphere or the development of the Member States*".¹³

From the above, it is then necessary to ask oneself about the content of both concepts, which will necessarily give rise to the real scope of action that the OAS can take in relation to them.

a) International peace

11 The Dictionary says that purpose means mood or intention to do or not to do something, object, sight, something intended, subject, matter in question.

12 The Dictionary says that essence is among other meanings, that which constitutes the nature of things, permanent and unchanging, the most important and characteristic of something.

13 The same happens in the Charter of the United Nations. Its articles 1, paragraph 1, 2, paragraph 3, 11, paragraphs 1, 2 and 3, 12, paragraph 2, 15, paragraph 1, 18, paragraph 2, 23, paragraph 1, 24, paragraph 1, 26, 33, paragraph 1, 34, 37, paragraph 2, 39, 43, paragraph 1, 47, paragraph 1, 48, paragraph 1, 51, 52, paragraph 1, 54 and 99 mention "*international peace and security*", that is, they use an article before each concept and both embrace it as a plural qualification, to indicate that we are dealing with two different realities.

The absence of a concept of international peace expressly provided in International Law and the circumstance that it considers the obligation of not resorting to threatening or using armed force in international relations, the fact is that the doctrine reaches the conclusion or consensus that international peace is, first and foremost, although not solely, a state or situation of “no war”.

It should be mentioned that although, from the viewpoint of social sciences, peace does not only mean the absence of war and the mere ban on aggression, it will not necessarily lead to that, if it could be said that the notions of war and peace do not have, for such disciplines, an unmistakable objective. Hence in political sciences it has been chosen rather to refer to today’s society as “organized absence of peace”, to reflect a situation in which there is no global warfare and where the other armed disputes are located with risk, therefore, of involving the whole planet or less, without directly confronting the major powers.

The jurist, on the other hand, believes that the concept of peace has been closely found to that of war, especially when, from the acknowledgment that the “state of war” substitutes the “state of peace”, the Right of War is applicable and today the Humanitarian International Law. And war, in the legal sphere, would then be the armed force between States, the objective of which is for one political viewpoint to prevail using means regulated by International Law, or, nowadays, international armed disputes, which comprise not only armed disputes between States, but also armed internal disputes with an international scope or consequence.

The legal concept of peace seems to correspond, moreover, to what is understood as international peace in the present meaning of the words.¹⁴ In fact, the dictionary says that peace is “a state and mutual relationship of who are not at war, public tranquillity and quiet of the States, in contrast to war or disturbance” and war is, according to the same text, “conflict and disturbance of peace between two or more powers; armed conflict between two or more nations or between parties of the same nation”.

This viewpoint seems to be adopted by the OAS Charter, since although it does not define what it understands international peace to be, it requires the States not to resort to the threat or use of force in its mutual relations.

In fact, article 22 of the OAS Charter says *“The American States bind themselves in their international relations not to have recourse to the use of force, except in the case of self-defense in accordance with existing treaties or in fulfillment thereof.”*

In turn, paragraph 4 of article 2 of the UN Charter provides that *“The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles... All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”*¹⁵

Article 1 of the Rio Treaty, in turn, states that *“The High Contracting Parties formally condemn war and undertake in their international relations not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the United Nations or of this Treaty”*, and in article 1 amended by article I of its Protocol of Amendment it repeats that *“The High Contracting Parties formally condemn war and undertake, in their international relations, not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the Organization of American States, the Charter of the United Nations or this Treaty.”*

The practice of the OAS points in the same direction, as the 3rd item of the Resolution CP/RES.359 (490/82) dated April 13, 1982, demonstrated concerning the “the existing state between the Argentine Republic and United Kingdom of Great Britain and Northern Ireland in relation to the Falkland Islands”, when it mentions that the friendly cooperation of the OAS is offered “to the efforts of peace...that removes the danger of war between” such countries, and the fourth considering of Resolution I, called “Serious situation in the South Atlantic”, on April 28, 1982, adopted at the

14 Paragraph 1° of article 31° of the Vienna Convention on the Law of Treaties provides that *“a treaty should be interpreted in good faith according to the current meaning that is given to the terms of the treaty in the context and bearing in mind their objective and finality.”*

15 In this same direction is article 52 of the Vienna Convention on the Law of Treaties provides that *“A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.”*

Twentieth Advisory Meeting of Ministers of Foreign Affairs, on alluding to the urgency to cease “hostilities insofar as they affect peace on the continent”.

So much so, then, that the mission and essential value of the OAS in relation to peace, would be, in the hemisphere, not to use armed force, nor that there are wars between the States. In keeping with this and that increasingly the said Treaty does not expressly favor a concept of peace,¹⁶ it could be said that, **for these purposes, peace is understood to be that state or international situation in which the States abstain from resorting to armed force in their mutual relations.**

In this concept, the mission and essential value that there are no wars, although it is of major importance¹⁷, it would appear formally as reduced or restricted. Nevertheless, the scope of possible action on this subject is given by the aforementioned second concept, that is, international security.

b) International security

Nor does International Law offer a concept of international security. The regulation of the OAS Charter that, however, could throw some light on the particular term, could be its article 29, when it refers to “... *the inviolability or the integrity of the territory or the sovereignty or political independence of any American State ... affected by... any other fact or situation that might endanger the peace of America, ...*”.

The same idea is repeated in article 6 of the Rio Treaty when it alludes to “...*If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State ... affected ... by any other fact or situation that might endanger the peace of America...*”. The same occurs in article 5 amended by article I of the Rio Treaty Protocol of Amendment when it mentions “... *the inviolability or the integrity of the territory or the sovereignty or political independence of any Member State ... affected ... by any dispute or serious fact that might endanger the peace of America ...*”.

So that, when referring to “*any other fact or situation that might endanger the peace of America*”, the quoted legal texts would be assuming that there would be facts or situations that are different, not because they effectively put an end to international peace, that is, the absence of war or use of armed force in the relations between States, but because they could possibly take a firm step towards the latter and, consequently, put an end to the former.

The same could be said about the Charter of the UN, in which it alludes to “*preventing and eliminating threats to peace*”¹⁸, or to “*what might endanger international peace and security*”¹⁹ to what might “*endanger the maintenance of international peace and security*”²⁰ or to “*any threat to peace*”.²¹

The concept of security would, therefore, relate to the situation in which peace is endangered. This is precisely the meaning that the current direction of the words gives to the concept of security.²² Security, the dictionary says, is “the quality of being secure” and this in turn means “free and exempt of any danger, damage or risk”.

On the other hand, it is considered that it is precisely this meaning and scope that is recognized by the OAS itself in, for example, Resolution CP/RES 359 (490/82), dated April 13, 1982, “Situation existing between the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland in relation to the Falkland Islands”, when it says in its first considering phrase that this situation “endangers the peace of the continent”.

For this reason and, especially, given the reference that the aforementioned article 29 provides for “*any other fact or situation that might endanger the peace of America*”, the concept of international security permits a discretionary but not arbitrary appreciation of the relevant agency about the fact or situation that endangers peace in the hemisphere. And, accordingly, not only those called by doctrine as internal conflicts with an international scope could be included in this category, that is,

16 Nor is it in the Charter of the UN.

17 The absence of war is, in itself, a situation that is duly appreciated only when it is not actually experienced.

18 Paragraph 1 of article 1.

19 Paragraph 3 of article 2.

20 Article 34.

21 Article 39.

22 Paragraph 1 of article 31 of Vienna Convention on the Law of Treaties. See note 14.

those that occur inside a State among its own citizens, but whose consequences go beyond its borders, but also multiple events or facts.

The political system assumed by Cuba has particular relevance in its opportunity and this respect. In fact, the Eighth Meeting of Consultation of Ministers of Foreign Affairs in 1962, adopted, among other items, Resolution VI, by which it declared that the government of Cuba, on acknowledging Marxist-Leninist inspiration, voluntarily stepped outside the Inter-American System and that this situation should be a subject of “the most constant vigilance by the member countries of the Organization of American States, which should inform the Council of any fact or situation that might endanger the peace and security of the continent”.

And today among the threats acts of terrorism against peace should be included. Now Resolution CP/RES.796 (1293/01), adopted on September 19, 2001, by the Permanent Council of the OAS when it called the Twenty-third Meeting of Consultation of Ministers of Foreign Affairs because of the attempts of September 11 that same month, against the buildings known as the New York Twin Towers, in the United States of America, attributes to “the acts of terrorism ... as a threat against peace and security of the Americas ...”and, consequently, calls the aforementioned Meeting of Consultation “to consider the threat to hemispheric security that international terrorism represents”. Resolution CP/RES.797 (1293/01), also September 19, 2001, reiterates that “the aforementioned attacks represent a clear threat to peace and security in the hemisphere”.

It is, on the other hand, for the same reason that the Declaration on Security in the Americas²³ discusses, from a so-called multi-dimensional outlook or scope, both traditional and new threats to peace, including among the latter “terrorism, transnational organized crime, the global drug problem, corruption, asset laundering, illicit trafficking in weapons, and the connections between them; extreme poverty and social exclusion of broad sectors of the population, which also affect stability and democracy ...” and that “erodes social cohesion and undermines the security of states; natural and man-made disasters, HIV/AIDS and other diseases, other health risks, and environmental degradation; trafficking in persons; attacks to cyber security; the potential for damage to arise in the event of an accident or incident during maritime transport of potentially hazardous materials, including petroleum and radioactive materials and toxic waste; and the possibility of access, possession, and use of weapons of mass destruction and their means of delivery by terrorists.”²⁴

It is precisely because of the aforementioned focus on a multidimensional scope that it adopts, which the aforementioned Declaration indicates, as a preamble of the Shared Values and Common Approaches, which the “new concept of security in the Hemisphere... includes traditional and new threats, concerns, and other challenges to the security of the states of the Hemisphere, incorporates the priorities of each state, contributes to the consolidation of peace, integral development, and social justice, and is based on democratic values, respect for and promotion and defense of human rights, solidarity, cooperation, and respect for national sovereignty”, to next assume Commitments and Cooperation Actions in the various area, consisting of democracy, human rights, peaceful dispute settlement, national sovereignty, the concerns of the small island states, bilateral or sub-regional agreements in terms of security and defense, peace zones, free nuclear weapons zone, armament control, disarmament and destruction of weapons of mass destruction, region free of biological and chemical weapons, limiting military spending, fostering mutual trust, criminal justice, ridding the zone of antipersonnel landmines, terrorism, transportation security, transnational organized crime, cyber security, illicit trafficking of firearms, ammunition, explosives and other materials, asset laundering, corruption, protection of refugees and those granted asylum, extreme poverty, financial crises, access to health, HIV/AIDS and other epidemic diseases, natural disasters, environmental degradation, and the global climate change.

Considering that the Declaration on the Security in the Americas is basically political in nature and, therefore, of no legally binding value to the signatory states, it can, however, be used to start a process of drafting Principles of International Law on the matter to interpret regulations to which it refers, that is, to be a basis for progressive development of International Law in this area.

So, consequently, it could be said that **international security is understood to be the absence of threat to peace on the continent, considering that the latter can be considered threatened by**

23 Approved by the Special Conference on Security, held in Mexico City, October 27 and 28, 2003, CES/dec.1/03 rev.1, October 28, 2003, Original: Spanish.

24 Part II: Shared Values and Common Approaches, letter m).

the use of armed force between American states or between one of them and one or more states outside the continent, by the negative consequences of a dispute between the latter or by any other similar fact or situations, including those mentioned in the Declaration on Security in the Americas.

C. Spatial environment

Now and although it seems evident or obvious, it is necessary to reiterate that the essential value of OAS to maintain and restore international peace and security, already conceptualized in the aforementioned terms, must assume a single relationship solely with the American continent. In other words, the responsibility of OAS is that peace and security effectively prevail in the American hemisphere. This is its spatial scope of action.

This is expressly stated in the second phrase of the first line of article 1 in the OAS Charter, that it is “... *a regional agency* ...”, in the also quoted letter a) of Article 2 therein, which states that it has “... *regional obligations* ...” and that its essential value is “... *to strengthen the peace and security of the continent*” and in Article 29 thereof, which alludes to any other “... *fact or situation the might endanger the peace of America* ...”

In the case of this last provision, it is worth pointing out that if it includes, among the hypotheses that might “*endanger the peace of America*”, “*an extracontinental conflict*”, it does so while this fact has some of the consequences indicated therein, that is, affecting “*the inviolability or integrity of the territory or sovereignty or political independence of any American State*.”

This spatial scope explains then that while the OAS can be concerned, in the framework of its mission concerning international peace and security, about a fact or situation that occurs outside the American continent, it can only and exclusively do so inasmuch as they affect the international peace and/or security in the Hemisphere.

This same idea is repeated in the last phrase of paragraph 3 of article 3 of the Rio Treaty, when it says that “... *When the attack takes place outside of the said areas, the provisions of Article 6 shall be applied*” and in Article 6 it stipulate that “*if the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected ... by any other fact or situation [that] might endanger the peace of America, ...*” It will proceed as indicated. The Rio Treaty Protocol of Amendment, in turn, also states in article 4 amended by its article I, that “*if the inviolability or integrity of the territory or sovereignty or political independence of any other American state were affected ... by a conflict or serious fact that might endanger the peace of America, ...*” it should proceed as stipulated.

From the same viewpoint, it is worth repeating that an internal conflict with international scope, that is, occurring in a smaller spatial scope than the hemisphere, could be catalogued within the comprehensive formula of the aforementioned article 29 of “... *any other fact or situation the might endanger the peace of America*”, that is, nevertheless, to say that it has continental spatial scope.

The spatial scope of the role of **OAS** in terms of international peace and security does not then refer to the spaces where it can, ultimately, aim its actions, but only that it **can act if peace and security on the continent is or may be found to be affected by facts or situations that happen in the Hemisphere or outside it.**

II. THE ACTION OF OAS IN TERMS OF INTERNATIONAL PEACE AND SECURITY

Having established the role of OAS in terms of international peace and security, the question now is about what it effectively can do in this field. Therefore, the prime mission should indicate what it should achieve in this matter and the kind of measures that might involve, distinguishing, moreover, those that do not imply the use of armed force by the OAS, those that permit such use by the member States of the Organization and those than mean such use in protecting the UN.

A. Prime objective

Bearing in mind that article 22 of the OAS Charter provides that “*The American States bind themselves in their international relations not to have recourse to the use of force, except in the case of self-defense in accordance with existing treaties or in fulfillment thereof*”, and considering the concept of international peace outlined previously, it would seem that the principal, although not the only, and prime objective to be achieved would be to restore the state of non-war or no threat of war.

This restoration would not be, however, a lesser objective. Very much to the contrary. To put a stop to the threat or use of armed force in the Hemisphere, permits establishing or restoring the proper environment to be able to find a basic solution to the conflict or dispute that has or may become violent.

The above is expressed, although referring to a specific situation, in Article 7 of the Rio Treaty, when it states that *“in the case of a conflict between two or more American States, ..., the High Contracting Parties, meeting in consultation shall call upon the contending States to suspend hostilities and restore matters to the status quo ante bellum ...”*.

The above was reflected in, for example, the Honduras-Nicaragua case (1957), when the created Investigation Committee was assigned the prime mission to promote the signing of an agreement on the cease-fire, which was signed on May 5 of that year. Another case worth mentioning is the Panama-United States of America (1964) when the created Commission was entrusted to propose to the Parties procedures to assure that peace would not be broken while the settlement of the conflict was underway. Also, at the Tenth Meeting of Consultation of Ministers of Foreign Affairs in 1965, a Commission was entrusted to offer its good services to the Dominican Republic “for the purpose of urgently reaching ... the cease-fire...”²⁵, and in Resolution I, “A serious situation in the South Atlantic”, approved on April 28, 1982 by the Twentieth Meeting of Consultation of Ministers of Foreign Affairs, it was urged for the governments of Argentina and Great Britain and Northern Ireland to “immediately cease hostilities”, to abstain “from undertaking any action that may worsen the situation” and establish “a truce immediately to permit the renewal and normal development of steps leading to the pacific settlement of the conflict”.

Obviously, when attempting to cease the hostilities, the OAS must respect the right to self-defense, which implies, on one hand, that the State that resorts to this is not impaired by the action of the OAS in the situation reached with the other and that, on the other hand, pursuant to article 51 of the OAS Charter with a view to *“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security”*, if the UN Security Council intervenes, its action will prevail over that of the OAS.

In short, it could be said that **the mission and prime objective to be achieved by the OAS in the case of a situation affecting international peace and security in the Hemisphere is the immediate cessation of the threat or use of armed force, without impairing the relevant rights of whosoever legitimately wields such force.**

B. Non-binding resolutions

Having mentioned the prime objective on this matter, it should be mentioned that, nevertheless and although it is apparently paradoxical, the resolutions that OAS can adopt with regard to international peace and security do not differ in terms of their nature to the resolutions that it can adopt in other fields, which is the same as saying that they are non-binding for their member States.²⁶

a) General rule

In other words, the OAS, in both organization of cooperation, that is, which coordinates the cooperation between its members, does not exercise before them, in subjects of international law that different from it²⁷, powers that they delegated in detriment to their sovereignty, as, on the contrary, occurs with the supranational organizations that in this way substitute their member States when exercising their powers and for this reason their resolutions are binding or mandatory, even in their own territories.

²⁵ OAS/Ser.F/II.10, document 78, rev.5.

²⁶ See CJI/doc.26./99 rev.1 corr.1, August 25, 1999, original: Spanish, “Hemispheric Security: considerations on the current situation of the inter-American system of security and measures of mutual trust”, presented by Dr. Luis MARCHAND STENS, p. 1, paragraph 4.

²⁷ Obviously, with regard to resolutions addressed to outside the Organization, since those addressed inwards are binding for all its organs and, as part of them, the Member States.

The OAS situation is also different from that of the UN, also an organization of cooperation, but where one of its agencies has, in certain cases, supranational powers. This is the case of the UN Security Council when it acts to protect Chapter VII of its Charter, called “*action with respect to threats to the peace, breaches of the peace, and acts of aggression*”, an event in which its resolutions are mandatory for all States, expressly pursuant to article 25 of the UN Charter as follows: “*The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.*”²⁸

When mentioning the above, it should be considered, consequently and especially, that item 2 of article 1 of the OAS Charter states that “*The Organization of American States has no powers other than those expressly conferred upon it by this Charter, none of whose provisions authorizes it to intervene in matters that are within the internal jurisdiction of the Member States.*”

Precisely in accordance with it, it should be recalled that while article 54, letter f), OAS Charter states that “*The General Assembly is the supreme organ of the Organization of American States. It has as its principal powers, in addition to such others as are assigned to it by the Charter, the following: ... To consider the ... recommendations presented by the Permanent Council ...*”, article 72 of the same text indicates that “*The Councils may, within the limits of the Charter and other inter-American instruments, make recommendations on matters within their authority*” and article 91, letter f), of this Charter repeats that “*The Permanent Council shall also: ... present to the General Assembly any observations and recommendations it deems necessary.*”

Furthermore, it could be added that the act of OAS in cases concerning international peace and security agrees with the aforementioned rules, since in such situations it adopted in general resolutions that do not exceed what is strictly a recommendation.

In fact, it was evident with the Resolution adopted by the Tenth Meeting of Consultation of Ministers of Foreign Affairs in 1965, when the Member States were asked what they wanted and were in conditions to do so, within their possibilities, provide the OAS with land, sea, air or police contingents to use them to form an Inter.-American force that will operate under the Meeting’s authority, as in fact happened.²⁹ It was the same in the case of the Falkland Islands, where the request was made to “the Member States of the Inter-American Treaty of Reciprocal Assistance to provide the Argentine Republic with the support that each considered appropriate to help it in this serious situations and that it abstain from any act that might impair this objective”.³⁰ Lastly, the same happened in the case of the terrorist attack on September 11, 2001, against the buildings known as the Twin Towers, New York, United States of America and that, as already mentioned, was considered to be an act that threatened the hemispheric peace and security. In paragraph 4 of the CP/RES. Resolution 796 (1293/01) dated September 19, 2002, “the Governments of the Member States and all the other governments [were urged] to use every necessary means in their reach to pursue, capture and punish those responsible for these attacks and to prevent other attacks”. And in paragraph 5 of the same text, it urges “all Member States to support the international efforts to bring to justice those responsible for these terrorist attacks and promote inter-American cooperation, especially through exchange of information, for this purpose.”

b) Exception: non-coercive measures in the framework of the Rio Treaty

However, the exception to the absence of the mandatory nature of the OAS resolutions lies in the Rio Treaty and its Protocol of Amendment. In article 10 of the former it provides that “*the decisions requiring the application of the measures mentioned in Article 8 will be required for all States signing hereunder that have ratified it, with the sole exception that no State will be bound to use armed force*

28 It should be noted that establishing binding effects of the resolutions of international organizations is not in itself any guarantee that these will actually be adopted and prove to be efficacious. Thus, for example, in the case of the Security Council of the United Nations, for resolutions to be adopted in accordance with Chapter VII of the Charter and so become obligatory for all the States, it is not only necessary to have a majority of 9 of its members, including the Permanent members, but also that none of these should exercise its right to the veto, that is, agreement is necessary to be able to dictate such obligatory resolutions. Without this prior political agreement, therefore, the obligatory nature of the aforementioned resolutions provided in the legal norm is dead letter. On the other hand, in the case of these resolutions being dictated, it also does not mean that all the States addressed effectively put them to practice. Also, there are many cases in such resolutions which really only “validate” or “legitimize” the action of one or more States. It is not enough, then, to enshrine the aforementioned obligatory nature or binding effect of the resolutions to guarantee their efficacy. The will of the States is always necessary.

29 OAS/Ser.F/II.10.document 78, rev.5.

30 See CP/RES.359 (490/82), April 13, 1982.

without its consent". And in items 1 and 3 of article 23 amended by article I of the second, it is provided that "*The measures mentioned in Article 8 may be adopted by the Organ of Consultation in the form of: a) Decisions whose application is binding on the States Parties, or b) Recommendations to the States Parties*" and that "*non State shall be required to use armed force without its consent*".

So much so that for the Member States in one or the other instrument, the measures provides in their respective articles 8 and which are effectively adopted by the relevant organ, will be required, unless it provides for the use of armed force.

In short, it could be said that **the resolutions that OAS adopted with regard international peace and security in the Hemisphere, are essentially recommendations of a political or diplomatic nature to its Member States, without detriment to the mandatory measures that do not include the use of armed force, that agree within the framework of the Rio Treaty by and for its Member States.**

C. Resolutions not bound to the use of armed force

Now, the recommendations mentioned herein above may comprise a number of specific measures that do not mean the use of armed force and that may be applied successively or simultaneously.

Measures of this kind are provided in article 41 of the UN Charter, which prescribes that "*The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.*"

In turn, article 8 of the Rio Treaty provides requires that "*for the purposes of this Treaty, the measures on which the Organ of Consultation may agree will comprise one or more of the following: recall of chiefs of diplomatic missions; breaking of diplomatic relations; breaking of consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications ...*". Article 8 amended by article I of the Rio Treaty Protocol of Amendment states that "*without prejudice to such conciliatory or peace-making steps as it may take, the Organ of Consultation may, in the cases ...[to which it refers] adopt one or more of the following measures; recall of chiefs of missions; breaking of diplomatic relations; breaking of consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, radio-telephonic or radio-telegraphic, or other means of communication; ...*".

On the other hand, the actual practice of OAS shows the kind of measures in question. In fact, in some cases, particularly relating to the application of the Rio Treaty, it provides for the constitution of a commission of observation or investigation of the facts. While such commissions have pointed more to the settlement of corresponding disputes, they are substantially involved in the task of preserving international peace and security. This is what happened, for example, in the cases of Costa Rica-Nicaragua (1948-1949), Honduras-Nicaragua (1957), Dominican Republic-Venezuela (1960-1962), Dominican Republic-Haiti (1963-1965) and Panama-United States of America (1964). In some of these cases it went even further. In that of Costa Rica-Nicaragua, it was also agreed to adopt certain measures to prevent hostile acts to third party States and that of Costa Rica-Nicaragua permitted and encouraged the procurement of war material for one of the parties. In the case of the Dominican Republic-Venezuela the break in diplomatic relations was decreed and the partial interruption of economic trade.³¹

It was a special situation in the case of Cuba (1962). Although there it was agreed to suspend trade and trafficking of weapons and implements of war of any kind with the government of that country, its self-exclusion was also decreed from the inter-American system.³² This last precedent could not, however, cause that the suspension of the quality of a member of the OAS would be a possible measure to adopt, since in order for it to be possible, it would be necessary to reform the

31 INSTITUTO INTERAMERICANO DE ESTUDIOS JURÍDICOS INTERAMERICANOS, "The Inter-American System: a Study of its Development and Strengthening", Instituto de Cultura Hispánica, Madrid, 1966, p. 252.

32 *Idem*.

Organization's Charter, as was done in the case of the democratic breach through the approval of the 1992 Washington Protocol.

Consequently, it could be said that the **resolutions** of the OAS on the subject of international peace and security **are** also **recommendations** to the OAS member states to adopt measures that encourage the State or States that illicitly threaten or use armed force, to cease it, such as **the constitution of investigation commissions, sending protest notes, the call to inform, recall of ambassadors, total or partial suspension of technical, cultural, trade, economic, consular and diplomatic relations, communications, and the breach of such relations.**

And considering that in paragraph 4, letter l) of the Declaration on Security in the Americas it states that "*The states of the Hemisphere recognize different perspectives regarding security threats and priorities. The security architecture in our Hemisphere should be flexible and provide for the particular circumstances of each sub-region and each state*", and also considering paragraph 4, letter m), last phrase, of the Declaration on Security in the Americas that states that "*it is the responsibility of the specialized fora of the OAS, and inter-American and international fora to develop cooperation mechanisms to address these new threats, concerns, and other challenges, based on applicable instruments and mechanisms*", it could be said that **these resolutions can also call attention of the States, relevant international organizations or agencies, about the failure to comply, affecting international peace, with any of the commitments agreed in the Declaration on Security in the Americas.**

D. Resolutions relating to use of armed force

Yet the OAS could also make recommendations that imply or relate to the use of armed force by its Member States. It will take place in three situations. One, when describing an act as an aggression. The second when have at disposal the organization of solidarity of the Member States in case of aggression. And the last, when have at disposal the coordination in the framework of the Rio Treaty.

a) Description of aggression

As already mentioned that, pursuant to article 22 of the OAS Charter, "*The American States bind themselves in their international relations not to have recourse to the use of force, except in the case of self-defense*", which provision that repeats the terms in paragraph 4 of article 2 of the UN Charter, in the sense that "*the Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles: ... All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations*", as provided in article 51 of the same Treaty, while "*nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.*"

These concepts are repeated in the Rio Treaty. Its article 1 states that "*The High Contracting Parties formally condemn war and undertake in their international relations not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the United Nations or of this Treaty*", adding in paragraph 4 of its article 3 that "*Measures of self-defense provided for under this Article may be taken until the Security Council of the United Nations has taken the measures necessary to maintain international peace and security.*" And article 2 amended by article I of the Protocol of Amendment of the Rio Treaty insists: "*The High Contracting Parties formally condemn war and undertake, in their international relations, not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the Organization of American States, the Charter of the United Nations or this Treaty.*"

Considering the provision in the quoted provisions from the Charter of the United Nations, its General Assembly defined, in its Resolution 3314 (XXIX), of December 14, 1974, in the following terms, what it understands by aggression:

Article 1: Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition

Explanatory note: In this Definition the term "State":

- a) Is used without prejudice to questions of recognition or to whether a State is a member of the United Nations.
- b) Includes the concept of a "group of States" where appropriate

Article 2: The First use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

Article 3: Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

- a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- c) The blockade of the ports or coasts of a State by the armed forces of another State;
- d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Article 4: The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

Article 5:

1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression
2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.
3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

Article 6: Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

Article 7: Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination: nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

Article 8: In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions.

The central ideas of the quoted Resolution are repeated in the Rio Treaty and in its Protocol of Amendment.

Article 9 of the former indicates that: ... *In addition to other acts which the Organ of Consultation may characterize as aggression, the following shall be considered as such:*

- a) *Unprovoked armed attack by a State against the territory, the people, or the land, sea or air forces of another State;*
- b) *Invasion, by the armed forces of a State, of the territory of an American State, through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision, or arbitral award, or, in the absence of frontiers thus demarcated, invasion affecting a region which is under the effective jurisdiction of another State.*

And the article 9 amended by article I of the Protocol of Amendment of the Rio Treaty provides:

1. *Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, the Charter of the Organization of American States or this Treaty.*

The first use of armed force by a State in contravention of the aforementioned instruments shall constitute prima facie evidence of an act of aggression, although the Organ of Consultation may, in conformity with these instruments, conclude that the determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

2. *Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of paragraph 1 of this article, qualify as an act of aggression:*

- a) *Invasion by the armed forces of a State of the Territory of another State, through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision or arbitral award or, in the absence of frontiers thus demarcated, invasion affecting a region which is under the effective jurisdiction of another State, or armed attack by a State against the territory or people of another State, or any military occupation, however temporary, resulting from such invasion or attack or any annexation by the use of force of the territory of another State or part thereof;*
- b) *Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;*
- c) *The blockade of the ports or coasts of a State by the armed forces of another State;*
- d) *An attack by the armed forces of a State on the land, sea or air forces of another State;*
- e) *The use of the armed forces of one State which are located within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;*
- f) *The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;*
- g) *The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.*

3. *The Organ of Consultation may determine that other specific cases submitted to it for consideration, equivalent in nature and seriousness to those contemplated in this article, constitute aggression under the provisions of the Charter of the United Nations, the Charter of the Organization of American States or this Treaty.*

Accordingly, it is agreed in the international legal texts reproduced herein that, faced with aggression, the international legal obligation of refraining from threat or use of armed force in international relations is not being violated, but rather, very much to the contrary, at the same time the attacked State is entitled to defend itself and comply with the international legal obligation of restoring international peace and security breached by the act of aggression. Similarly, the use of

force when exercising self-defense, whether individual or collective, does not require any authorization, not even in the hypothesis of an agreed action by a regional authority.³³

That is why letter d) of article 2 of the OAS Charter provides that *“The Organization of American States, in order to put into practice the principles on which it is founded and to fulfill its regional obligations under the Charter of the United Nations, proclaims the following essential purposes: ... To provide for common action on the part of those States in the event of aggression”* and that letters g) and h) of article 3 of the same Charter provide that *“The American States reaffirm the following principles: The American States condemn war of aggression: victory does not give rights. An act of aggression against one American State is an act of aggression against all the other American States”*. Furthermore, article 28 of the said text states that *“Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States”*.

In its turn, the last phrase of article 7 of the Rio Treaty states that *“The rejection of the pacifying action will be considered in the determination of the aggressor and in the application of the measures which the consultative meeting may agree upon.”*

Consequently, and without detriment to the authority of the UN Security Council, the OAS has authority to say whether an act is or is not of aggression.

It is like that, for example, in the case of Cuba, the VIII and IX Meetings of Consultation, 1962 and 1964, respectively, described the acts of that country as “political aggression” or “aggression of a non-military nature”³⁴ and the Fifth Considering of the CP/RES Resolution 796 (1293/01) dated September 19, 2001, adopted as motive of the attacks against the Twin Towers, New York, United States of America, mentions these acts as terrorism, alluding to article 2 of the OAS Charter when proclaiming that one of the essential values of the Organization is to provide common action in case of aggression. Similarly, in Resolution RC.24/RES.1/01, dated September 21, 2001, the Permanent Council of OAS, acting provisionally as the Organ of Consultation, not only again alludes to the article 2 in question, but also resolves that these “terrorist attacks against the United States of America are attacks against all American States”.

Therefore, it could be stated that **the resolutions** of the OAS in terms of international peace and security **may determine, if applicable, that one or more acts against an American State should be considered as acts of aggression against the other States on the continent**, decisions that, in this way, give them further legality in exercising their right to self-defense, and constitute an expression of the recognition of the Organization itself as the entity that provides it.

b) Organization of common action in case of aggression

Well then, in this case, it is not the OAS that can use the armed force to repel the act of aggression, but that its Member States, corresponding to it, however, can organize their common action in such an event.

This role of coordination arises, as already mentioned, from the provision in letter d) of article 2 of the OAS Charter, which states that *“The Organization of American States, in order to put into practice the principles on which it is founded and to fulfill its regional obligations under the Charter of the United Nations, proclaims the following essential purposes: ... To provide for common action on the part of those States in the event of aggression”*.

The OAS Charter does not specify what is understood by organizing common action of the Member States in case of an act of aggression. However, the dictionary understands organizing to be “establishing or restoring something to achieve a purpose, coordinating the people or suitable means”, and common to be *“joined or associated to someone’s cause, enterprise or opinion”*. Therefore, the aforementioned function of organizing the common action in case of an act of aggression is concerned with coordinating joining or association to the cause of the attacked party.

It can, then, be logically concluded that, addressing the hypothesis in which its Member States are entitled to self-defense, the solidarity between them can also address, albeit not solely, actions of armed force and that, therefore, the organization corresponding to OAS is in relation to the

33 *Idem*, p. 252.

34 *Idem*, p. 147.

coordination of the use of this armed force that the Member States use or will use in exercising their right to collective self-defense.

In this sense, it should be considered that, pursuant to article 65 of the OAS Charter, as regards *“In case of an armed attack on the territory of an American State or within the region of security delimited by the treaty in force, the Chairman of the Permanent Council shall without delay call a meeting of the Council to decide on the convocation of the Meeting of Consultation, ...”*, the organization or coordination of the common action between its Member States that is the responsible of OAS in case of a consistent aggression in an armed attack against the territory of an American state or in the security region that the prevailing treaty demarcates, must begin by the convocation that such a provision establishes.

In short, it may be said that, **in case of aggression, the OAS can organize or coordinate the common action between its Member States in order to repel it, including the measures of force that are agreed when exercising collective self-defense.**

c) Application of the Rio Treaty

The OAS must proceed in the aforementioned manner even when, at the same time, the application of the Rio Treaty is invoked, since the obligation of meeting with the Council provided in the aforementioned article 65, is *“without prejudice to the provisions of the Inter-American Treaty of Reciprocal Assistance with regard to the States Parties to that instrument.”*

The former agreed, on the other hand, with the provision in article 29 of the OAS Charter, which provides that *“If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an armed attack or by an act of aggression that is not an armed attack, or by an extra-continental conflict, or by a conflict between two or more American States, or by any other fact or situation that might endanger the peace of America, the American States, in furtherance of the principles of continental solidarity or collective self-defense, shall apply the measures and procedures established in the special treaties on the subject.”*

And number 3 of article 3 of the Rio Treaty develops said idea: *“The provisions of this Article shall be applied in case of any armed attack which takes place within the region described in Article 4 or within the territory of an American State. When the attack takes place outside of the said areas, the provisions of Article 6 shall be applied.”* Article 6, in turn, states: *“If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack or by an extra-continental or intra-continental conflict, or by any other fact or situation might endanger the peace of America, the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of the aggression or, in any case, the measures which should be taken for the common defense and for the maintenance of the peace and security of the Continent.”*

Article 3, in turn, amended by article I of the Protocol of Amendment of the Rio Treaty says: *“If the inviolability or the integrity of the territory or the sovereignty or political independence of any other American State should be affected by an act of aggression as determined in accordance with Article 9 of this Treaty or by a conflict or serious event that might endanger the peace of America, the Organ of Consultation shall meet immediately to agree on the measures and steps that should be taken for the common defense and for the maintenance of the peace and security of the Hemisphere.”*

The only special agreement that could be called upon in the cases to which article 29 of the OAS Charter refers and that, moreover, expressly mentions its said article 65, is, consequently, the Rio Treaty and its Protocol of Amendment, instruments that, however, present the peculiarity of solely binding the part of the members of the OAS.³⁵

But, the fact should also be emphasized that the Rio Treaty is, then, a more comprehensive mechanism of self-defense than what OAS could use overall, given than it could be invoked not only in case of aggression as was conceptualized, that is, an armed attack, but also in the case of an unarmed attack or an extra-continental conflict or a conflict between two or more American States or

35 See notes 7 and 8.

any other fact or situation that might endanger the peace of America, affect the inviolability or integrity of the territory or sovereignty or political independence of any American State.

Moreover, the Rio Treaty can operate not solely in the framework of the right to self-defense, but also in that of “continental solidarity”. It is recalled, in relation to the above, that in the case of Cuba, in the missile crisis, it was recommended to adopt measures, understanding the use of armed force and that in the case of the Dominican Republic an inter-American force was actually constituted.³⁶

Given all the above, it could be said that **the resolutions that the OAS adopts in relation to international peace and security are without detriment to what the Member States may agree to on treaties concerning the same subject but only binding for some American States.**

E. Resolutions concerning the use of armed force within the sphere of the United Nations

In the event that it is the United Nations itself that is using armed force, this should observe what is set forth in paragraph 1 of article 53 of the Charter of the United Nations, which states that *“the Security Council will employ said agreements or regional organizations, if appropriate, to apply coercive measures under its authority. Nevertheless, such measures will not be applied on account of regional agreements or by regional organizations without authorization of the Security Council, except against enemy States, as defined in paragraph 2 of this Article”*. As said above, the OAS was founded expressly as regional in the framework of what is contemplated in the Charter of the UN.

It is therefore possible to indicate that only in the fulfillment of the mandate of the United Nations Security Council and according to its terms can the Organization of the American States employ armed force in a State to maintain international peace and security.³⁷

Although this possibility has never arisen, that is, there are no precedents in this matter, but bearing in mind that paragraph 1 of article 24 of the Charter of the United Nations states that *“in order to ensure swift and effective action on the part of the United Nations, its Members grant to the Security Council the primordial responsibility of keeping international peace and security, and recognize that the Security Council acts on this behalf in the actions that this responsibility imposes on it”* and furthermore, article 25 of the same text adds that *“the Members of the United Nations agree to accept and obey the decisions of the Security Council in accordance with this Charter”*, it may be concluded that **the action performed by the Organization of the American States in the scope of international peace and security by mandate of the United Nations Security Council should be in keeping the terms of this duty.**

On the other hand, considering that article 43 of the United Nations Charter states that: *“1. All the Members of the United Nations, with a view to contributing to the maintenance of international peace and security, pledge to place at the disposal of the Security Council, when so requested and in accordance with a special agreement or agreements, the armed forces, help and facilities, including the right of transit, that are necessary for the purpose of preserving international peace and security. 2. Said agreement or agreements will determine the amount and type of forces, their degree of preparation and general location, as well as the nature of the facilities and assistance to be delivered. 3. The agreement(s) will be negotiated at the initiative of the Security Council as soon as possible; agreement will be made between the Security Council and individual Members or between the Security Council and groups of Members, and will be subject to ratification by the signatory according to their respective constitutional procedures”*, it may likewise be concluded that in such cases, **the armed force of the Organization of the American States should be comprised of the contingents provided in accordance with the mandate of the United Nations, the respective agreement signed between both organizations and the agreements made with its Member States.**

In turn, bearing in mind that paragraph 1 of article 48 of the United Nations Charter states that *“actions required to carry out the decisions of the Security Council for the purpose of maintaining international peace and security will be taken by all or some members of the United Nations, as determined by the Security Council”*, it could also be deduced that in such circumstances the

36 INSTITUTO INTERAMERICANO DE ESTUDIOS JURÍDICOS INTERAMERICANOS, “El Sistema Interamericano. Estudio sobre su Desarrollo y Fortalecimiento”, *op. cit.*, p. 135 and ff.

37 Some authors call attention to the fact that the Charter of the United Nations does not pronounce about the situation arising when it does not act with regard to international peace and security, and, therefore, the regional agencies play an effective role in this sphere.

Organization of the American States should see to it that the only armed force that intervenes on behalf of or by mandate of the United Nations on the American continent is its own.

III. CONDITIONING FACTORS OF THE OAS IN MATTERS OF INTERNATIONAL PEACE AND SECURITY

The action that the Organization of the American States can perform in the scope of international peace and security must respect certain factors, norm or principles which therefore to some extent limits such action. One of these constraining factors is the specificity of the area relating to international peace and security. Another is the development or *status quo* circumstances attained in the hemisphere. A third factor concerns the importance of the United Nations in this area. And a fourth element to consider is the role that the State still conserves as a sovereign entity.

A. Specificity

We have already defined what is meant by international peace and security. And this bearing in mind that for the Inter-American system such area of action responds to specific circumstances different from other areas that are likewise relevant to this system.

Indeed, considering that letters b), c) and e) of article 2 of the Charter of the OAS state that *“the Organization of the American States, in order to accomplish the principles on which it is founded and fulfil its regional obligations according to the Charter of the United Nations, establishes the following essential propositions: ... To promote and consolidate representative democracy within the principle of non-intervention. ... To prevent possible causes of difficulties and ensure peaceful settlement of disputes that arise among the member States. ... To try to solve any political, juridical and economic problems that arise”* and that letters d), i) and l) of article 3 of the same Fundamental Text prescribes that *“the American States reaffirm the following principles: ... The solidarity of the American States and the lofty principles that they obey call for the political organization of same on the basis of effective exercise of representative democracy. ... Disputes of an international nature that arise between two or more American States should be settled by peaceful means. ... The American States proclaim the fundamental rights of the human being without distinction of race, nationality, creed or gender”*, one can rightly say that if international peace and security as phenomena are closely linked to democracy, peaceful settlement of disputes and human rights are all different realities that are susceptible to being approached in an independent or separate fashion.³⁸

This is so true that the very Charter of the Organization of the American States treats each of these realities differently. So, its article 9 establishes a sanction procedure for the case of a breach of democracy, which was developed by the Inter-American Democratic Charter. In turn, Chapter V of this Treaty regulates all that concerns the peaceful settlement of disputes. In turn, Chapter XV of the same document alludes to the Inter-American Commission on Human Rights, these having been established in the American Declaration of the Rights and Duties of Man.

From the practical perspective, perhaps the case that is normally mentioned to demonstrate the close link between democracy and international peace and security is Haiti. Nevertheless, at least in the inter-American sphere, it has been dealt with almost exclusively within the scope of promoting and defending democracy and at times also the sphere of human rights.³⁹ In turn, it was in the United Nations that it was inserted in the ambit of international peace and security. That is why it

38 Perhaps the same could be mentioned as regards terrorism, since, for example, in item 8 of Resolution RC.23/RES.1/01, of 21 September 2001, adopted by the Meeting of Consultation of Ministers of Foreign Affairs of members of the Organization of the American States and denominated “Strengthening hemispheric cooperation to prevent, combat and eliminate terrorism” the Permanent Council is urged to convene as soon as possible a meeting of the Inter-American Committee against Terrorism, in order to identify urgent actions meant to strengthen Inter-American cooperation to prevent, combat and eliminate terrorism in the Hemisphere”. However, it bears remembering that this mechanism is not to be found in the Charter of the OAS, as can be found those pertaining to democracy, peaceful settlement of disputes and human rights. Similarly, in order to emphasize the specificity of terrorism in respect to international peace and security, it is worth mentioning Resolution CP/RES. 799 (1298/01), dated 31 October 2001, denominated “the socio-economic impact of the terrorist acts perpetrated on 11 September 2001, on the member States and the damage caused especially to the smaller and more vulnerable economies”.

39 See AG/RES.1831/XXXI-O/01, 5 June 2001, Support for Democracy in Haiti; AG/RES.1841 (XXXII-O/02), 4 June 2002, The Situation in Haiti; AG/RES. 1959 (XXXIII-O/03, Support for Strengthening Democracy in Haiti; y AG/RES. 2058 (XXXIV)-O/04, Situation in Haiti: Strengthening Democracy. Also, CP/RES.806 (1303/02), 16 January 2002, Situation in Haiti, which is peculiar in that its last item provides that the Secretary General of the OAS should inform the Secretary General of the United Nations of the resolution.

has been understood that the Security Council “ratified” the resolutions of the OAS⁴⁰, since in reality the decisions of the latter were entirely independent of those of the United Nations, precisely because of the different basis and despite the fact that the latter mention the former.⁴¹

As far as the relation between peaceful settlement of disputes and international peace and security is concerned, this seems very evident in practically all the cases when the TIAR has been invoked, such as Honduras-Nicaragua (1957), Panama-United States (1964) and the Dominican Republic (1965)⁴², as well as the Falklands (1982).⁴³

The most emblematic case with regard to the connection between human rights and international peace and security could be that of Nicaragua that closed with the fall of General Somoza. However, in respect to this situation, it could be argued that the theme was actually handled by the OAS without any reference to international peace and security.⁴⁴

So it is feasible to claim that **the actions of the OAS in the ambit of international peace and security develop without jeopardizing those also undertaken together or separately in the same situation and in accordance with the Charter of the Organization and other international legal instruments on the matter of peaceful settlement of disputes or the effective exercise of representative democracy or respect for human rights.**

B. Progressive development

By the same token, a conditioning factor of OAS actions in questions of international peace and security is the Declaration on Security in the Americas, since, although it could not yet be considered as an expression of common law or principles of international law applicable in the Americas, there exists the possibility that it can serve as a proof of the interpretation that the States have lent to the matter and even though it serves as a basis for the progressive development of International Law applicable in the Americas on this question.

In particular, it is significant what paragraphs 2 and 3 of this Declaration state on this issue: *“Our new conception of security in the hemisphere is of a multidimensional nature, includes the traditional threats and new ones, preoccupations and other challenges to security in the States of the Hemisphere, incorporates the priorities of each State, contributes to the consolidation of peace, integral development and social justice, based on democratic values, respect, promotion and defense of human rights, solidarity, cooperation and respect for national sovereignty.”* Also, “peace is a value and a principle in itself and is based on democracy, justice, respect for human rights, solidarity, security and respect for international law. Our security architecture will contribute to preserving it through strengthening the mechanisms of cooperation among our States to face the traditional challenges, the new ones, the preoccupations and other challenges that our Hemisphere has to face.”

Considering this new focus or perspective, it should be stated that **the decisions of the OAS in matters of international peace and security should be interpreted in accordance with the Shared Principles, Values and Focuses and Commitments and Actions of Cooperation expressed in the Declaration on Security in the Americas, and consequently in accordance with the multidimensional scope of the concept of hemispheric security adopted there.**

C. Importance of the United Nations

Congruent with its status as regional organization within the framework of the United Nations and with the possibility of being executor of some mandate on the matter, article 131 of the Charter of the OAS points out that *“none of the stipulations of this Charter shall be interpreted in the sense of neglecting the rights and obligations of each of the member States in keeping with the Charter of the United Nations”*.

40 See OAS/Ser.Q CJI/doc 26/99 corr.1, 25 August 1999, and OAS/Ser. Q CJI/doc 4/00 corr.1, 28 March 2000, both already quoted and presented by Dr. Luis MARCHAND STENS.

41 On relations between Democracy and International Peace and Security and especially on the case of Haiti, See CJI/SO/II/doc 37/94 rev.1 corr.2, 18 October 1994, “Report. Democracy under the Inter-American System”, presented by the author of this report and reproduced in “Democracy under the Inter-American System”, Comité Jurídico Interamericano, Secretaría General, Organización de los Estados Americanos, Washington D.C., 1998, pp.105-152.

42 INSTITUTO INTERAMERICANO DE ESTUDIOS JURÍDICOS INTERAMERICANOS, *op.cit.*, p. 157 and ff.

43 See I, B, a).

44 See CJI/SO/II/doc 37/94 rev.1 corr.2, 18 October 1994, Report: Democracy under the Inter-American System, already quoted and presented by the author of this report.

This disposition agrees, on the other hand, with what is set forth in article 103 of the Charter of the United Nations, which establishes that *“in case of dispute among the obligations assumed by the Members of the United Nations on account of this Charter and their obligations assumed on account of any other international convention, the obligations imposed by this Charter shall prevail.”*

It must be borne in mind that on occasion the effective importance of the United Nations is non-existent, but this is for political reasons and basically due to the use of the veto in the Security Council, which leads to its paralysis and consequently to the possibility that the regional organizations act in exercising the right to legitimate collective defense. The truth is that some insinuate that this is what happened with the Inter-American force in the Dominican Republic. Perhaps this could also be affirmed in the case of the military intervention in Grenada, carried out under the cover of a sub-regional agreement of the Caribbean States.

Similarly, this is in agreement with what the Charter of the OAS stipulates under number 4 of article 3 of the TIAR: *“Application may be made of the measures of legitimate defense dealt with in this Article should the Security Council fail to take the necessary measures to maintain international peace and security”*.

In the same way, numbers 4 and 6 of article 3 and article 10 modified by article I of the Protocol of Amendments of the TIAR indicate that: *“Article 3: ... 4. ..., the Consultation Body will meeting without delay, convened by the President of the Permanent Council, for the purpose of examining the immediate measures to be taken by the Member States based on paragraph 1 of this article and agreeing on collective measures, including joint action to be taken before the United Nations in order to that the provisions contained in the Charter of that Organization be made effective 6. Application may be made of the measures of legitimate defense dealt with in this article should the Security Council of the United Nations fails to take the necessary measures to maintain international peace and security”*. And *“Article 10: The High Contracting Parties shall send immediately to the Security Council, in accordance with articles 51 and 54 of the Charter of the United Nations, complete information on the activities undertaken or programmed in the exercise of the right to legitimate defense or for the purpose of maintaining international peace and security”*.

In light of the above, the OAS understands that even it should respect this communication in the event of acting in cases of aggression. This, for example, was done at the 6th Consultation Meeting of Ministers of Foreign Affairs in the case of the Dominican Republic in 1960⁴⁵ and is also of item 2 of Resolution CP/RES.797 (1293/01, of 19 September 2001 and item 9 and the end of Resolution RC.24/RES.1/01, of 21 September 2001, adopted by the Twenty-fourth Consultation Meeting of Ministers of Foreign Affairs acting as a Consultative Body in the application of the TIAR, on the occasion of the terrorist attacks of 11 September in New York, on recommending that “the Security Council of the United Nations” be informed “immediately of the text of the ... Resolution” and “of all the activities related to this matter” or “any decision that might be taken on the matter”.

In short, it could be said that **no resolution of the OAS concerning international peace and security can be interpreted as a contradiction of what is set forth in the Charter of the United Nations** and that **the United Nations should be informed of any resolution that is adopted by the OAS on matters of international peace and security**.

D. Role of the sovereign State

In the present international structure, including the Inter-American, based on the concept of sovereignty, the sovereign State continues to conserve its main faculties; consequently, practically all the organizations, including the OAS, are based on cooperation.

That is why article 13 of the Charter of the OAS proclaims that *“... the political existence of the State is independent of its recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, provide for its conservation and prosperity and, consequently, to organize itself as it sees fit, legislating on its interests, administering its services and determining the jurisdiction and competence of its courts. The exercise of these rights knows no other limits than the exercise of the rights of other States in accordance with international law”* and article 19 of the same fundamental Convention adds that *“no State or group of States has the right to intervene, directly or indirectly, and whatsoever may be the reason, in the internal or external*

45 In respect to those case, the debate arose in the United Nations about whether the breach and partial interruption of economic relations determined by the OAS were “coercive measures” or not.

affairs of any other. The preceding principle excludes not only armed force but also any other form of intervention or tendency against the personality of the State and its constituent political, economic and cultural elements."

And as a corollary to this, article 21 of the same Fundamental Text declares that *"the territory of a State is inviolable; it cannot be the object of military occupation or any other measures of force taken by another State, directly or indirectly, whatsoever may be the reason, and even if of a temporary nature. The territorial acquisitions or special advantages obtained by force or any other means of coercion shall not be acknowledged."*

But on the other hand, article 6 of the same Charter states that *"any other independent American State that wishes to become a member of the Organization should manifest this wish by means of a note addressed to the Secretary General indicating that it is willing to sign and ratify the Charter of the Organization and also accept all the obligations entailed in being a member, especially those referring to collective security mentioned expressly in articles 28 and 29 of the Charter."*

It may thus be deduced that although the resolutions that the OAS adopts in the matter of international peace and security are not, as said earlier, of a supra-national nature, that is, are not *per se* directly binding in the territory of its member States, these have pledged to adopt the pertinent measures so that the OAS can effectively fulfill its mission on international peace and security matters and in particular so that it can act in cases of aggression to one or several member States.

Such resolutions therefore imply the obligation of the member States to obtain results, this obligation consisting of adopting, in accordance with its internal law and given the freedom to choose the means, all the measures that it deems necessary and proper so that the OAS can fulfil, as an organization of cooperation and in the terms set forth in the Charter, its function as far as international peace and security are concerned and in particular exercising collective legitimate defense.

In turn, paragraphs 1 and 2 of article 3 of the TIAR expressly refer to the right to individual action of the member States, by declaring: *1. The High Contracting Parties agree that an armed attack on the part of any State against an American State will be seen as an attack against all the American States and as a consequence each one of said Contracting Parties commits itself to help face that attack, in the exercise of the inherent right of legitimate individual or collective defense recognized in Article 51 of the Charter of the United Nations. 2. At the request of the State or State directly attacked, and even the decision of the Consultative Body of the Inter-American system, each of the Contracting Parties may determine the immediate measures to be taken individually to fulfill the obligation dealt with in the preceding paragraph and in accordance with the principle of continental solidarity. The Consultative Body will meet without delay for the purpose of examining these measures and agreeing on those of a collective nature that it deems appropriate to adopt."*

The above is repeated in paragraphs 1, 2 and 3 of article 3 and in article 6, both introduced by article I of the Protocol of Amendments to the TIAR: *"Article 3. 1. The High Contracting Parties agree that an armed attack by any State against a member State will be seen as an attack against all the member States and consequently each one of them pledges to help face the attack in the exercise of the inherent right of legitimate individual or collective defense recognized in article 51 of the Charter of the United Nations. 2. At the request of the State or member States directly attacked by another American State or States, and until the Consultative Body provided for in this Treaty takes a decision, each one of the member States may determine according to circumstances the immediate measures to adopt individually to fulfil the obligation dealt with in the preceding paragraph. 3. In the case of armed attack of extra-continental origin against one or more member States and until the Consultative Body makes a decision, each one of the member States may determine according to circumstances at the request of the State or States under attack, the immediate measures to adopt in the exercise of its right to individual and collective legitimate defense, in keeping with article 51 of the Charter of the United Nations and with the obligation stipulated in the first paragraph of this article."*

In turn, letter a) of paragraph 4 of the Declaration on Security in the Americas indicates that *"we affirm that our cooperation to face the traditional challenges and the new ones, preoccupations and other challenges to security is also based on shared values and common views recognized within the hemisphere. Outstanding among them are the following: ... Each State has the sovereign right to identify its own national security priorities and to define the strategies, plans and actions to face*

the characteristics to its security in accordance with its legal system and with full respect for international law and the norms and principles of the Charter of the OAS and the Charter of the United Nations.”

In view of this reality, on the one hand one could support **the resolutions that the OAS adopts concerning international peace and security are executed by its member States** and on the other hand, that **none of them can be interpreted as restrictive with regard to their rights and obligations on the matter, in particular as regards their right to legitimate defense.**

IV. DECISION-MAKING IN THE OAS ON MATTERS OF INTERNATIONAL PEACE AND SECURITY

In the light of the above, the question arises about who makes the decisions of the Organization of the American States to act in the area of international peace and security.

In fact, it would be wise to point out that the process of making decisions on these issues involves the member States of the OAS, the General Assembly and/or Meeting of Consultation of Ministers of Foreign Affairs, the Permanent Council and the General Secretary, all enjoying the cooperation of advisory bodies and in accordance with a well-delimited hierarchical order.

A. General Assembly and/or Meeting of Consultation of Ministers of Foreign Affairs

On the other hand, given that letter a) of article 54 of the Base Convention of the OAS provides that *“the General Assembly is the supreme organ of the Organization of the American States. Its main attributions, in addition to the others mentioned in the Charter, are as follows: ... To decide on the action and general policies of the Organization, to determine the structure and functions of its units and to consider any matter relating to the harmony of the American States”* and bearing in mind that article 61 of the same Fundamental Text states that *“the Meeting of Consultation of Ministers of Foreign Affairs should be held for the purpose of looking at problems of an urgent nature and common interest to the American States and to serve the Consultative Body”*, the conclusion can be drawn that **it is indistinctly the competence of the General Assembly or the Meeting of Consultation of Ministers of Foreign Affairs to agree on the action of the Organization of the American States as regards international peace and security on the continent.**

B. Consultative Body

However, considering that article 65 of the Charter of the Organization of the American States establishes that *“in case of armed attack to the territory of an American State or inside the security region delimited by the treaty in effect, the President of the Permanent Council will convene the Council at once to determine convening the Consultative Meeting ...”*; that paragraph 2 of article 3 of the TIAR reiterates that in accordance with the terms of paragraph 3 of the same article, *“...the Consultative Body will meet without delay in order to examine these measures and agree upon those of a collective nature that it is appropriate to adopt”*, which, according to paragraph 3 of the same provision, applies *“in all cases of armed attack within the region described in Article 4.° or within the territory”*; that article 6 of this same instrument establishes that in the case of *“an aggression that is not an armed attack or because of an extra-continental or intra-continental dispute, or for any other fact or situation that can endanger peace in America in the situation referred to, the Consultative Body will meet immediately in order to agree upon the measures to be taken in the case of aggression to help the attacked or in any case those appropriate for common defense and to ensure the peace and security of the Continent”*; and that paragraph 4 of article 3 modified by article I of the Protocol of Amendments of the TIAR, establishes that *“...the Consultative Body will meet without delay by convocation of the President of the Permanent Council in order to examine the immediate measures to be adopted by the member States ... and to agree upon the collective measures that are necessary, including joint action that can be undertaken before the United Nations so that the provisions set forth in the Charter of that Organization are made effective”*, it becomes evident that at least in the situations referred to the Consultative Body is responsible for approving the measures that it deems necessary to adopt.

So, according to article 61 of the Charter of the OAS, the Consultative Body is the meeting of Ministers of Foreign Affairs. As a matter of fact this norm stipulates: *“the Consultative Meeting of the Ministers of Foreign Affairs should be held in order to look at problems of an urgent nature and of common interest to the American States and to serve as a Consultative Body”*.

In short, it might be stated that **the Consultative Body, convoked by the President of the Permanent Council, is responsible for determining the collective measures to face an armed attack to an American State or inside the zone determined by the TIAR.**

With regard to this instrument, it is appropriate to recall that article 11 provides that *“the consultations mentioned in this Treaty were held by means of the Meeting of Ministers of Foreign Affairs of the American Republics that ratified it or in the form or by the body that it in the future will be agreed upon”*; that article 13 of the same adds that *“the consultations will be promoted by means of a request addressed to the Directing Council of the Pan-American Union by any of the signatory States that has ratified the Treaty”*; in article 14, that *“only the representatives of the States that have ratified the Treaty can take part in the voting referred to herein”*; in article 15 that *“the Directing Council of the Pan-American Union will act in matters concerning this Treaty as the body connecting the signatory States that have ratified it and including the United Nations”*; in article 17, that *“the Consultative Body will adopt its decisions by the vote of two thirds of the signatory States that have ratified the Treaty”*; and in article 20, that *“the decisions that require the application of the measures mentioned in Article 8° will be obligatory for all the signatory States of this Treaty that have ratified it, with the sole exception that no State will be obliged to use armed force without their consent”*. From all of this, it may therefore be concluded that what is resolved by the Consultative Body within the scope of the TIAR can only bind or affect the member States of the TIAR.

This idea is found too in the Protocol of Amendments of the TIAR in the following provisions modified by article I: paragraph 3 of article 3: *“The stipulations of this article will apply in all cases of armed attack against a member State in the region described in article 4 or in territory under the full sovereignty of a member State”*; article 20: *“The Consultative Body, save for the provisions of the following paragraph, will adopt all its decisions or recommendations by the vote of two thirds of the member States”* and *“Revoking the measures adopted according to article 8 will require the vote of the absolute majority of said States”*; article 23: *“The measures mentioned in Article 8 may be adopted by the Consultative Body in the form of: a) Decisions that all member States are obliged to apply, or b) Recommendations to all member States”*; and article 27: *“This Treaty can only be reformed in a special conference convened for that purpose by the majority of the member States. The amendments will take effect as soon as two thirds of the member States have deposited their instruments of ratification”*. The same concept is reiterated in articles VIII: *“This Protocol will take effect among the States that ratify it when two thirds of the signatory States have deposited their instruments of ratification”*, IX: *“When this Protocol comes into effect, it will be understood that the member States of the Organization of the American States that are not Parties in the Inter-American Treaty of Reciprocal Assistance and sign and ratify this Protocol will also sign and ratify the non-amended parts of the Inter-American Treaty of Reciprocal Assistance”* and XII: *“The Inter-American Treaty of Reciprocal Assistance will remain in effect among the member States in this Treaty. Once the Protocol of Amendments comes into effect, the amended Treaty will apply among the States that have ratified this Protocol”*.

To be sure, both the TIAR and its Protocol of Amendments simply develop what is provided in article 65 of the Charter of the OAS, insofar as it expresses that the Organization should proceed as it stipulates, *“without jeopardizing the provisions of the Inter-American Treaty of Reciprocal Assistance concerning the member States in this instrument”*.

In the light of the above, it can therefore be added that **in the event of any other fact or situation that could endanger peace in the Americas, other than an armed attack, such collective measures are only binding for the member States of the TIAR. In adopting measures covered by the latter, only its member States can participate.**

C. Permanent Council

So, considering that article 70 of the Charter of the OAS expresses that *“the Permanent Council of the Organization and the Inter-American Council for Integral Development depend directly on the General Assembly and have the competence that the Charter and other Inter-American institutions assign to each one of them, as well as the functions assigned by the General Assembly and the Meeting of Consultation of Ministers of Foreign Affairs”*; bearing in mind that article 82 of the same Fundamental Treaty provides that *“the Permanent Council is competent, within the limits of the Charter and Inter-American treaties and agreements, in any matter assigned to it by the General Assembly or the Consultative Meeting of Foreign Affairs”*; seeing that letters a) and d) of article 91 of this text add that *“it is also the duty of the Permanent Council: ... to take those decisions of the*

General Assembly or the Meeting of Consultation of Ministers of Foreign Affairs that no other entity has been assigned to take; ... to prepare, on the request of the member States and with the cooperation of the appropriate bodies of the Organization, draft agreements to promote and facilitate collaboration between the Organization of the American States and the United Nations or between the Organization and other American bodies of recognized international authority. These projects will be submitted to the approval of the General Assembly"; and bearing in mind that article 61 of the same Base Convention provides that *"the Meeting of Consultation of Ministers of Foreign Affairs should be held ... to serve the Consultative Body"*, it can be said that **the Permanent Council of the OAS is responsible for adopting the appropriate measures for the preparation or execution of the resolutions on questions of international peace and security of the General Assembly or the Meeting of Consultation of Ministers of Foreign Affairs and for acting provisionally as such bodies.**

D. Secretary General

So, a significant role within the whole decision-making process in the OAS as regards international peace and security is reserved for the principal officer of that body, that is, the Secretary General.

As a matter of fact, according to paragraph 2 of article 110 of the Charter of the Organization, a provision very similar to article 99 of the Charter of the United Nations, *"the Secretary General may call the attention of the General Assembly or the Permanent Council any matter that he understands might affect the peace and security of the Continent or the development of the member States."* And paragraph 3 of the same norm adds that *"the attributions referred to in the preceding paragraph will be exercised in accordance with this Charter."*

In the light of all that has been presented above, it could be stated that **the General Secretary of the OAS may take to the General Assembly or the Permanent Council any question relating to international peace and security in the Americas.**

And in observance of the provision in article 107 of the fundamental text of the OAS that *"the Secretariat General is the central and permanent body of the Organization of the American States. It shall fulfil the functions attributed to it by the Charter, other Inter-American treaties and agreements and the General Assembly, and shall carry out such functions as commissioned by the General Assembly, the Meeting of Consultation of Ministers of Foreign Affairs and the various Councils"*, it may be said that **the General Secretary shall also fulfil the related missions given by such bodies and the Meeting of Consultation of Ministers of Foreign Affairs.**

Such missions certainly include the one related to the provision in article 54 of the Charter of the United Nations, namely that *"the Security Council should always be kept fully informed of the activities undertaken or projected in accordance with regional agreements or by regional organizations for the purpose maintaining international peace and security"*.

Fulfilling this obligation is also to be found in the TIAR. Article 5 states: *"The High Contracting Parties shall send immediately to the Security Council of the United Nations, in accordance with Articles 51 and 54 of the Charter of San Francisco, complete information on the activities undertaken or projected in the exercise of the right to legitimate defense or for the purpose of maintaining Inter-American peace and security."* And article 10, modified by article I of the Protocol of Amendments of the TIAR repeats that *"the High Contracting Parties shall send immediately to the Security Council, in keeping with articles 51 and 54 of the Charter of the United Nations, complete information on the activities undertaken or projected in the exercise of the right to legitimate defense or for the purpose of maintaining Inter-American peace and security"*.

Also when the TIAR and its Protocol of Amendments refer to their High Contracting Parties about the aforementioned obligation, it is clear that, since the TIAR in the scope of the OAS and specifically of its Charter, they should fulfil that obligation by the means established for and in the Charter.

It should be added to all that has been said up to now that paragraph 52 of the Declaration on Security of the Americas recommends *"that the General Assembly strengthen the capacity of the Secretariat General in order to lend better service to the member States and political bodies of the Organization on matters of security in the hemisphere, including substantive secretarial support to the Commission on Hemispheric Security."*

It can also be said, then, that **it is also the duty of the Secretariat General to channel the communications regarding international peace and security between the OAS and other**

organizations, and especially information that the former periodically has to send to the Security Council of the United Nations about activities underway and projected on account of the mandate granted by the latter.

E. Managing Bodies

So, it is obvious that the agents who take part in the decision-making process of the OAS on questions of international peace and security do so or may do so duly advised.

a) Consultative Defense Committee

The principal advisory body is the one provided in article 66 of the Charter of the OAS, which stipulates that “*a Consultative Defense Committee is set up to lend advice to the Consultative Body on problems of military collaboration that arise as a result of the application of existing special treaties on matters of collective security*”.

Such a body, denominated subordinate and also principal for having been contemplated by the Base Convention itself, was foreseen, because of the reference in the aforementioned article to “*special existing treaties on matters of collective security*”, to act in the case of application of the TIAR, the only special treaty that exists on the issue of collective security.

Therefore, article 67 of the Charter of the OAS, which provides that “*the Consultative Defense Committee will join the highest military authorities of the American States that attend the Consultative Meeting*”, as well as article 68 of the same instrument, which stipulates that “*the Consultative Defense Committee will be convened in the same terms as the Consultative Body when matters have to be dealt with concerning defense against aggression*”, should be interpreted in consistency with the provision in the TIAR⁴⁶ and its Protocol of Amendments⁴⁷, which prescribe that only member States intervene in the application of the TIAR, and so it should be understood that the invited military authorities taking part in the Consultative Defense Committee are only those belonging to these member States.

The above interpretation is reinforced by what article 69 of the Charter of the OAS stipulates in the final paragraph, namely that “*when the General Assembly or the Consultative Meeting or Governments, by majority of two thirds of the member States, commission technical studies or reports on specific themes, the Committee will also meet for this purpose*”. Note the special use of the word “also” in this norm, indicating that the Consultative Defense Committee should also act as an advisory entity in the event of an action on the part of the OAS itself in answer to an aggression and not only in the event of application of the TIAR.

b) Inter-American Defense Board

On the other hand, it is necessary to emphasize that the Inter-American Defense Board (JID) exists and operates, founded in 1942 by Resolution XXXIX of the 4th Meeting of Consultation of Ministers of Foreign Affairs which was attended by only 19 member States of the OAS. The problem of the JDI is that up to the present date its international legal status is under, and in particular its connection with the OAS.

This question has been debated at great length. Discussion has mainly centered on whether the JDI is or is not a unit of the OAS, especially bearing in mind that on one occasion its highest officer qualified it as an international organization.

With regard to the reasons for claiming that the JID is an organ of the OAS, these refer to the strong operative and legal links between both institutions, such as financing of the former by the latter, the functions the latter has granted it, the building where the former works, which is the property of the latter, and so on. Some of the reasons mentioned for not considering the JID as a unit of the Organization of the American States are that, despite its existing at the moment when the latter was founded, its Base Convention does not include the fact that the JID does not have the conditions to be considered a specialized body of the Organization, the fact that it was not designed by the General Assembly of the latter as an entity, and the fact that it also was not founded in accordance with the provisions of the Charter of the OAS.

⁴⁶ See articles 11, 13, 14, 15 and 17 in IV, B.

⁴⁷ See articles 3, 20, 23 and 27 amended by article I and articles VIII, IX and XII in IV, B.

The question has also been discussed on whether it is or ought to be declared by the General Assembly of the OAS as specialized agency or as an entity of the Organization.

The first alternative would entail applying letter h) of article 53⁴⁸ and Chapter XVIII of the Charter of the OAS, denominated "Specialized Organizations". The second would entail applying the second last paragraph of article 53.⁴⁹ The difference between the two institutions comes from the fact that whereas the relation between the specialized agency and the OAS should be the object of an agreement between both instances, that between the entity and the Organization should be regulated only by a resolution of the General Assembly of the latter.

The aforementioned debate has not yet reached an end.⁵⁰ o much so that the Declaration on Security in the Americas addresses this topic by pointing out in paragraph 49 that: "We repeat the need to clarify the legal and institutional relation of the Inter-American Defense Board (JID) with the OAS. Accordingly, we recommend that the Permanent Council, through the Committee on Hemispheric Security, bearing in mind the provision of article 54, items (a) and (b) of the Charter of the Organization and according to the criteria contained in the resolutions of the General Assembly on this question, in particular resolution AG/RES. 1240 (XXIII-O/93) – "advisory and consulting services of a technical-military nature that in no case be of an operative nature"; resolution AG/RES. 1848 (XXXII-O/02) – "including the principle of civil supervision and the democratic conformation of its authorities"; and resolutions AG/RES. 1908 (XXXII-O/02) and AG/RES. 1940 (XXXIII-O/03) – "to provide the OAS with technical, consultative and educational capacity on questions of defense and security"–, should conclude the analysis of the relationship between the JID and the OAS and present recommendations to the thirty-fourth period of regular sessions of the General Assembly for determining the norms required for that relationship and the mandate of the Board. The Permanent Council, through the Committee on Hemispheric Security, will maintain regular communication with the JID for the effects of this paragraph."

This being so, indications, not precisely in the traditional implicit form, are that the matter of the Inter-American Defense Board and its relationship with the OAS should be the object of a political decision on the part of the highest body of the Organization, that is, the General Assembly, and adopted in view of the proposition previously presented by the Permanent Council.

Nevertheless, on suggesting this, the Declaration on Hemispheric Security does so with strong emphasis on the advisory - and by no means whatsoever military - nature of the Inter-American Defense Board.

c) Committee on Hemispheric Security

Furthermore, the Permanent Council of the OAS, on the recommendation of the General Assembly⁵¹, created the Committee on Hemispheric Security, which unmistakably indicates that this is a subsidiary body, that is, not provided for in the Base Convention and consequently set up by a principal body which confers attributions to it that cannot exceed its own, although its composition is entirely identical, in other words it is made up of representatives of all the member States of the OAS.

However, the Committee on Hemispheric Security has been recognized politically by the Declaration on Security in the Americas, which recommends in paragraph 43 that "within the OAS, the Committee on Hemispheric Security should coordinate the cooperation among the bodies, organizations, entities and mechanisms of the Organization related to the various aspects of security and defense in the hemisphere, respecting the mandates and the scope of their

48 "The Organization of the American States achieves its ends by means of: ... h) Specialized organizations"

49 "Besides the organs provided for in the Charter and in accordance with its provisions, any other subsidiary bodies, organizations and entities deemed necessary can be established".

50 See Memorandum of 18 March 2003, from William BERENSON to Paul DURAND, Representative of Canada to the OAS, and CP/CHS-264/00. rev.1, "The Organization of the American States and the Inter-American Defense Board", Document prepared by the Department of International Law of the Sub-Secretariat for Legal Affairs, OAS/Ser.G.CP/doc 854/78 corr.1, 15 August 1978, "Situation of the JID in respect to the OAS"; OAS/Ser.G.CP/GT/CSH-33/92, 12 May 1992, "Hemispheric Security: JID"; OAS/Ser.G.CE/SH-3/93, 2 February 1993, "The institutional relation between the Organization of the American States and the Inter-American defense Board"; OAS/Ser.G.CP/doc 2392/93, 28 May 1993, "Report of the Special Committee on Hemispheric Security about the J.I.D."; and OAS/Ser.G.CE/SH-18/93, 15 September 1993, "Inter-American Defense Board: the Legal-Institutional/Competencies/Financing Relation", Document prepared by the President of the Special Committee on Hemispheric Security.

51 AG/RES. 1353 (XXV-O/95).

competencies, in order to ensure the application, evaluation and observance of this Declaration” and in paragraph 44 that “the Committee on Hemispheric Security should preserve the necessary ties with other sub-regional, regional and international institutions and mechanisms related to the various aspects of security and defense in the hemisphere, respecting the mandates and the scope of their competencies, in order to ensure the application, evaluation and observance of this Declaration and bearing in mind paragraph 52 of the Declaration on Security in the Americas”.

Nonetheless, it is sensible to repeat that all this does not alter the nature of the Committee on Hemispheric Security as a subsidiary body that continues to serve as advisor to the Permanent Council.

d) Other bodies, organizations or entities⁵²

Finally, it should be borne in mind that because of a general principle in law, namely that international organizations possess all the faculties necessary for fulfilling their commitments and even the theory of implicit powers, both the General Assembly and the Meeting of Consultation of Ministers of Foreign Affairs and even the Permanent Council of the Organization of the American States possess the general or implicit faculty of being advised by the bodies, organizations or entities that they deem suitable for carrying out their functions.

In the light of all this, it may be concluded that in order to fulfil their commitments to international peace and security, the General Assembly or the Meeting of Consultation of Ministers of Foreign Affairs can enjoy the advisory services of the Consultative Defense Committee and can also, just like the Permanent Council, be advised by the Inter-American Defense Board, the Committee on Hemispheric Security and the other bodies in the inter-American system that they deem necessary to consult. In any case, the coordination of these advisory services on questions of international peace and security, is the responsibility of the Committee on Hemispheric Security, which exercises this function with the cooperation of the General Secretariat.

V. CONCLUSIONS

In view, then, of the foregoing relationship and even at the risk of being repetitive, it might be stated that the general principles and norms that regulate the action of the OAS in questions of international peace and security are as follows:

I. The primary, but not the sole, objective of the Organization of the American States is to keep and re-establish international peace and security in the hemisphere.

II. To this end, peace is understood as the international state or situation in which the States abstain from resorting to armed force in their mutual relations and international security as the absence of threat to peace in the continent, considering that this peace may be menaced by the use of armed force among American States or between one of these and one or several foreign States, by the negative consequences of a dispute between the latter or due to some other similar fact or situation, including those mentioned in the Declaration on Security in the Americas. It is also understood there are the Organization of the American States can act if peace and security in the continent are or may come to be affected by facts or situations that happen in or outside the hemisphere.

III. The first and foremost objective of the OAS in the case of a situation that affects ops in the continent is the prompt termination of the threat or the use of armed force, without neglecting the pertinent rights of the party that legitimately exercise such force.

IV. The resolutions that the OAS adopts with regard to international peace and security in the hemisphere are essentially recommendations of a political or diplomatic nature directed to its member States, without affecting the obligatory measures that do not include the use of armed force and are agreed upon within the framework of the TIAR by and for their member States. These recommendations may be to set up investigation committees, draft notes of protest, summons to give information, withdrawal of Ambassadors, total or partial suspension of diplomatic, consular, economic, commercial, cultural and technical relations and those concerned with communications, and the breach of such relations. In addition, these resolutions can call the attention of the pertinent

52 See notes 48 and 49.

States and international organizations or bodies about the non-compliance with any of the commitments assumed through the Declaration on Security in the Americas that comes to affect international peace.

V. These resolutions likewise determine that one or several acts against an American State should be considered as acts of aggression against the other States of the continent. In the case of aggression, the OAS may organize or coordinate actions of solidarity among its member States to repel such aggression, including the measures of force that are agreed upon in the exercise of collective legitimate defense.

VI. All the aforementioned resolutions do not affect those that come to be agreed upon by the member States of treaties concerning the same matter but that are only binding for some American States.

VII. The action that the Organization of the American States undertakes in the sphere of international peace and security by mandate of the Security Council of the United Nations should be consistent with the terms of this commitment. In such cases, the armed force of the OAS should be made up of the contingents provided in accordance with the mandate of the United Nations, the respective agreement signed between both organizations and the agreements subscribed with the member States. The OAS should ensure that the only armed force that intervenes on behalf or by mandate of the United Nations in the American continent is its own.

VIII. The actions of the OAS within the scope of international peace and security develop without affecting those also undertaken jointly or separately concerning the same situation dealt with and according to the Charter of the Organization and other international legal instruments, with regard to peaceful settlement of disputes or the effective exercise of representative democracy or respect for human rights.

IX. The decisions of the OAS in respect to international peace and security should be interpreted in accordance with the Shared Principles, Values and Focuses and Actions of Cooperation expressed in the Declaration on Security in the Americas, and consequently according to the multidimensional scope of the concept of hemispheric security adopted there.

X. No resolution of the OAS concerning international peace and security can be interpreted in contradiction of what is written down in the Charter of the United Nations and the United Nations should be notified of any resolution that the OAS adopts in the area of international peace and security.

XI. The resolutions that the Organization of the American States adopts with regard to international peace and security are carried out by its member States and none of them can be interpreted as restricting the rights and obligations of these States in the same question, in particular as regards the right to legitimate defense.

XII. The General Assembly and the Meeting of Consultation of Ministers of Foreign Affairs are without distinction both responsible for coming to agreement about the action of the OAS with regard to international peace and security in the continent.

XIII. The Consultative Body, convoked by the President of the Permanent Council, is responsible for determining the collective measures to face an armed attack against an American State or inside the zone defined by the TIAR. In the event of another fact or situation that could put peace in the Americas in jeopardy, other than armed attack, such collective measures only bind the member States of said Treaty. Only the member States participate in adopting measures encompassed by said Treaty.

XIV. The Permanent Council of the Organization of the American States is responsible for adopting the appropriate measures for preparing and executing the resolutions on international peace and security issues of the General Assembly or the Meeting of Consultation of Ministers of Foreign Affairs and to act provisionally as substitute for the latter.

XV. The Secretary General of the OAS can take to the General Assembly or to the Permanent Council any question on international peace and security in the Americas and should also fulfil the missions assigned to him in this respect by such bodies and the Meeting of Consultation of Ministers of Foreign Affairs. Likewise, the Secretariat General should channel the communications relating to international peace and security, between the OAS and other organizations and especially

information that the former should periodically send to the Security Council of the United Nations concerning the activities it undertakes or projects on account of the mandate granted by the latter.

XVI. In order to fulfil its commitment on matters relating to international peace and security, the General Assembly or the Meeting of Consultation of Ministers of Foreign Affairs can receive the advisory services of the Consultative Defense Committee and – like the Permanent Council – those of the Inter-American Defense Board, the Committee on Hemispheric Security and any other bodies of the Inter-American system that it deems necessary. In any case, the coordination of the advisory services on questions of international peace and security is the responsibility of the Committee on Hemispheric Security, which exercises this with the cooperation of the General Secretariat.

From such general principles and norms, the conclusion can be drawn that the OAS really does rely on a system for maintaining and re-establishing international peace and security that is part and parcel of its essence or *raison d'être*, which is reason enough for it not to shrink from its responsibility in this area.

In this sense, special note should be taken that this mechanism is not limited to the application of the TIAR and consequently any inactivity or partiality of the latter should not be used as an excuse for inaction or omission of the OAS in questions concerning international peace and security. Moreover, it should even operate in parallel to the former.

Following the same line of reasoning, it would be appropriate to point out that the fact that resolutions adopted within this system are not obligatory for the member States of the OAS, except for those agreed upon in the framework of the TIAR in respect to its member States and that do not imply the use of armed force, should not be interpreted *a priori* as a natural deficiency or imperfection of same.

On the contrary, bearing in mind that, as happens on all levels of society, the Law responds to the Society that it rules, the efficacy of the legal order of the OAS depends ultimately and in practically all current international structures on the political will of its member States to respect it and make it effective by observing and fulfilling its resolutions.

3. Application of the Inter-American Democratic Charter

Resolution

CJI/RES.80 (LXV-O/04) *Application of the Inter-American Democratic Charter*

The Inter-American Juridical Committee did not discuss this topic at the 64th regular session (Rio de Janeiro, March 2004).

At its XXXIV regular session (Quito, June 2004) the General Assembly, through resolution AG/RES.2042 (XXXIV-O/04), requested the Inter-American Juridical Committee, within the framework of this topic, to analyze, in light of the provisions in Chapter III of the *Inter-American Democratic Charter*, the legal aspects of interdependence between democracy and economic and social development, bearing in mind, for example, *Recommendations of the High Level Meeting on Poverty, Equality and Social Inclusion* in the *Declaration of Margarita*, *Monterrey Consensus*, declarations of action plans issued by Summits of the Americas, and the objectives in the *United Nations Millennium Declaration*.

The Inter-American Juridical Committee examined the General Assembly resolution AG/RES.2042 (XXXIV-O/04) at its 65th regular session (Rio de Janeiro, August 2004).

Dr. Eduardo Vío, rapporteur of the topic, said that the documents reviewed in the resolution should be analyzed before the Committee gives its opinion on the General Assembly mandate, bearing in mind that they are documents of a different nature and issued by different agencies and organizations.

Dr. Luis Herrera expressed his doubts that the topic is evidently juridical, by which, from analyzing the relation between democracy and social development, certain legal consequences may arise. Dr. Felipe Paolillo stressed that what the resolution asks for is precisely to analyze the *legal* aspects of the interdependence between democracy and economic and social development. He asked to bear in mind the twofold meaning established by the *Inter-American Democratic Charter* in its article 1, in the sense that democracy is essential for economic, political and social development of the peoples of the Americas and vice versa. Dr. João Grandino Rodas, in turn, said that it might be a hard task, but that the Committee could give an answer at the next regular session. He suggested that it is possible for the Committee to propose a binding instrument on this matter, as it did on the occasion of the *Inter-American Democratic Charter*. Dr. Luis Marchand commented that what the General Assembly is requesting is already outlined in the *OAS Charter* itself and in the *Inter-American Democratic Charter*. Latin America is the worst in the world for social inequality and the topic of abject poverty is crucial within the OAS, he said. He proposed to take as a working model the *Inter-American Democratic Charter*, proceeding to find a link between the documents mentioned in the General Assembly resolution. At this point, Dr. Marchand said that it was important in the Juridical Committee report to study the elements against economic and social development. He said that, with the sole statement on the legal aspects of interdependence as the resolution states, the Committee will lose a wonderful opportunity to give a valuable contribution to the Organization on this topic. He finally said that the Achilles heel of democracy is poverty, and that this is an item that must not be ignored. Lastly, he proposed that one of the conclusions of the Juridical Committee is the preparation of an Inter-American Charter for Economic and Social Development within the framework of democracy.

Dr. Eduardo Vio asked to consider that not necessarily in all cases under study is it possible to determine a legal obligation whose non-compliance entails international responsibility, such as, for example, the obligations of the States to promote economic and social development, an obligation of behavior with which it is difficult to determine non-compliance. He also suggested stating that the mechanism of non-compliance included in the *Inter-American Democratic Charter* (break in democracy) does not relate to non-compliance with the obligation to the aforementioned development.

Dr. Luis Herrera referred to articles 3 and 4 of the *Inter-American Democratic Charter*, listing the essential components of representative democracy and the basic items for exercising democracy. In his opinion, there is no mention of economic and social development being essential or of the basic components for the existence of democracy, but it establishes their interdependence. Therefore, the

absence of economic and social development would not mean the start of using mechanisms to establish the *Democratic Charter*. Nor did the *Monterrey Consensus* or *Declaration of Margarita* apparently conclude anything else. The key question is then what happens if it determines that a State is not doing what it could do to promote economic and social development. In Dr. Herrera's opinion, in this case, there would not necessarily be legal consequences.

Dr. Mauricio Herdocia said that it was important to again summarize what has already been acknowledged in the *OAS Charter*, which has an entire chapter on integral development. The Charter includes commitments to developing the entire link between democracy and full development, he said. He also recalled that, at the last General Assembly, it adopted a resolution on a Draft Social Charter of the Americas, and that it should be borne in mind. Dr. Herdocia suggested also that any progress on the topic within the Inter-American Juridical Committee should be restricted to the mandate of the resolution. He commented that although legal interdependence between peace and development has not been highlighted, there has been progress on the matter. He said that the *OAS Charter* stipulates such connections and it should be discussed further. He also suggested taking as a logical basis resolution AG/RES.2056 (XXXIV-O/04) that requests CIDI to prepare documents on the matter. He also recommended a study of the minutes in which the discussion led to adopting the resolution, such as that which originated the mandate of the Juridical Committee.

The Inter-American Juridical Committee decided finally to add another topic to the Committee agenda with the title *Legal aspects of interdependence between democracy and economic and social development* for consideration with Dr. Jean-Paul Hubert as rapporteur. The topic on implementation of the *Inter-American Democratic Charter* continues with doctor Eduardo Vío as rapporteur. The Juridical Committee approved this decision in the following resolution:

CJI/RES. 80 (LXV-O/04)

APPLICATION OF THE INTER-AMERICAN DEMOCRATIC CHARTER

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that, within its agenda for the present regular session, the theme under consideration is "Application of the Inter-American Democratic Charter";

BEARING IN MIND the mandate of the General Assembly of the OAS, which under resolution AG/RES.2042 (XXXIV-O/04), requests the Inter-American Juridical Committee to analyze the legal aspects of the interdependence between democracy and economic and social development, including, among others, the recommendations of the High Level Meeting on Poverty, Equity and Social Inclusion contained in the Declaration of Margarita, Monterrey Consensus, Declarations and Plans of Action from the Summits of the Americas, and the objectives in the United Nations Millennium Declaration;

BEARING IN MIND the treatment of the theme in the Inter-American Juridical Committee during the present regular session,

RESOLVES:

1. To include in the agenda of the Inter-American Juridical Committee corresponding to its 66th regular session, as a theme to be discussed, the theme on "Legal aspects of the interdependence between democracy and economic and social development", and appoint Dr. Jean-Paul Hubert as rapporteur of the theme.

2. To include the follow-up of the theme "Application of the Inter-American Democratic Charter" in the agenda with Dr. Eduardo Vío Grossi as its rapporteur.

This resolution was unanimously adopted at the session held on 16 August 2004, in the presence of the following members: Drs. Mauricio Herdocia Sacasa, Jean-Paul Hubert, Brynmor T. Pollard, Ana Elizabeth Villalta Vizcarra, Luis Marchand Stens, Luis Herrera Marcano and João Grandino Rodas.

4. Joint efforts of the Americas in the struggle against corruption and impunity

Resolution

CJI/RES.77 (LXV-O/04) *Joint efforts of the Americas in the struggle against corruption and impunity*

At its 65th regular session (Rio de Janeiro, August 2004), the Inter-American Juridical Committee examined the General Assembly resolution AG/RES.2022 (XXXIV-O/04), *Joint efforts of the Americas in the struggle against corruption and impunity*, by which it requests the Committee to prepare a study on the legal effects of granting safe haven in regional or extra-regional countries to public officials and persons charged with crimes of corruption after having held public power, and in cases in which fraud against the law or abuse of the right is considered in relation to the principle of dual nationality.

Dr. Mauricio Herdocia said that, first of all, it was necessary to look at the current regulation in terms of safe haven, pointing out that the term safe haven could be understood in the resolution as protection or impunity, which can be enjoyed by people charged with corruption. The second element worth discussing was, in his opinion, the idea of extradition. In this framework, Dr. Herdocia referred to the *Inter-American Convention against Corruption*, which provides that corruption as a crime is subject to extradition, that is, it cannot be classified as a political crime, which is the protection for people when they want to avoid extradition. Another element to be discussed, in his opinion, was whether the *Convention* automatically includes the crime of corruption as an extraditable crime in the various bilateral agreements on extradition signed by the several countries. Concerning the second point in the resolution on dual nationality, he said that it refers to people who acquire dual nationality in order to escape the consequences of their acts of corruption.

Dr. Luis Herrera said that the situation of safe haven with regard to extra-regional countries differs from that among Latin American countries, which have a longstanding tradition on the matter, and that the resolution basically addresses the first case. Among the extra-regional cases, Dr. Herrera said that the institution of safe haven should be studied, and within it, the principle of nonrefoulement. He also said that all topics deriving from the Nottebohm case on dual nationality should be studied in relation to the second aspect of the mandate.

Dr. Ana Elizabeth Villalta said that this topic includes aspects of public and private international law. She mentioned that not only the Nottebohm but also the Canevaro case may be sources for reaching important conclusions on the matter.

Dr. Eduardo Vio believed that the Committee should limit itself to the theoretical aspects stated in the resolution. He said that no mention in the resolution is made of safe haven or extradition, and that, therefore, it should not go ahead with these facets. His first question is what is understood by safe haven, and said that it might refer to a country. He then concluded that the question of the resolution was on the legal effects for the States that effectively offer safe haven, without, he said, referring to the person to which the safe haven is granted. He commented that there are some legal instruments or conventions on corruption at an inter-American and worldwide level, but that, not knowing the countries that could be involved in the question, then these conventions cannot be applied and solely the States Parties are binded to them. Dr. Vio said that the only things to be taken from such conventions are the general principles deriving from them, such as, for example, the obligation to cooperate between States and to judge the presumed offender. He also said that the topic is restricted to people who are charged (not convicted) with crimes of corruption (acts of corruption are not necessarily crimes in all States), and to public officials. With regard to the second part of the question in the resolution, he commented that the first aspect to be analyzed is what is understood as fraud against the law and abuse of right, emphasizing that they are two different concepts. The person who commits fraud or abuse of right may be the State or an individual, which is not clear from the General Assembly resolution. Dr. Vio was inclined to think that it addressed the State. Moreover, he said that dual nationality was not a principle but a situation deriving from the right of any individual to have a nationality. The problems of nationality arise because the State is sovereign in granting nationality and hence the problems of people with dual nationality, he said. He recalled that

in such cases the effective nationality or that with which the individual has closest ties prevails. Hence the question of when a State wrongly grants a nationality involving fraud against the law or abuse of right.

Dr. Felipe Paolillo said that the English version of the General Assembly resolution was much clearer than the Spanish, especially in the second part, since the English gives the idea of mentioning those cases where a person can allege the principle of dual nationality with abuse of right or fraud against the law.

Dr. Luis Marchand said that this resolution made the *Declaration of Quito* operative, adopted at the last General Assembly of the OAS, and is based on it. This was one of its objectives, that is, to prevent impunity and reinstate the prevalence of justice, accentuating the mechanisms against this impunity. He said that it is clear that impunity does not stop, when there is no extradition. Therefore, this institution must be studied. Concerning the term safe haven, its use in the resolution, he said, comes from the need to apply the premise that addresses extra-regional countries, and is not restricted to the concept of refuge. He also supported Dr. Felipe Paolillo's interpretation of the second part of the resolution, in that those cases should be mentioned where a person can allege the principle of dual nationality with abuse of right or fraud against the law, and this is the heart of the matter. Accordingly, if dual nationality was obtained through fraud against the law, the State that granted it should feel morally compelled to cooperate with the other State by adopting extradition, when interceding in a charge on perpetrating acts of corruption.

Dr. João Grandino Rodas suggested that the Committee studies all topics mentioned by the other members, and then take the decision on which have an impact on the issue of the General Assembly mandate. He said first that it is difficult to specify which are the legal effects of the unilateral acts of the States, such as granting asylum. It is a key question then to what extent a public official charged with corruption can enjoy asylum. Secondly, he believed that the concept of fraud against the law leads us to private law, and on this there is abundant jurisprudence, especially in the sphere of dual nationality. The Committee's response cannot then be simplistic.

As a result of all those discussions, the Inter-American Juridical Committee examined document CJI/doc.166/04 rev.1, *Draft resolution: Joint efforts of the Americas in the struggle against corruption and impunity*, presented by Drs. Mauricio Herdocia Sacasa, Ana Elizabeth Villalta, and Luis Marchand Stens.

Dr. Ana Elizabeth Villalta gave an oral presentation of the draft resolution. The Juridical Committee members then commented. Dr. Eduardo Vio suggested that in the resolution under study, guidelines are to be given to the rapporteur, but at that moment categorical statements had not yet been made that seem more like a final report. Dr. Jean-Paul Hubert said that every point mentioned in the draft resolution should be considered, but so that it does not hinder the result of the Juridical Committee work.

After such comments, Drs. Ana Elizabeth Villalta, Mauricio Herdocia and Luis Marchand reviewed the draft resolution and presented to the Inter-American Juridical Committee the document CJI/doc.166/04 rev.2, *Draft resolution: Joint efforts of the Americas in the struggle against corruption and impunity*.

After making some amendments, the Inter-American Juridical Committee approved the resolution as follows:

CJI/RES.77 (LXV-O/04)

**JOINT EFFORTS OF THE AMERICAS IN THE STRUGGLE
AGAINST CORRUPTION AND IMPUNITY**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

BEARING IN MIND the Declaration of Quito on Social Development and Democracy and the Impact of Corruption, which contains the commitment to "to deny safe haven to corrupt officials and to cooperate in their extradition".

CONSIDERING that in resolution AG/RES.2022 (XXXIV-O/04), *Joint efforts of the Americas in the struggle against corruption and impunity*, the Inter-American Juridical Committee was asked by the General Assembly to prepare a study on: a) the legal effects of granting safe haven in regional or extra-regional countries to public officials and persons charged with crimes of corruption after having held political power; and b) the cases in which fraud against the law or abuse of the right is considered in relation to the principle of dual nationality;

RESOLVES:

1. To assign Dr. Ana Elizabeth Villalta Vizcarra to undertake the study requested by the General Assembly in its Resolution AG/RES.2022 (XXXIV-O/04), bearing in mind some of the elements deemed to be pertinent, as follows:

- a) the Inter-American Convention against Corruption, especially concerning legal aid and cooperation; and bearing in mind that corruption is an extraditable offense;
- b) the provisions relating to the United Nations Convention against Corruption, in particular concerning international cooperation;
- c) the content and scope of the provisions of several resolutions of the General Assembly regarding the existing obligation to deny safe haven to corrupt officials who have held political power, and to cooperate towards placing them at the disposal of the pertinent authorities of the countries where the crimes were committed in order to be tried by their national courts;
- d) existing international jurisprudence on the matter of “effective nationality or genuine link”, especially the rulings of the International Court of Justice in the *Nottebohm case (Liechtenstein v. Guatemala)* and sentence of the Permanent Court of Arbitration in *The Hague in the Canevaro case (Italy v. Peru)*;
- e) treatment to be given to requests for asylum in those cases involving individuals accused of crimes of corruption, in order to prevent impunity.

2. To ask the rapporteur of this theme to submit a report to be considered at the next regular session of the Inter-American Juridical Committee.

This resolution was unanimously approved at the session on August 13, 2004, in the presence of the following members: Drs. Mauricio Herdocia Sacasa, Jean-Paul Hubert, Brynmor T. Pollard, Ana Elizabeth Villalta Vizcarra, Luis Marchand Stens, Luis Herrera Marcano, Eduardo Vío Grossi and Felipe Paolillo.

5. Preparations for the commemoration of the centenary of the Inter-American Juridical Committee

Resolution

CJI/RES.76 (LXV-O/04) *Preparations for the centennial of the Inter-American Juridical Committee*

Documents

CJI/doc.156/04 rev.2 *Book on the Inter-American Juridical Committee centenary*
(Coordinators Drs. Eduardo Vío Grossi, Luis Herrera Marcano, João Grandino Rodas and Mauricio Herdocia Sacasa)

CJI/doc.175/04 Consolidated version of the program for the celebration of the Inter-American Juridical Committee Centennial

The 64th regular session (Rio de Janeiro, March 2004), the Inter-American Juridical Committee discussed this topic. Dr. Eduardo Vío, coordinator of the topic, recalled that the OAS General Assembly had requested the Juridical Committee to draft a declaration on international law. He suggested that the draft declaration should be prepared as soon as possible. The Inter-American Juridical Committee decided to form a Publishing Committee to plan the preparation of the Centennial book, with Drs Eduardo Vío, Mauricio Herdocia, João Grandino Rodas and Luis Herrera in charge of the Committee, who submitted document CJI/doc.156/04 rev.2 *Book on the Inter-American Juridical Committee centenary*, including the proposed structure for that publication.

The General Assembly at its XXXIV regular session (Quito, June 2004), by resolution AG/RES.2042 (XXXIV-O/04), requested the Inter-American Juridical Committee to continue with the preparations for the Centennial commemorations.

At its 65th regular session (Rio de Janeiro, August 2004), the Inter-American Juridical Committee listened to Dr. Eduardo Vío's verbal report on the preparations for the Centennial commemorations of the Committee. Dr. Vio informed that the inter-American network (containing points of contact) was already organized by the General Secretariat, that the bases for the Centennial commemorative book were already approved at the Committee's previous regular session, and that the commemorative poster was also underway. He mentioned that the Centennial preparations were now in their second stage, but given the budget situation, some kinds of adjustment will have to be made. He suggest that the commemorations focus on a major three-day event attended, at their own expense, by entities of the inter-American system, legal advisors and other organizations that figure in the resolution now adopted, and that work with international law, culminating in a ceremony on August 23, 2006. He insisted that both this activity and the publication of the commemorative book should be carried out without cuts in the budget.

Concerning the basic aspects, he recalled that the Committee should prepare the Centennial Declaration. Dr. Vio agreed to bring a preliminary draft Declaration to the regular session in March 2005 in order to finalize it in August 2005.

Lastly, Dr. vio suggested now announcing the Committee Centennial on the website as well as, if possible, the relevant program, with a logo or announcement like the poster. Dr. Mauricio Herdocia suggested including on that page a brief summary of the background of the topic.

The Secretariat informed that the letters concerning the Centennial book had been sent to the former members of the Committee, and that some answers had already been received, which were reported. It also stated that all works done by the Committee between 1939 and 2004 had already been located, and that it now only remains for the Committee to decide which are to be included in the publication. It also informed that the deadline for contributions to the book is August 2005.

At this regular session, the Inter-American Juridical Committee examined document CJI/doc.163/04 *Draft resolution: Inter-American Juridical Committee preparations for the centennial*, presented by Dr. Eduardo Vío. The Juridical Committee members commented and finally adopted the resolution herein below, together with the aforementioned document CJI/doc.156/04 rev.2. Paragraph 5 of the said resolution assigned to the Secretariat the drafting of a final Program for the Centennial which is also attached below as document CJI/doc.175/04.

CJI/RES.76 (LXV-O/04)**PREPARATIONS FOR THE CENTENNIAL OF THE
INTER-AMERICAN JURIDICAL COMMITTEE**

THE INTER-AMERICAN JURIDICAL COMMITTEE

CONSIDERING resolutions CJI/RES.II-19/96, CJI/RES.26 (LVIII-O/01) and CJI/RES.43 (LX-O/02) and document CJI/doc.156/04 rev.2;

BEARING IN MIND the resolutions of the General Assembly AG/RES.1773 (XXXI-O/01), AG/RES.1844 (XXXII-O/02) and AG/RES.2042 (XXXIV-O/04);

ACKNOWLEDGING the contents of the communication dated June 24, 2004 of the Secretary General of the OAS and addressed to the Chairman of the Permanent Council on the financial crisis that the Organization is undergoing, and

NOTING the information provided by rapporteur Dr Eduardo Vío Grossi and the remarks and comments of the members of the Inter-American Juridical Committee,

RESOLVES:

1. To commemorate the centennial under the slogan "Centennial of the Inter-American Juridical Committee: A Century of Contributions to International Law".

2. To reorganize the 3rd Stage of the Centennial Program, known as the Culmination Stage, mentioned in resolution CJI/RES.26 (LVIII-O/01) and complemented by resolution CJI/RES.43 (LX-O/02), as follows:

- a) A unique event on August 21, 22 and 23, 2006, on the "Centennial of the Inter-American Juridical Committee: A Century of Contributions to International Law", with the participation of representatives of the organizations, organisms and institutions mentioned in the above Resolutions, in addition to other guests related to the area of International Law, including the directors of diplomatic study centers, members of the Commissions of Foreign Affairs of Parliaments, and so on.
- b) The above event shall consist of five sessions. The first four, to be held on August 21 and 22, will address topics on the main contributions and challenges of the inter-American system, especially in the sphere of International Private Law, the maintenance of international peace and security, international jurisdiction and International Economic Law.
- c) The fifth session will be held on August 23, 2006, and shall be the Solemn Session for the commemoration of the centennial of the Inter-American Juridical Committee.
- d) The aforementioned event shall be encompassed within the framework of the XXXIII Course on International Law.

3. To include a logo and information on the event in the section on the Inter-American Juridical Committee in the Web page of the Organization.

4. To assign to the rapporteur, Dr. Eduardo Vío Grossi, the preparation of the Draft Declaration on the "Centennial of the Inter-American Juridical Committee: A Century of Contributions to International Law".

5. To confirm the provisions contained in the Resolutions mentioned in the initial considerations, unless modified by this resolution, and assign to the Secretariat the drafting of a final Program for the Centennial.

This resolution was adopted unanimously at the session on August 11, 2004, in the presence of the following members: Drs. Brynmor T. Pollard, Ana Elizabeth Villalta Vizcarra, Luis Marchand Stens, Luis Herrera Marcano, Mauricio Herdocia Sacasa, Jean-Paul Hubert, Eduardo Vío Grossi and Felipe Paolillo.

CJI/doc.156/04 rev.2**BOOK ON THE INTER-AMERICAN JURIDICAL COMMITTEE CENTENARY**

(Coordinators Drs. Eduardo Vio Grossi, Luis Herrera Marcano,
João Grandino Rodas and Mauricio Herdocia Sacasa)

Scheme

I Part: Brief History of the Inter-American Juridical Committee, including the topics discussed by it.
(responsibility of the General Secretariat).

II Part: Articles to be prepared by members and former members of the Inter-American Juridical Committee.

a) Mere suggestions for the thematic content and referring to the inter-American system:

- 1) Human rights
- 2) Democracy
- 3) Indigenous peoples
- 4) Law of the sea
- 5) Peace and hemispheric security
- 6) Peaceful settlement of disputes
- 7) Principle of non-intervention
- 8) International responsibility
- 9) Asylum
- 10) Administration of justice
- 11) Compliance with international resolutions
- 12) Corruption
- 13) Terrorism
- 14) Extradition
- 15) Private international law
- 16) CIDIP
- 17) Economic and international trade law
- 18) Law of integration

b) It will be suggested that each article, within the global context of the relevant topic, discuss both the IAJC contribution on the subject, such as the development or challenges that it could or should have in the future, and everything relating to the inter-American system.

c) There may be more than one article on each of the topics.

d) Each article should be written on letter size paper, in double spacing and not exceed 60 pages.

e) The deadline for handing in the articles will be August 2005.

f) The Secretariat will contact former IAJC members to ask them for their contributions, receive them, and cooperate with everything relating to the publication of the book.

III Part: Documents

a) Documents:

1. Expert opinions or reports, or some of them, which are most representative of each phase of IAJC (e.g.: Human Rights, Law of the Sea, International Responsibility, Asylum, Tunermann Case, Alvarez-Machain Case, Helms Burton Law, Democracy)
2. Chapter XIV of the OAS Charter

3. IAJC Statutes
4. IACJ Rules of Procedure
5. IACJ Members and Chairmen

b) The Secretariat will be responsible for points 2 to 5 and, concerning point 1, will cooperate with point 1 to obtain the necessary records.

CJI/doc.175/04

**CONSOLIDATED VERSION OF THE PROGRAM
FOR THE CELEBRATION OF THE
INTER-AMERICAN JURIDICAL COMMITTEE CENTENNIAL**

THE INTER AMERICAN JURIDICAL COMMITTEE is the oldest body of the Inter-American system, operating ever since August 23, 1906. According to resolution CJI/RES.II-19/96, on the *Preparations for the Inter American Juridical Committee Centenary*, the Chair and Vice-Chair were instructed, with the assistance of the Secretariat for Legal Affairs of the OAS General Secretariat, to prepare a draft Program for its centennial celebration in 2006.

The program sets forth:

1. To commemorate the centennial under the motto "Centenary of the Inter American Juridical Committee: A Century of Contributions to International Law".
2. To draft a Program to celebrate the Inter American Juridical Committee centennial along the general guidelines hereunder:
 - a. The core feature of the Program must be to start a process of review and analysis with the active involvement of all the other Bodies of the Organization of American States as well as all the related institutions within the field of international law both in the inter-american and worldwide scenarios.
 - b. The goals of the Program are to discuss:
 - i. how best to strengthen the compliance with and development of international law within the inter-American system;
 - ii. the contribution of the Americas to international law as a whole; and
 - iii. the work done by the Inter American Juridical Committee on these matters.
 - c. The Program will be broken down into three stages, to wit, one for the preparations, one for operation and the third one for the event proper.
 - d. The preparatory stage, running from 2001 through 2003, will include:
 - i. establishing the inter-American network (RICEDI is the Spanish acronym) with universities, institutes, teaching centers, committees, as well as national and international entities in the Continent devoted to the study, research, teaching or dissemination of other legal matters of international interest, who will have signed an agreement whereby they undertake to exchange information of mutual interest to the parties involved, to prepare reports on topics of the Committee's agenda, to assist in organizing the agenda of the annual Course on International Law and attend the events organized by the Committee.
 - ii. preparing the draft of a book to be published at the time of the centennial, and
 - iii. issuing a tender for the design and printing of the poster celebrating the Inter American Juridical Committee centennial.
 - e. To request from the General Secretariat to carry out the steps provided under paragraph d) above, in accordance with the following guidelines:
 - i. giving priority throughout 2002 to the setting up of the RICEDI network with the universities of the Continent, addressing them to this effect through the Permanent Missions of the Organization's Member States

- ii. the book will contain articles written by members of the Inter American Juridical Committee, former members and the staff of the General Secretariat who wish to make a contribution, former members and the staff of the General Secretariat.
 - iii. Such articles will address the work done within the Committee or about it; thus the General Secretariat must contact the authors of such articles to submit a draft on the topics, including, among other things, a budget, format, date and place of printing, bearing in mind that the deadline for the collection of the material to be published is January 2005;
 - iii to submit a proposal for the design and printing of a poster, in accordance to the Organization standards on the matter;
 - iv. to report to the Inter American Juridical Committee on the fulfillment of these tasks
- f. The implementation stage during 2004 and 2005 includes the following steps:
- i. holding the first full meeting of RICEDI, where all the members will decide on its organization and action plan, particularly with regard to the celebration of the Inter-American Juridical Committee centennial;
 - ii. holding a Joint Meeting of the Inter-American Juridical Committee with legal advisors, counselors or directors of the Ministries of Foreign Affairs of Member States of the Organization of American States, and of the other international organizations in the inter-American system, where the objectives of the program will be discussed, among other subjects;
 - iii. the printing and distribution of the poster earlier described,
 - iv. the visit by representatives of the Inter-American Juridical Committee to explain the commemoration plans and issue invitations to the following institutions:
 - International Court of Justice;
 - United Nations International Law Commission;
 - Sixth Committee of the United Nations General Assembly;
 - Afro-Asian Legal Advisory Committee;
 - Inter-American Development Bank (IDB);
 - Latin American Integration Association (ALADI);
 - Latin American Economic System (SELA);
 - Caribbean Community (CARICOM);
 - Southern Common Market (MERCOSUR);
 - Andean Community (Andean Pact);
 - Inter-American Court of Human Rights;
 - Inter-American Commission on Human Rights;
 - Inter-American Institute of Human Rights;
 - Justice Studies Center of the Americas;
 - Inter-American Children's Institute
 - Inter-American Indian Institute
 - Central-American Court of Justice, and
 - Central-American Integration System
 - v. preparing the draft declaration of the Inter-American Juridical Committee on the topics listed as the objectives of the program.
- g. The final stage, in 2006, will take place in Rio de Janeiro in August of that year and will involve the following steps:
- i. a single meeting from August 21 to 23, 2006, on the "Centennial of the Inter-American Juridical Committee: A Century of Contributions to International Law", attended by representatives of all the organizations, bodies and institutions mentioned hereabove, in addition to other guests involved with International Law, including the directors of diplomatic study centers, members of Parliament Commissions of Foreign Affairs, and so on;

- ii. the meeting shall consist of five sessions. The first four, to be held on August 21 and 22, will address the main contributions and challenges of the inter-American system, especially in the sphere of Private International Law, the maintenance of International Peace and Security, International Jurisdiction and International Economic Law;
 - iii. the fifth session will be held on August 23, 2006, and shall be the Formal Session for the Commemoration of the Centennial of the Inter-American Juridical Committee;
 - iv. the aforementioned event shall be part of the 33rd International Law Course. In the final stage and especially during the formal session:
- h. In the final part, and particularly during the formal session of the celebration
 - i. the commemorative book will be distributed;
 - ii. tribute will be paid to jurists of the hemisphere, including those who have passed away, who, according to the Inter-American Juridical Committee, have made a significant contribution to international law in the Americas for which they will be awarded certificates;
 - iii. the Declaration of the Inter-American Juridical Committee on the topics listed in the objectives of the program will be signed;
3. To include a logo and information on the event in the Inter-American Juridical Committee section of the Organization's web site.
4. The Chair and Vice Chair will be asked to contact the appropriate authorities to obtain funding for the program covered in this resolution, and later to submit at each of the coming regular sessions, a progress report on the tasks accomplished and an increasingly detailed version of the program to include the necessary steps for its implementation, with the full assistance of the Secretariat of Legal Affairs. Notwithstanding the commitments of the Chair and Vice-Chair of the Inter American Juridical Committee and the mandates received from the General Secretariat, to appoint Dr. Eduardo Vío Grossi to coordinate the program described herein, for which he will submit a progress report at each of the subsequent regular meetings.
5. To assign to the coordinator, Dr. Eduardo Vío Grossi, the drafting of the Draft Declaration on the "Centennial of the Inter-American Juridical Committee: A Century of Contributions to International Law".

6. Right to information: access and protection of information and personal data

Resolution

CJI/RES.81 (LXV-O/04) *Right to information: access and protection of information and personal data*

Document

CJI/doc.162/04 *Right to information: access and protection of information and personal data*
(presented by Dr. Alonso Gómez Robledo)

This topic was not addressed at the 64th regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2004).

The General Assembly during its XXXIV regular session (Quito, June 2004), by resolution AG/RES.2042 (XXXIV-O/04), noted the importance of the inclusion of this topic in the agenda of the Inter-American Juridical Committee, and requested that an updated report on the matter is included in its next annual report.

At its 65th regular session (Rio de Janeiro, August 2004), the Inter-American Juridical Committee examined document CJI/doc.162/04, *Right to information: access and protection of information and personal data*, presented by Dr. Alonso Gómez Robledo. The rapporteur of the topic underscored in the report the interdependence between rendering of accounts and transparency in implementing democracy. In general, his report is in line with the Mexican legal reality on the matter. On this subject, he referred basically to the resources of review in Mexico in the Federal Institute of Access to Public Information (IFAI), whose decisions are binding, definitive and not open to appeal for the decentralized departments or entities of the federal public administration. It is, however, not like that for private individuals, who filed an appeal before the federal courts through legal aid. The rapporteur also referred to the federal law on transparency and access to government public information in response to a growing demand for citizenship against corruption, and which is currently the only legal system for protecting personal data, and it collects the general guidelines of similar laws in the United States, Canada and Spain. The prime purposes of this law are to provide what a national or alien individual or company needs in order to be able to have access to information through efficient procedures. Also to favor rendering of accounts to citizens, which is fundamental. The rapporteur said that the powers under this law are the federal executive, judiciary and legislative, as well as autonomous constitutional powers. The general principle is that all federal government information is public, except for that which can be classified as reserved in the terms of the law. The rapporteur emphasized that *reserved information* is understood to be that the disclosure of which may jeopardize national defense or public security, principally, and other suppositions. This kind of information can be restricted for a maximum of 12 years. Information that is confidential, however, does not preclude in its character, unless it is particularly agreed to disclose such information, he said. The most general hypothesis is that which affects the privacy or intimacy of individuals, in other words, personal data. However, there is no law in Mexico as yet to regulate privacy. The rapporteur said that the results are interesting after one year of enforcing the federal law on transparency. Of the 36,803 requests for information received, more than 32,000 have been answered, that is 87%. It reflects that public administration has changed and that now it is obliged to expedite the demands of its citizens. And it also reflects that the citizen participation is increasing. It is important for administration not to consider this a treaty, mentioned Dr. Gómez Robledo.

Lastly, the rapporteur said that the challenges in Mexico in this area are important, that is, to promote among the citizens the right to know information about government performance and the management of public funds, and instate a culture of transparency and rendering of accounts in public administration, wherein the public entities meet the demand of the citizens.

Next, some Juridical Committee members asked some questions or made comments to rapporteur Dr. Gómez Robledo about his report. Dr. Mauricio Herdocia stressed the fact that the topic of democracy was related to the topic of right to information. He also pointed out how the report addressed the right to protection of personal data, besides the right of access to information. He said

that it was important to resume the works of Dr. Jonathan Fried, especially his August 2000 report, since the subject is to update what has already been discussed on the matter in the Juridical Committee.

Dr. Gómez Robledo agreed then to update Dr. Jonathan Fried's report to be included in the next *Annual Report of the Inter-American Juridical Committee*.

The Inter-American Juridical Committee decided to adopt resolution CJI/RES.81 (LXV-O/04) and thanked the rapporteur for his report presented and asked him for an update. The texts of the said resolution and the report of Dr. Alonso Gómez Robledo are as follows:

CJI/RES.81 (LXV-O/04)

**RIGHT TO INFORMATION:
ACCESS AND PROTECTION OF
INFORMATION AND PERSONAL DATA**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

BEARING IN MIND the General Assembly resolution AG/RES.2042 (XXXIV-O/04), in which the Inter-American Juridical Committee is asked to include in its next annual report an updated report on the right to information: access and protection of information and personal data,

TAKING INTO ACCOUNT the document CJI/doc.162/04, *Right to information: access and protection of information and personal data*, presented by rapporteur Dr. Alonso Gómez Robledo,

RESOLVES:

1. To thank the rapporteur of the theme, Dr. Alonso Gómez Robledo, for presenting the preliminary report, CJI/doc.162/04, on the *Right to information: access and protection of information and personal data*.

2. To ask Dr. Alonso Gómez Robledo to present an updated report on the subject to be analyzed at the next regular session of the Inter-American Juridical Committee.

This resolution was approved unanimously at the session on August 17, 2004, in the presence of the following members: Drs. Mauricio Herdocia Sacasa, Jean-Paul Hubert, Brynmor T. Pollard, Ana Elizabeth Villalta Vizcarra, Luis Marchand Stens, Luis Herrera Marcano and João Grandino Rodas.

CJI/doc.162/04

**RIGHT TO INFORMATION:
ACCESS AND PROTECTION OF
INFORMATION AND PERSONAL DATA**

(presented by Dr. Alonso Gómez-Robledo)

I would like to mention first two *sine qua non* concepts for modern democracy, i.e. the rendering of accounts and transparency. The former, because we know now that in democracy not only reliable rules have to be ensured as regards voting competencies and access to power but, in addition the transparent exercise of the public management has to be ensured as well, so as the society may get acquainted and evaluate governmental management and the performance of public servants.

Using the words of Rosa Nonell: "The rendering of accounts is defined as the requested made to an organization, either public or private, in order to explain to the society the actions taken and consequently accept liability for them." In that regard, I am of the opinion that the rendering of accounts favors enhanced liabilities for the parties involved in the political system, so that the citizens may assess the correct performance of rulers, as well as of all the remaining actors involved in the use of public funds.

In this line of thought, rendering of accounts is a key concept even for the legitimization of public policies and credibility of governments. According to Robert Vaughn: "In the political environment, the lack of information about governmental policies reduces government credibility and reduces the value of the right to expression."

Therefore, the only support of the concept of rendering of accounts lies in a democratic system which thoroughly ensures the free right to expression and the right to free association, but most of all it warrants the effective exercise of the right to information.

As far as the concept of transparency is concerned, this is defined as the practice of making information available to the public, and in colloquial terms is a crystal box and those who are interested may revise it, analyze it and in any case, use it to penalize any anomaly.

Transparency refers to the information flux, which according to Daniel Kaufman, must at least possess four attributes: "accessible to all, comprehensive, relevant, of high quality and reliable".

We should highlight that transparency in public management and rendering of accounts are closely connected, as the combination of both fuels citizens to retrieve their power over the acts of the governments; the materialization of these concepts helps to better define the control mechanisms for preventing corruption.

In this regard, the exercise of the right to information provides not only the legal basis for both concepts but also achieves its concretion in practice.

Under this scheme I would like to make a brief summary of steps taken, the results achieved and the main challenges the consolidation to the right of information Mexico is trying to tackle.

Since 1977, article six of the Political Constitution of the Mexican States has expressed the right to information, but nevertheless, the lack of complementary regulations has prevented the exercise of such prerogative. Notwithstanding the relevance of the concepts of transparency and access to information in the democratic system, in which the institutionalization of mechanisms ensure the rendering of accounts are of a fundamental nature, almost three decades have elapsed to achieve the passing of a law fully recognizing the right to obtain the information held by the government.

The Federal Law on Transparency and Access to Public Information held by the Government, which is in force since June 2002, is the result of the joint effort of all the Powers of the Union, but above all is the response to a demand of the citizens. As such I believe that the right to have access to the information is a requisite of democracy and a condition for Mexican modernity.

Access to the information guaranteed by the aforementioned legislation was one of the outstanding topics in the national democratic agenda, and the approval of the law now permits advancing in the consolidation of a government where all and any public servant must submit his/her accounts to the citizens.

The law, therefore, has become a powerful tool for fighting corruption which, under the principle of disclosure of information, favors and eases the functioning of a system of public responsibilities, in which the acts and the players liable for them are identified, that is, discretionality in the making of decisions is not anonymous.

In this regard, the Federal Law of Access to Public Governmental Information has been a relevant legislative advance for promoting such a fundamental right and for reducing the incidence of political and administrative corruption in the federal government.

Pursuant to article 4 of the Law, the main goals are as follows: provide the necessary means so that any person may have access to the information by means of simple and expedite processes; provide transparency to public management through the dissemination of information; facilitate the rendering of accounts to citizens; ensure the protection of personal data, and contribute for the democratization of Mexican society.

Since its inception, the law has helped to define the subjects liable and what their obligations are. In this way, pursuant to article 3 item XIV, the three Powers of the Union, as well the autonomous constitutional agencies such as the Electoral Federal Institute, the Bank of Mexico, the National Commission for Human Rights and other public autonomous organizations such as the National Autonomous University of Mexico, and so on, must establish the criteria and procedures to provide access to information.

In practice both procedures and criteria have varied according to the institution, and for example: the Executive Power, whose experience I will refer to, has been the only one to set up an Institute to see to it that legislation is enforced; in the Senate a Committee to ensure Access to and Transparency of Information; at the Supreme Court three Ministers are the regulatory instance to

enforce the law, and at the National Commission of Human Rights this task is in the hands of the First Inspection Department.

Notwithstanding the differences created in the design of mechanisms to obtain the information of the persons liable, the Law in article 7 determines the information that has to be made available to the public and its permanent updates. In this item we may consider topics such as: monthly remuneration per position, design, implementation, amounts allocated and criteria for operational programs, the information on the budget allocated, execution reports and results of audits, among others.

In Chapter three, the law classifies the information as reserved or confidential, and also defines reserved information as that whose disclosure jeopardizes public security and national defense; or that one affecting negotiations and international relations, endangering financial, economic or monetary stability; the life, health or security of any person, causing serious damage to the activities of surveillance as regards compliance of the law, prevention activities and penalizing of crimes, as well as the collection of contributions and the operations for migratory control. This kind of information may only remain reserved or confidential during a period of twelve years at most.

As regards the information classified as confidential, this includes the information provided by individuals to the agencies or entities of the Federal Government and regarded as such, and which requires the consent of the title-holder of the information in order to be disclosed, and also the information known as "Personal Data", and included in article 3 Item II of the Transparency Law.

We should highlight here that the law in question considers that in respect to classification of the information, it is not sufficient that the contents of same be directly connected with the matters which have been classified as reserved or confidential, and therefore we must consider the existence of elements which allow to determine if the disclosure of the information might damage the legal interests covered by the aforementioned legislation.

We should also mention that the Federal Law on Transparency and Access to Governmental Public Information is at present the only legal regulation protecting personal data. According to the purpose of the law, which is to ensure the protection of personal data, public information cannot and should not infringe the human rights of privacy and intimacy, and therefore it is an obligation of the person(s) responsible to protect them and also ensure their access and accuracy to the title-holders.

It is important to stress that the costs involved in securing information cannot surpass the addition of the costs of materials and the cost of delivery, the purpose of this being that any interested party, regardless of his/her economic situation, should enjoy access to information, as established by article 27 of the Law.

At this point I wish to deal in depth with the case of the Federal Executive, where we find the most significant contribution as far as institutional design is concerned, with the setting up of the Federal Institute of Access to Public Information, hereinafter denominated IFAI.

The IFAI is a decentralized agency of the Federal Public Administration, having operational, budgetary and decision-making autonomous authority, not subordinated to any of the Secretariats of State, which ensures the independence of its resolutions and decisions.

The Institute is composed of five members, proposed by the head of the Executive and confirmed by the Senate. The functions of this Institute can be classified under four categories: the first of them, of a resolute and regulating nature, is a key element to resolve cases involving dismissal of access to information as well as for construing the law and issue the necessary outlines; the second one, surveillance and coordination, which is essential to promote developments in the transparency of the federal government; the third one, promotional ones to boost and disseminate the benefits of the rights of access to information; and lastly, its own operational and administrative functions.

Above all, each one of the agencies and entities of the Public Federal administration of the Executive Power has a Linking Unit which serves as an "access window", in charge of collecting public information to be updated quarterly pursuant to article 7 of the Law, as well as to receive and deal with requests for access to information and also to assist individuals in preparing such requests.

A year has elapsed since the law has been in force, and in practice the results as regards the processes of information requests in the Federal Public Administration are outstanding. Up to May

15, 2004, the agencies and entities in charge had received 36,803 requests for information, of which 32,091 have already been processed, that is to say, 87%. This figure portrays the results closely related to the promulgation of the Law: the first of them refers to the transformation of the public administration, which is now supposed to comply with the demands for information in a rapid and responsible way; and secondly, derived from the active participation of the citizens, which evidences the social need to know about the decisions made by the Government, and which requires increasing efficiency and effectiveness in the communication channels.

On average, the agencies and entities received 3,150 requests per month, and in 9 out of 10 cases, these were filed by electronic means, especially the SISI (Information Request System) which was created for the purpose of facilitating rapid access to information without needing to go to the agencies of entities holding the information. It is fair to say that the Federal Government of Mexico is at present far more transparent than it was only two years ago.

It is important to point out that 65% of the requests for information come from the Greater Federal District, and this shows the need to promote the culture of transparency throughout the country. This percentage has to be considered in relation with the developments of the federative entities in the matter, since out of the 32 States of the Mexican Republic, only 17 have enacted local legislation and only seven transparency institutes have been set up so far.

However, we should recognize that transparency is an inevitable fact in present times; an issue that is here and will stay here, as we cannot go back to the lack of understanding and the bureaucratic resistance of the past.

In addition, and as shown by the Work Report submitted to the Honorable Congress of the Union in 2003-2004, on the 9th of June we found that 37% of the 2003 requests referred to administrative matters and operational costs such as: organic structure, remuneration, expenditure and leasing of agencies and entities. This figure is comparable to the requests referring to results and substantive activities that concentrate 42% of the total figure; in particular, citizens showed interest in the information related to programs of subsidies.

As regards the agencies and entities (or ministries), most of the requests were addressed to the Secretariat of Economy and Public Credit, to the Education Secretariat, to the Environment and Natural Resources Secretariat and to the Governor's Secretariat, amounting to almost 50% of the total requests received.

As regards the responses provided by the agencies and entities, only 3% of them were appealed (appeals for review), that is, the normal procedure that individuals pursue when they are denied the access to the information. In this case the IFAI will determine if the information corresponds to the aforementioned classification cases of if on the contrary it should be delivered to the petitioner.

The Institute may issue four categories of rulings or decisions: confirmation, reversal or revoking, amendment, dismissal and rejection for inadmissibility. It should be pointed out that the rulings of the Institute are final for the individuals concerned and in this regard the work of the Courts of the Federation has been crucial for their enforcement. It is important to stress that up to May 15, 2004, 30 Court injunctions against the rulings of the Institute had been filed, 25 of them by individuals and 5 of them by civil servants. In the latter case the process was dismissed on the grounds of inadmissibility and the Supreme Court launched the first Thesis which reads: "Official legal entities liable according to the IFAI for providing information requested by individuals are not legitimized to file Court injunctions".

From June 2003 to July 22, 2004 1,330 appeals were filed at the Institute. Of these, 1,046 have already been resolved; in 20.84% of cases the Institute revoked the original decision of the department or agency in order to grant the petitioner access to information; the ruling in 21.41% of cases was that the information provided by the agency or department was not complete, and therefore the response was amended so as to allow the petitioner to have access to the information in its integrity; only in 17.5% of the cases was the information provided by the agency or department confirmed, on the grounds that in fact the information in question was to be regarded as reserved or confidential¹.

¹ Revocation / Amendment. In approximately three of four appeals, the Federal Institute of Access to public Information

As regards the petitions, 12.62% were dismissed and in most cases the department delivered the information; 15.58% of the petitions were rejected for not complying with one of the legal situations; 9.18% were declared not presented; and in only 86% of cases did the IFAI declare incompetence. The remaining 2% were resolved through a "*positiva ficta*" request for information and non-procedence of same.

From this perspective, according to article 7 of the Law the Institute has favored the principle of disclosure, specifically as regards information on the use of public funds, as well as in deliberative processes when the definitive decision has been taken, regardless of the name of the petitioner and without any need for this party to show legal interest in the matter.

The Institute, in terms of the provisions of the Law and its Regulations, also relies on faculties to follow up on the resolutions emitted on account of the appeals made by the individual parties. In this sense, and for the purpose following up on the resolutions of the Plenary Tribunal, mechanisms have been set up to allow these resolutions to be followed up on after the termination of the period of compliance (ten working days).

The General Board of Coordination and Surveillance is the unit responsible for establishing communication with the authorities and initiating a procedure of documental integration in which information is officially requested on the resolution being attended and evidence of receipt of information by the petitioner.

In cases that reveal the reluctance of some authority to attend to the instruction contained in the resolution, the measures contemplated in article 92 of the Regulation of the Law are put into effect, namely: 1) compliance is requested to the hierarchical superior; 2) the competent internal organ of control is informed so that it can take intervene legally; or 3) said circumstance is made public knowledge.

Special mention should be of the intervention that the IFAI made in six questions, two of which are presently in procedures before jurisdictional authorities (the Secretariat of Foreign Affairs and the Institute for the Protection of Savings); one in which the petitioner was presented to the authorities of the Secretariat of Finance and Public Credit for the delivery of information; and another in which work has been reviewed and is being carried out together with the Institute for the Protection of Savings for the conformation of the public versions of the minutes of the session of its Honorable Board of Government; another in which the National Council for Science and Technology delivered information directly to the petitioner on hiring external services for recovering scholarship-holders' dossiers; and the last one, at present being examined with authorities of the Secretariat of National Defense, on various installations inside military zones.

Access to information and transparency constitute two fundamental pieces of the process of constant transformation of public management whose consequences are beginning to appear, to correct irregular conduct, to detect anomalies and to gradually change the relation between government and society.

Accordingly, since it was set up, the IFAI has been an indispensable reference in the process of democratization being carried out in Mexico, whose social and political repercussions have defined a new agenda in the relationship between government and governed.

In synthesis, the law of access to information guaranteed by the Law and the promotion made by the IFAI have led to an improvement in institutional relations, as well as a lowering of the discretionary limits of action on the part of government and civil servants translated into acts of corruption, resulting in appropriate conditions for fostering development of a fundamentally democratic legal system.

To end, I would like to me say that there is still a long road ahead before we manage to socialize this legal order, before each and every Mexican can know and take full benefit of it, before each and every civil servant is responsible for his/her actions, but we are aware that changes are not made just like that, that this entails a gradual process of learning and establishing new practices.

In this sense, we have two major challenges to face: promote among citizens the right to know information on the government's performance and the management of public funds, and to instill a

culture of transparency and rendering of accounts in public management where we civil servants provide proper attention to citizens.

The commitment in this matter is and will continue to be to lend citizens our support to make a reality of the basic principle that the information of the government belongs to all.²

To end, I would like to extend the pledge of my country to all the members of the Organization of the American States for us to work together to strengthen a culture of transparency so that there is not one single place left where opacity, negligence and corruption are allowed to flourish.

Appendices:

1. Federal Law of Transparency and Access to Public Government Information, published in the Official Bulletin of the Federation on 11 June 2002.
2. Regulation of the Federal Law of Transparency and Access to Public Governmental Information, published in the Official Bulletin of the Federation on 11 June 2003.
3. Decree Creating the Federal Institute of Access to Public Governmental Information, published in the Official Bulletin of the Federation on 20 December 2002.
4. Federal Institute of Access to Public Information, Regulation, published in the Official Bulletin of the Federation on 20 December 2002.
5. Federal Institute of Access to Public Information: General Guidelines for Classifying and Declassifying Information on Departments and Entities of Federal Public Administration, published in the Official Bulletin of the Federation on 1 April 2003.
6. Federal Institute of Access to Public Information: Guidelines to be observed by departments and entities of the Federal Public Administration in receiving and processing individual petitions for access to government information, as well as in resolving, notifying and delivering information, excluding petitions for access to personal data and correction of same, published in the Official Bulletin of the Federation on 5 June 2003.
7. Federal Institute of Access to Public Information: Guidelines to be observed by the departments and entities of the Federal Public Administration in receiving and processing individual petitions for access to personal data, excluding petitions to correct these data, published in the Official Bulletin of the Federation on 12 August 2003
8. Guidelines to be observed by departments and entities of the Federal Public Administration in receiving, processing, resolving and notifying individual petitions to correct personal data, published in the Official Bulletin of the Federation on 9 December 2003.
9. Thesis on Jurisprudence: Ninth Period. Instance: Collegiate Circuit Courts. Source: Judicial Seminar of the Federation and its Official Bulletin, t. XIX, February 2004. Thesis: I.7oA.275 A, p. 1073. Subject: Administrative, Common. Original thesis.
10. Appeals for review.

Request	Page #:
0912100014903	Federal Telecommunications Committee
0001200002904	Health Department
0064100045403	Mexican Social Security Institute
0000500039903	Foreign Affairs Department
0001100006504	Public Education Department
0002000006304	Social Development Department
0000400055203	Government Secretariat

² In the first report submitted to the Federal Institute of Access to Public Information to the Honorable Congress of the Union, the Federal Public Administration (220 agencies and bodies), was granted an average assessment of 63% in relation to the obligation on transparency pursuant to article seven of the Federal Law on Transparency and Access to Information.

184000002003 III Servicio S. A. de C. V.
021000050003 Government Executive Office

7. Improving the systems of administration of justice in the Americas: access to justice

At its 64th regular session (Rio de Janeiro, March 2004), the Inter-American Juridical Committee did not discuss this topic.

The General Assembly at its XXXIV regular session (Quito, June 2004), by resolution AG/RES.2042 (XXXIV-O/04), requested the Inter-American Juridical Committee, within the framework of its duties, to take into consideration the relevant recommendations of the Meetings of Ministers of Justice or Minister or Attorneys General for the Americas (REMJA).

At its 65th regular session (Rio de Janeiro, August 2004), the Inter-American Juridical Committee examined the General Assembly resolution AG/RES.2042 (XXXIV-O/04).

Dr. Brynmor Pollard, rapporteur of the topic, maintained that the topic was kept on the agenda in the hope of a mandate that could be received by the political agencies of the Organization. He also mentioned that the aspect of access to justice was given more importance in the framework of the REMJAS. However, he also warned about the importance of not neglecting quality of justice in the topic .

Dr. Ana Elizabeth Villalta, in turn, gave a brief report on the progress of some of the topics that were analyzed at the last REMJA (Washington, D.C, April 2004). Among these topics, she emphasized the hemispheric cooperation against terrorism, the struggle against transnational crime, mutual legal aid in criminal and extradition matters, cyberspace crime, human slave trade (women, teenagers and children), and violence against women. She suggested that the Juridical Committee adapt its work to the recommendations from the above REMJA.

Dr. Luis Marchand said that it would be interesting for the Committee to restrict its work to the access to justice on the part of the marginal sectors. He also suggested that at the next opportunity, the Committee could consider the study of the reports prepared by IDB on the subject.

Dr. Luis Herrera interpreted the General Assembly mandate in the sense that the Juridical Committee, at these moments, does not require to take any action on the topic and that, when doing so in the future, takes into account the recommendations of the REMJAS and their priorities.

On the other hand, Dr. Eduardo Vio said that the topic itself has its own dynamics within the REMJAS and the Justice Studies Center for the Americas, and that therefore, care should be taken not to duplicate the work. He also recalled that in the past four years the General Assembly has been quite vague about the mandates to the Juridical Committee in this area. He believed that the Committee's work is to give legal technical assistance from the viewpoint of international law regarding the documents that either REMJAS or the Justice Studies Center for the Americas decides to submit for the Committee's appreciation. He, therefore, suggested contacting the Center in order to analyze together the contribution of the Juridical Committee and perhaps adopt some memorandum of understanding.

During the Inter-American Juridical Committee's recess period, Dr. Eduardo Vío contacted the Executive Director of the Justice Studies Center of the Americas (JSCA), Juan Enrique Vargas Viancos, with a view to exploring possible areas for collaboration between the Committee and the JSCA with respect to administration of justice in the Americas, and especially the possibility of writing a draft Judicial Ethics Code or General Principles of Judicial Ethics, for possible adoption by the inter-American system. In this connection and based on that contact, the Chair of the Juridical Committee, Dr. Mauricio Herdocia, engaged in a series of communications with the Chair of the Board of Directors of the JSCA, Dr. Federico Callizo Nicora, in which an understanding was reached to the effect that the Juridical Committee and the JSCA will work closely together on this project, which will be addressed by the Committee in its regular session scheduled for March 2005.

8. Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII)

At the 64th regular session (Rio de Janeiro, March 2004), the Inter-American Juridical Committee did not discuss this topic.

The General Assembly, at its XXXIV regular session (Quito, June 2004), by resolutions AG/RES. 2042 and 2033 (XXXIV-O/04), requested the Inter-American Juridical Committee to contribute with the preparatory work of the CIDIP-VII, once the Permanent Council approves the agenda for the aforementioned conference.

At the 65th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2004), Dr. Ana Elizabeth Villalta gave an account of the progress of the topic in the Committee. She explained that as part of the preparations for the CIDIP-VI, the Juridical Committee had already presented a document on the successive stages and future of the CIDIP, which figures in the relevant *Annual report* of the Committee. The rapporteur explained that, in that document, the Committee suggested a series of topics to be discussed in the CIDIP framework. She said that the General Assembly, in various resolutions, had requested the States to propose topics for the CIDIP-VII. Some of the topics proposed were multimodal transport, standardizing university degrees, liability for products, extra-contractual liability for environmental pollution, electronic commerce, transnational movements, consumer protection, child protection, disabled adult protection, transnational insolvency, and transactions in valuables and investments. The rapporteur mentioned that the Juridical Committee should comment on the topics of the CIDIP and stress the importance of private international law in the Americas.

Dr. João Grandino Rodas, rapporteur of the topic, continued with the report on the matter. He said that the Committee should stress the strengths of coding the private international law, and must point out the weakness of the process in general. He said that due to the existence today of subregional economic blocs, private law is being converted into a subregional law, unlike public international law. However, to date, he said, there has been no process encompassing the revision of the codes and regulations that govern private relations. He proposed to undertake this revision process within the Juridical Committee, from 1928 to the CIDIP-V, insofar as the systematics of the CIDIP-VI was of a different nature, since it no longer addressed the conflicts of law but rather the material law (the results of the aforementioned CIDIP were model laws). He proposed dividing the conventions adopted within the CIDIP in thematic areas and based on them, also analyze the subregional rules existing on such matters.

With regard to the weaknesses to which the rapporteur referred, he mentioned that to date there has not been a revision of the existing treaties. Moreover, he said that it was necessary to hear the opinions of the top jurists of current private international law. He also stressed the need to consider, after the revision process has begun, the possibility of including the common law and Caribbean countries, which have long been on the edge of the private international law principally in Latin America.

In light of all this, Dr. Grandino Rodas proposed analyzing the feasibility of reviewing the standard law of the Americas. The first thing to be done would be to investigate everything that has been discussed in the Juridical Committee since 1948 on the subject of reviewing the Bustamante Code, to consider the problems, weaknesses and strengths, and then analyze the possibility of continuing with the study. He also considered that the use of a convention could not be measured in relation to the number of ratifications received, since it could be adopted by States that have not ratified it, or that had used it as a model for other regulations that are being put into practice. Dr. Luis Herrera, along the same lines of thought, said that a convention may not have many ratifications but may be very important for the countries who have ratified it, or that has been ratified only by the countries that find it very useful. He also said that it was important to prepare a CIDIP when it is necessary to address some specific topic, and not force its preparation.

Dr. Jean-Paul Hubert said that the initiative of the rapporteurs should be given close attention. He also emphasized the need, when proposing topics for the next CIDIP, to bear in mind their feasibility so that afterwards the resulting conventions are not without effectiveness.

Dr. Luis Marchand proposed having a list of conventions adopted in the CIDIP by area and with the number of ratifications received. It would be necessary to include in this list the conventions adopted on a worldwide basis and see whether American States had ratified them. With this document, the areas most useful to the member States could be determined. In particular, Dr. Luis Herrera said that it would be important to see the quantity of ratifications received by almost 200 conventions on private international law adopted in the Council of Europe.

Dr. Grandino Rodas lastly intervened to point out two aspects: the question on the convenience of continuing or not with the CIDIP in the future has no relationship with the existence of the conventions that have been adopted, and those that might deserve a revision process.

Dr. Mauricio Herdocia agreed to mention the list that had been proposed on this occasion by the Committee when he presents the Juridical Committee *Annual report* to the Permanent Council: electronic commerce, migration and free circulation of persons, arbitration and settlement of disputes, consumer's protection, protection to minors, and transnational insolvency.

Lastly, the Inter-American Juridical Committee decided to include in its agenda the topic on re-examining the inter-American conventions on private international law, in addition to the topic on the CIDIP-VII. He also requested the rapporteurs Drs. Ana Elizabeth Villalta and João Grandino Rodas to present some progress report on such a re-examination at the next regular session. On December 6, 2004, the Secretariat sent to the two rapporteurs a bibliography and a list of the reports done by the Inter-American Juridical Committee from 1948 until now on the reform of the Bustamante Code to serve as a basis for their respective reports.

9. Preparation of a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.

At the 64th regular session (Rio de Janeiro, March 2004), the Inter-American Juridical Committee did not discuss this topic.

At the 65th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2004), Dr. Felipe Paolillo, rapporteur of the topic, gave a brief description of the progress of the work of the Juridical Committee on this matter.

Insofar as this topic was already the subject of a report by the Inter-American Juridical Committee, it was decided to keep the topic on the agenda as a topic in progress until a reply is given from the Permanent Council in this area. Dr. Paolillo also informed that the General Assembly, at its last regular session, adopted a resolution on the topic that it decided to ask several entities in the inter-American system for reports so that, together with the report presented by the Juridical Committee, they are analyzed and be used as basis for deciding on the convenience of adopting a convention against racism.

CHAPTER III

OTHER ACTIVITIES

Activities carried out by the Inter-American Juridical Committee in 2004

A. Presentation of the Annual report of the Inter-American Juridical Committee

Dr. Brynmor Pollard, Chairman of the Juridical Committee, during the Committee's 65th regular session (Rio de Janeiro, August 2004), referred to his presentation of the *Annual Report of the Inter-American Juridical Committee* on its activities for 2003, to the Committee for Juridical and Political Affairs of the Permanent Council, during the General Assembly in Quito, Ecuador in June 2004. Dr. Brynmor Pollard said that in his report during the General Assembly he had the company of Drs. Luis Marchand, Jean-Paul Hubert and Mauricio Herdocia. He mentioned that he addressed all aspects of the agenda of the Inter-American Juridical Committee. Among the points worth mentioning, he said that this time during the General Assembly, the report was presented to the Plenary and not to the General Commission as normally happened in the past.

Dr. Brynmor Pollard's presentation to the General Assembly is found in document CJI/doc.161/04 *Presentation of the annual report for 2003 of the Inter.-American Juridical Committee to the General Assembly of the Organization of American States* and which is transcribed in the part corresponding to reports in this *Annual report*.

B. Course of International Law

At its 63rd regular session (Rio de Janeiro, August 2003), the Inter-American Juridical Committee decided that the key topic of the 2004 Course would be *International law, trade, finance, and development*.

Based on this resolution, the 31st Course on International Law was organized by the Inter-American Juridical Committee and the Department of International Law of the Secretariat for Legal Affairs, and took place between August 2 and 27, 2004. It was attended by 24 lecturers from different American countries, 29 OAS scholarship students chosen from among more than 70 applicants, and ten students who paid their own fees.

On August 2, 2004, during the 65th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2004), the 31st Course on International Law was inaugurated at the Centro Empresarial Rio. The ceremony was attended by members of the Inter-American Juridical Committee, several guest authorities, representatives of the General Secretariat, and the scholarship students and participants in the Course. At this inaugural ceremony a tribute was paid to the memory of Dr. Seymour J. Rubin.

The Program of the course was as follows:

Programme of 31st International Law Course Rio de Janeiro, August 2 – 27, 2004

International Law, Commerce, Finance and Development

First Week

Monday 2

10:00 – 12:00 Opening Session
Luis Herrera Marcano, Member of the Inter American Juridical Committee
Tribute to Dr. Seymour Rubin

12:00 – 1:00 Coordination meeting with the Course fellows.

Tuesday 3

2:30 – 4:30 Brynmor T. Pollard, Chairman of the Inter American Juridical Committee
The work of the Inter American Juridical Committee

Wednesday 4

- 9:00 – 10:50 Jean-Michel Arrighi, Director of the OAS Department of International Law
Introduction to the Inter- American system I
- 11:10 – 1:00 Antônio Augusto Cançado Trindade, Judge of the Inter-American Court of Human Rights
Peaceful settlement of international disputes in the 21st century: general review I
- 2:30 – 4:30 Mauricio Herdocia, Member of the Inter American Juridical Committee
Central American integration: A third track I

Thursday 5

- 11:10 – 1:00 Antônio Augusto Cançado Trindade
Peaceful settlement of international disputes in the 21st century: general review II
- 2:30 – 4:30 Ana Elizabeth Villalta Vizcarra, Member of the Inter-American Juridical Committee
Integration and development within the framework of the Central American integration system

Friday 6

- 9:00 – 10:50 Jean-Michel Arrighi
Introduction to the Inter- American system II
- 11:10 – 1:00 Antônio Augusto Cançado Trindade
Peaceful settlement of international disputes in the 21st century: general review III
- 5:30 Welcoming cocktail for the Course fellows

Second WeekMonday 9

- 9:00 – 10:50 Cecilia Fresnedo, Professor of Private International Law at the University of the Republic and at the Catholic University of Uruguay
Free will in international contracting I
- 11:10 – 1:00 Luiz Felipe Lampreia, Former Minister of Foreign Affairs of Brazil
The WTO: Legal standards of trade globalization

Tuesday 10

- 9:00 – 10:50 Cecilia Fresnedo
Free will in international contracting II
- 11:10 – 1:00 Steven Kargman, Lead Attorney of the Export-Import Bank of the United States, Washington, D.C.
International debt restructurings in the emerging markets I
- 2:30 – 4:30 Welber Barral, Professor at the Federal University of Santa Catarina, Brazil.
International trade regulation and the developing countries I.

Wednesday 11

- 9:00 – 10:50 Cecilia Fresnedo
Free will in international contracting III
- 11:10 – 1:00 Steven Kargman

International debt restructurings in the emerging markets II

2:30 – 4:30 Welber Barral

*International trade regulation and the developing countries II*Thursday 12

9:00 – 10:50 Alejandro Daniel Perotti, Legal Advisor of the Mercosur Secretariat

MERCOSUR: Institutional framework, legal order and competence of U.S. ad hoc courts and national courts I

11:10 – 1:00 Steven Kargman

International debt restructurings in the emerging markets III

2:30 – 4:30 Alejandro Daniel Perotti

*MERCOSUR: Institutional framework, legal order and competence of U.S. ad hoc courts and national courts II*Friday 13

9:00 – 10:50 Welber Barral

International trade regulation and the developing countries III

11:10 – 1:00 Luis Marchand Stens, Member of the Inter-American Juridical Committee

The world and regional systems with regard to the modern-day international dynamics

2:30 – 4:30 Welber Barral

*International trade regulation and the developing countries IV***Third Week**Monday 16

9:00 – 10:50 Diego P. Fernández Arroyo, Professor at the Universidad Complutense de Madrid

Framework and operation of the European Union internal market I

11:10 – 1:00 Jonathan T. Fried, Senior Foreign Policy Advisor to the Prime Minister of Canada

The Monterrey Consensus: The role of law, finance and politics in development I

2:30 – 4:30 Clovis Baptista Neto, Executive Secretary of the Secretariat of the OAS Inter-American Telecommunications Commission (CITEL)

*Telecommunications and the information society*Tuesday 17

9:00 – 10:50 Diego P. Fernández Arroyo

Framework and operation of the European Union internal market II

11:10 – 1:00 Jonathan Fried

The Monterrey Consensus: The role of law, finance and politics in development II

2:30 – 4:30 Clovis Baptista Neto

*Telecommunications and the information society II*Wednesday 18

9:00 – 10:50 Diego P. Fernández Arroyo

Framework and operation of the European Union internal market III

11:10 – 1:00 A. Ralph Carnegie, Executive Director, Caribbean Law Institute Center, University of the West Indies

The impact of the World Trade Organization on international law I

2:30 – 4:30 Ana-Mita Betancourt, Deputy General Counsel, Inter American Development Bank

International project financing transactions – Risk mitigation and documentation issues I

Thursday 19

9:00 – 10:50 A. Ralph Carnegie

The impact of the World Trade Organization on international law II

11:10 – 1:00 Dr. Luis Marchand Stens, Member of the Inter-American Juridical Committee

The world and regional systems in a modern-day international dynamics scenario

2:30 – 4:30 Ana-Mita Betancourt

International project financing transactions – Risk mitigation and documentation issues II

Friday 20

9:00 – 10:50 Allan Wagner Tizón, Secretary General of the Andean Community

Legal, political and economic bases for a South American integration space

11:10 – 1:00 A. Ralph Carnegie

The impact of the World Trade Organization on international law III

Fourth Week

Monday 23

9:00 – 10:50 Roberto Ruiz Díaz Labrano, Resident Professor of Private International Law and of Integration Law at the National University of Asunción

Market law and integration

11:10 – 1:00 Guy de Vel, Director General of Legal Matters at the Council of Europe

The Council of Europe, Pan-European Legal Cooperation

2:30 – 4:30 Roberto Ruiz Díaz Labrano

Market law and integration

Tuesday 24

9:00 – 10:50 Roberto Ruiz Díaz Labrano

Market law and integration

11:10 – 1:00 João Grandino Rodas, Member of the Inter-American Juridical Committee

Competition Law I

2:30 – 4:30 Guilhermina Coimbra, Assistant Professor of Law at the Federal Rural University

Arbitration: Procedures – Resources – Arbitration rights – Issues

Wednesday 25

9:00 – 10:50 Daniela Trejos Vargas, Professor of Private International Law at the Rio de Janeiro Pontifical Catholic University

The regional harmonization of private international law: the CIDIPs

11:10 – 1:00 João Grandino Rodas

Competition law II

Friday 27

10:00 – 12:00 Closing ceremony of the Course and awarding of certificates.

At its 64th regular session (Rio de Janeiro, March 2004), the Inter-American Juridical Committee decided that the topic of the 2005 Course on International Law would be *International organizations: their collective action*. With regard to tribute to the jurist during the 2005 Course, the Inter-American Juridical Committee decided to pay homage to jurists Santiago Benadava and José Gustavo Guerrero, and entrusted Drs. Eduardo Vio and Mauricio Herdocia to prepare these tributes.

On this matter, the Inter-American Juridical Committee adopted resolution CJI/RES.69 (LXIV-O/04), 32nd Course on International Law, as follows:

CJI/RES.69 (LXIV-O/04)

32ND COURSE ON INTERNATIONAL LAW

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that the thirty-second edition of the Course on International Law, organized annually with the collaboration of the General Secretariat of the Organization of the American States, will be held in the city of Rio de Janeiro in 2005;

CONSIDERING the need for the Course on International Law to be based on a central theme to focus attention on a subject of current international importance, and also sufficiently flexible to attract teachers and students with different interests in public and private international law,

RESOLVES that the central theme of the 32nd Course on International Law is "International organizations: Their collective action".

This resolution was unanimously adopted in the session on March 17, 2004, in the presence of the following members: Drs. Brynmor T. Pollard, Luis Marchand Stens, Mauricio Herdocia, João Grandino Rodas, Ana Elizabeth Villalta Vizcarra, Jean-Paul Hubert, Felipe Paolillo, Eduardo Vio Grossi and Luis Herrera Marcano.

During the 65th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2004), the Director of the Department of International Law informed that the volume relating to the 31st Course on International Law was already published and available to the members of the Committee. Moreover, the Juridical Committee decided to change the title of the 32nd Course on International Law for *The contribution of international organizations to current international law*.

C. Relations and forms of cooperation with other inter-American organs and entities and with like regional or world organizations

The Inter-American Juridical Committee's participation as an observer to various organizations and conferences

The following members of the Inter-American Juridical Committee were observers at and participated in different forums and international agencies as Committee representatives during the 2003-04 period:

Dr. Brynmor Pollard, at the Rome-Brasília Seminar (Brasília, August 2003).

Dr. Brynmor Pollard, at the Meeting of Experts on Democratic Governance, organized by the Unit for Promotion of Democracy of the OAS (Washington, D.C., November 12 and 13, 2003).

Drs. Brynmor Pollard and Luis Marchand, at the 34th regular session of the OAS General Assembly (Quito, June 2004). Dr. Brynmor Pollard's presentation to the General Assembly is in document CJI/doc.161/04, *Presentation of the Annual Report of the Inter-American Juridical Committee to the General Assembly of the Organization of the American States*.

Dr. Felipe Paolillo, at the UN Commission of International Law (Geneva, July 20, 2004). The presentation by Dr. Paolillo to the ILC is recorded in document CJI/doc.164/04, *Speech delivered to the International Law Commission on the recent activities of the Inter-American Juridical Committee (July 20, 2004)*.

Dr. João Grandino Rodas in the act of convening the Permanent Review Tribunal of MERCOSUR, at the Plenary Meeting on the project Contribution and Improving the Dispute Settlement System in MERCOSUR, and at the 11th Meeting of MERCOSUR Law Students, organized

by the Law School of the National University of Asuncion, on August 11, 12 and 13, 2004.

Moreover, at the 65th regular session (Rio de Janeiro, August 2004), the Inter-American Juridical Committee appointed its Chairman, Dr. Mauricio Herdocia, as its representative to present the *Annual report* of the Juridical Committee corresponding to its activities performed during 2004 to the Committee of Juridical and Political Affairs of the Permanent Council.

Presentations of the members of the Inter-American Juridical Committee members as observers, representatives or participants in different meetings in 2004 are transcribed as follows:

CJI/doc.161/04

**PRESENTATION OF THE ANNUAL REPORT OF THE
INTER-AMERICAN JURIDICAL COMMITTEE TO THE
GENERAL ASSEMBLY OF THE ORGANIZATION OF AMERICAN STATES**

(presented by Dr. Brynmor T. Pollard, Chairman)

Mr. Chairman, Distinguished Representatives of Member States,

On behalf of the members of the Inter-American Juridical Committee, it is my privilege and it is also an honour for me to present the Committee's Annual Report for 2003 to this 34th Regular Session of the General Assembly by providing a summary of the main activities of the Inter-American Juridical Committee for 2003.

On behalf of the members of the Inter-American Juridical Committee of this Organization, I extend congratulations to you, Mr. Chairman, on your election to chair the proceedings of this regular session of the General Assembly and it is our wish that the conclusions reached by this Assembly will result in advancing the objectives of our Organization. I must also associate myself with the expressions of deep appreciation to the Government of Ecuador for affording us the opportunity of being here in Quito and for the warm hospitality and many courtesies extended to us.

Mr. Chairman, I must recognise the presence of three other members of the Inter-American Juridical Committee - Ambassador Luis Marchard Stens (Peru), Ambassador Jean-Paul Hubert (Canada) and Dr. Mauricio Hardocia Sacasa (Nicaragua).

The work undertaken by the Inter-American Juridical Committee comprises essentially timely responses to the Organization's priorities determined by the political organs and other bodies of the Organization and also initiatives taken by the Committee in undertaking research, studies and similar tasks so as to fulfill its responsibilities arising out of the OAS Charter and also the Committee's Rules of Procedure.

The following matters on which the Inter-American Juridical Committee deliberated during the 62nd and 63rd regular sessions in 2003 deserve particular mention:

1. The Applicable Law and Competency of international jurisdiction with respect to extra-contractual civil liability;
2. Cartels in the framework of competition law in the Americas;
3. Improving the systems of administration of justice in the Americas: access to justice;
4. The Fifth (V) Joint Meeting with Legal Advisors of the Foreign Ministries of the Member States of the OAS;
5. Legal aspects of compliance within the States of sentences of decisions of international courts or tribunals or other international organs with jurisdictional functions.

With respect to:

1. Applicable law and competency of international jurisdiction

With respect to extra-contractual civil liability, the Inter-American Juridical Committee, at its 63rd regular session in Rio de Janeiro in August 2003, adopted resolution CJI/RES.59 (LXIII-O/03) in which it recalled resolution CP/RES.815 (1318/02) where the Permanent Council instructed the Committee to examine the documentation on the topic regarding the applicable law and competency of international jurisdiction with respect to extra contractual civil liability, and "to issue a

report on the subject, drawing up recommendations and possible solutions”, as well as a comparative analysis of national norms currently in effect.

In its resolution, the Inter-American Juridical Committee bore in mind that it was instructed by the Permanent Council to treat as a guideline the resolution of CIDIP- VI (CIDIP-VI/RES.7/02) in which a preliminary study to be submitted to a meeting of Experts was contemplated identifying specific areas revealing progressive development of regulation in this field through conflict of laws solutions, as well as a comparative analysis of national norms currently in effect.

The Committee’s resolution made reference to the fact that members of the Committee had benefited from a thorough discussion of the subject at its 63rd regular session and acknowledged the sterling contributions of the co-rapporteurs to the deliberations.

In its resolution, the Inter-American Juridical Committee reaffirmed its conclusion that, because of the complexity of the subject and the wide variety of diverging forms of responsibility encompassed within the category of “non-contractual civil liability”, it would be more appropriate to recommend initially the adoption of Inter-American instruments to regulate jurisdiction and choice of law with respect to specific sub-categories of non-contractual civil liability, and only afterwards, should the proper conditions exist, pursue the adoption of a general Inter-American instrument to address jurisdiction and choice of law for the entire field of non-contractual liability.

In its resolution, the Inter-American Juridical Committee concluded that:

- a) favourable conditions currently exist for the elaboration of an Inter-American instrument addressing jurisdiction and applicable law that with respect to non-contractual obligations arising out of traffic accidents;
- b) favourable conditions currently exist for the elaboration of an Inter-American instrument addressing jurisdiction and applicable law with respect to non-contractual liability of manufacturers and others for defective products (product liability), although the elaboration of such an instrument would be more challenging than the elaboration of an instrument addressing jurisdiction and choice of law for non-contractual obligations arising out of traffic accidents;
- c) the elaboration of an Inter-American instrument addressing jurisdiction and choice of law with respect to non-contractual liability arising out of transboundary environment damage would be considerably more challenging than the elaboration of an instrument addressing jurisdiction and applicable law for non-contractual liability arising out of traffic accidents and for non-contractual liability of manufacturers and others for defective products (product liability);
- d) favourable conditions do not currently exist for the elaboration of an inter-American instrument addressing jurisdiction and applicable law with respect to non-contractual liability resulting from acts occurring in cyber space.

The Committee also resolved:

- i) to transmit also to the Permanent Council the reports represented to the Committee by the rapporteurs at previous regular sessions of the Committee with the recommendation that the documents be made available to the Meetings of Experts that may be convened to research possible topics for inclusion in the agenda of CIDIP-VII.
 - ii) to convey to the Permanent Council its continuing desire to support the work of the Organization relating to the harmonisation and development of private international law in the hemisphere as the Permanent Council may request.
- 2) Cartels in the Framework of Competition Law in the Americas

Initially, the study on competition and cartels in the Americas was undertaken by the Inter-American Juridical Committee in response to the General Assembly’s urging that the Committee study various dimensions of the legal aspects of integration and free trade in the Americas. In this connection, a preliminary proposal presented by Dr. João Grandino Rodas, then Chairman of the Committee, provided the basis for the General Assembly’s request that the Inter-American Juridical Committee make a preliminary analysis of existing laws within the hemisphere in the light of the increasing number of international rules and agreements likely to heighten the potential for possible

conflicts caused by the extra-territorial application of competition laws for the Latin American Region.

At the 60th Regular Session of the IAJC in March 2002, the Committee decided to include the subject of cartels in the study of competition policies in the hemisphere being undertaken. In the process the IAJC requested the national authorities of member States of the OAS, to provide the co-rapporteurs of the subject with information on their domestic competition legislation, recent cases and practices following which the co-rapporteurs were invited by the Committee to prepare a revised consolidated report incorporating information received from the national authorities, including the results of the questionnaire sent to the OAS member States.

The Inter-American Juridical Committee finally adopted resolution CJI/RES.58 (LXIII-O/03) entitled *Cartels in the scope of the competition law in the Americas* in which the General Assembly was requested to arrange for the report on competition and cartels in the Americas to be circulated to the competent authorities in the member States in the official languages of the Organization, and the member States were urged to give the highest priority to the adoption and the implementation of competition laws and to conclude agreements to strengthen consultation, cooperation and the exchange of information in competition – related matters.

The resolution adopted by the Juridical Committee also urged member States of the Organization to pay particular attention to the challenges faced by less developed or territorially smaller member States to help them to develop the necessary capacity to maintain effective administration, application and international cooperation in this field of endeavour.

Finally, the Committee decided to respond favourably to any future request from the political organs of the Organization to undertake additional activities in this area.

3) Improving the systems of administration of justice in the Americas: access to justice

At its 33rd regular session in Santiago Chile in June 2003, the General Assembly in resolution AG/RES.1916 (XXXIII-O/03) requested the Inter-American Juridical Committee to take account of pertinent recommendations of the Meetings of Ministers of Justice or of Ministers or Attorneys-General of Americas (REMJA) in order to monitor progress made in their implementation.

At its 63rd session the Juridical Committee was afforded the opportunity to exchange views on the Caribbean Court of Justice established for member States of the Caribbean Community. Members of the Committee commented on the unique features of the Court exercising an appellate jurisdiction as the final appellate court in civil and criminal matters in the national legal system resulting in abolishing the jurisdiction of the Judicial Committee of the Privy Council in England and also exercising an original jurisdiction authorising the Court to interpret definitively provisions of the Treaty establishing the Caribbean Community and the Single Market and Economy, and to resolve disputes arising under or by virtue of the Treaty. The Inter-American Juridical Committee at its session resolved to retain the item in its agenda as a follow-up item.

4) The Fifth (V) Joint Meeting with Legal Advisors of the Foreign Ministries of the Member States of the OAS

In response to the urging of the General Assembly the Fifth (V) Joint Meeting with the Legal Advisors of the Foreign Ministries of the OAS Member States was held at the Headquarters of the Committee on 25 and 26 August 2003, with the Legal Advisors of eleven member States attending being the largest number of legal advisors participating. Students attending the Course in International Law conducted annually by the Committee attended the afternoon sessions of the Meeting.

On Monday August 24, the Meeting reviewed existing mechanisms to address and prevent serious and recurrent violations of international humanitarian law and international human rights law and the role of the international Criminal Court in this process.

On Tuesday August 26, the Meeting engaged in discussions on the Inter-American Juridical Agenda and Juridical aspects of the enforcement at the national level of decisions of international tribunals or other international organs with jurisdictional competence. The Legal Advisors attending the Fifth Joint Meeting as well as members of the Inter-American Juridical Committee regarded the meeting as successful and took the opportunity to adopt a resolution acknowledging with gratitude the financial support for the meeting provided by the Andean Corporation through the initiative of its

Executive Chairman, Dr. Enrique Garcia, thereby facilitating the attendance of several legal advisors at the meeting.

5) Legal Aspects of compliance within the States of decisions of International Courts or Tribunals or other international organs with jurisdictional functions

In the light of the exchange of opinions at the Fifth (V) Joint Meeting with Legal Advisors of Foreign Ministries held on 25 and 26 August 2003, during the 63rd regular session of the Juridical Committee held in Rio de Janeiro, the Committee adopted resolution CJI/RES.67 (LXIII-O/03) entitled *Legal aspects concerning States complying internally with sentences passed by international courts or other international organizations with jurisdictional functions* in which it decided to include the item in its agenda and requested each of its members to submit for consideration at the next regular session of the Committee a report on the juridical situation in their respective countries on the matter.

The Committee assigned the coordination of the above mentioned reports to one of its members, Dr. Luis Herrera Marcano.

At the 64th Regular Session of the Inter-American Juridical Committee held in Rio de Janeiro from 8 to 19 March 2004, the Juridical Committee considered the information furnished by individual members of the Committee in response to a questionnaire circulated to members by the coordinator, Dr. Herrera Marcano. In order to further the work on this subject, the Committee decided to request information from other authentic sources, in particular, the Legal Advisors of Ministries of Foreign Affairs of Member States, themselves.

Other Activities

Presentation of the Annual Report of the Inter-American Juridical Committee for 2002 and 2003

The Chairman of the Inter-American Juridical Committee, Dr. Brynmor T. Pollard, presented the Committee's Annual Report for 2002 to the Permanent Council's Committee on Juridical and Political Affairs, Dr. Carlos Manuel Vazquez, the Vice-Chairman of the Committee, accompanied the Chairman. In my capacity as Chairman I presented the Committee's Annual Report for 2003 to the Committee on Juridical and Political Affairs of the Permanent Council on 24 March, 2003.

Dr. Eduardo Vío Grossi accompanied the Chairman at the 33rd regular session of the OAS General Assembly in Santiago, Chile, in June 2003.

On the invitation of the OAS Secretary-General, the Chairman of the Inter-American Juridical Committee participated in a Meeting in Washington D.C. from 12-14 November 2003, organised by the Unit for the Promotion of Democracy to consider issues related to Good Governance in OAS member States and to make recommendations. This meeting was organised in response to a mandate from the General Assembly.

Course on International Law

The 30th Course on International Law organised by the Inter-American Juridical Committee as conducted during the period August 4 to 29, 2003 with the theme *International Law and the maintenance of international peace and security*. The Course was inaugurated at the Rio Business Center and attended by members of the Inter-American Juridical Committee, special guests, representatives of the General Secretariat in Washington D.C. recipients of fellowships and other participants in the Course.

At the opening ceremony, a tribute was paid to the memory of Dr. Jorge Castañedo.

At its 63rd regular session in Rio de Janeiro in August 2003, acknowledgement was given to the donation of US \$15,000 by the Government of Brazil to provide simultaneous interpretation services during the 30th Course on International Law thereby enabling increased and more effective participation in the Course by monolingual students.

At the session, the Director of the Department of International Law reported on the publication of the presentations made in the Course on International Law conducted in 2002.

He also reported that the Annual publication containing the lectures delivered in the Course in International Law, in August 2003 will be available in July 2004.

The Committee conveyed congratulations and appreciation to the Department of International

Law for its efforts in connection with organising successfully the Course on International Law annually which has been acknowledged by OAS member States. The main theme for the Course to be conducted in August 2004 will be "International Law: Trade Finance and Development". The Annual publication containing the lectures delivered in the Course on International Law conducted in August 2003 under the auspices of the Committee will be available in July 2004.

The Committee's Centennial

The Juridical Committee took the opportunity presented by the convening of the 64th Regular Session of the Committee to advance further preparation for the observance of the Committee's centennial in 2006. An Editorial Committee was established for the purposes of the publication which is being planned for the occasion. The Editorial Committee deliberated during the period of sessions on matters such as guidelines for contributors to the publication.

Relations and forms of co-operation with other organizations and bodies

The Chairman of the Inter-American Juridical Committee and Dr. Eduardo Vio Grossi attended the 33rd regular session of the OAS General Assembly in Santiago, Chile, in June 2003 when the Annual Report of the Inter-American Juridical Committee for 2002 was presented to the General Committee of the 33rd regular session of the Assembly.

Dr. João Grandino Rodas visited with the UN's International Law Commission in May 2003 and presented an overview of the Juridical Committee's activities. Dr. João Grandino Rodas's presentation before the International Law Commission is included in the Committee's Annual Report for 2003.

The Chairman, Dr. Brynmor Pollard, attended the 20th Roma - Brasilia Seminar held at the Supreme Court of Justice in Brasilia on 28 August 2003 and participated in a panel discussion on the maintenance of international peace and security.

Relocation of the offices of the Inter-American Juridical Committee

The LXIII (63rd) regular session of the Inter-American Juridical Committee was held in the new location of the Committee in the renowned Palácio Itamaraty due to the commendable gesture of the Government of Brazil.

The inauguration of the new premises took place on August 8, 2003 and was attended by a number of dignitaries, including His Excellency, Ambassador Celso Amorim, Minister of State for Foreign Affairs of Brazil, Ambassador Luigi Einaudi OAS Assistant Secretary-General and members of the Diplomatic and consular corps.

Membership of the Inter-American Juridical Committee

At the 33rd regular session in Santiago, Chile, in June 2003, the General Assembly elected Dr. Mauricio Herdocia Sacasa, of Nicaragua, to membership of the Committee. In December 2003, the Permanent Council elected Ambassador Jean-Paul Hubert, of Canada, as a member of the Committee, in succession to Dr. Jonathan T. Fried, who resigned his membership of the Juridical Committee by reason of additional governmental responsibilities. At the 64th Regular Session in March 2004, the Inter-American Juridical Committee acknowledged the valuable and substantial contribution of Dr. Fried to the work of the Committee. The newly elected members of the Committee attended the 64th regular session of the Committee in Rio de Janeiro, in March 2004.

I wish to avail myself of this opportunity to place on record the deep appreciation of the Inter-American Juridical Committee for the sterling and sustained assistance given to us by the Secretary of the Committee and his staff at our headquarters in Rio de Janeiro during the past year. I must also acknowledge with thanks the supporting role played by the Assistant-Secretary for Legal Affairs, the Director, Department of International Law and the other members of the Secretariat in Washington D.C. in the work on which the Committee has been engaged during the past year.

I wish to take the opportunity afforded me with the making of this presentation to reaffirm the commitment of the Inter-American Juridical Committee, within its competence, to work towards the Organization attaining its objectives and, in the process, to collaborate with the organs and other bodies of the Organization.

It would be remiss of me if I did not use this occasion to express the appreciation of the Inter-American Juridical Committee to Secretary-General Cesar Gaviria as he relinquishes office and to

extend our best wishes to the newly elected Secretary-General, Miguel Rodríguez, as he enters upon the challenging portfolio of OAS Secretary-General.

I must end this presentation on a personal note. Deep appreciation and thanks must be conveyed to my colleagues on the Committee who played their part with dedication thereby contributing significantly to the work of the Inter-American Juridical Committee particularly during my current term of office as Chairman.

Thank you.

CJI/doc.164/04

**SPEECH DELIVERED TO THE UNITED NATIONS INTERNATIONAL LAW COMMITTEE
ON THE RECENT ACTIVITIES OF THE INTERAMERICAN JURIDICAL COMMITTEE
(July 20, 2004)**

(presented by Dr. Felipe Paolillo)

Mr. Chairman:

I have the honor of speaking to the members of this top international legal organization, in which I can count several friends of mine.

I am complying with the duty of making a report on the Inter-American Juridical Committee's most recent activities, which might perhaps be seen as the younger brother of this Committee, although sometimes I doubt whether this would be the proper way of referring to our Committee.

In the first place, I doubt whether both institutions might be deemed as being "sister entities". If the fraternal liaison must be established on the grounds of similarity of duties, then we should recall that the duties and purposes of both institutions, although similar, are not identical. The work of the International Law Committee has been precisely defined as regards its purpose and approach: its purpose is to carry out one of the most important functions that the *United Nations Charter* entrusts to the General Assembly, namely, to promote the progressive development and codification of international law. Its approach is, in principle, universal; the international law that the ILC develops and codifies is that whose aspiration is to govern the conduct of the States, in whatever region they may be.

On the other hand, our Committee's duty is also to promote the progressive development and codification of international law, but this duty must be complied with within the framework of the American region, bearing in mind its peculiar problems, its legal tradition and regional interests and priorities. But in addition to that, the Committee is also the consultative body of the OAS in juridical matters and an organ for the study of the legal problems related to the integration of the developing countries of the continent and the possibilities of standardizing their legislation.

I should add that, contrary to this committee, the Juridical Committee has devoted much time and effort to questions related to private international law. Furthermore, in the last few years the issues concerning private international law have prevailed over other topics on its agenda. And lastly, the Committee is able to include topics on its agenda on its own initiative, topics which were studied in depth in the past, springing from conventions and resolutions of other OAS organs, as in the case of topics dealing with administration of justice and terrorism in the early nineties.

As you may see, the differences between our two institutions, as far as their competencies and the approach of their conclusions are concerned, serve to justify my doubts in calling them sister entities.

But above all, I also hesitate in designating our Committee as the minor relative of this Committee [of International Law]. It is true that its consulting tasks and recommendations are regional in scope. And it is also true that from the viewpoint of the number of members, the Committee, composed of only 11 members is obviously a considerably smaller organization than this Commission.

But in any case the qualification as "minor" relative is clearly inappropriate if we are to adopt a chronological focus to define the relationship between both institutions. In fact, in two years' time the Inter-American Juridical Committee shall commemorate its centennial.

This does not mean that the Committee has been working for a century without interruption, but its inception goes back to the year 1906, when the Third American Conference decided to set up

the International Commission of American Jurists. In 1939 the organ is given the name "Inter-American Neutrality Committee" and in 1948 it receives its present denomination. Its current structure and functioning were established in 1967, when the *Buenos Aires Protocol* was adopted, amending the *OAS Charter* and thereby raising the Committee to the level of principal organ of the Organization.

Therefore the Committee is older than the most ancient institutions that still continue to exist within the framework of the United Nations or within the framework of any of the current regional organizations.

Commemoration of the centennial

Consequently, the Committee is currently preparing the commemoration of its centennial, as per Resolution 1773 adopted by the General Assembly in June 2001. And it will be done in the proper way that an institution of this nature deserves. Among other things, the Committee is organizing the publication of a volume with the contributions of its present and past members, and these inputs will primarily refer to the Committee's contribution towards the development of Inter-American international law during its long life. The same topic shall be addressed during the annual course on International Law to be given in the City of Rio de Janeiro in the year 2006 - the centennial year - together with the August regular session of the Committee.

I will now very briefly refer to the topics addressed last year by the Committee.

Extracontractual liability

In the year 2002 the Permanent Council of the Organization of American States instructed the Committee to examine the documents on the issue related to applicable law and competence of the international jurisdiction as regards extracontractual liability, bearing in mind the guidelines of the Sixth Inter-American Specialized Conference on Private International Law (CIDIP). The Permanent Council also requested the Committee to issue a report on the topic and to draw up recommendations and possible solutions to be presented to the Permanent Council for its consideration and to decide on future steps".

Among the guidelines of the CIDIP, it was determined that the study should aim to "identify specific areas revealing progressive development of regulation in this field through solutions of conflicts of law, as well as a comparative analysis of national norms currently in effect".

Two Committee members, namely, Drs. Elizabeth Villalta and Carlos Vázquez, produced reports on "Applicable law and competence of the international jurisdiction as regards the topic of civil extracontractual liability".

The Committee, after debating the topic based upon the reports submitted, concluded that it was not feasible to try to draw up a regional treaty on the whole subject, in view of the extreme complexity and the existence of a great variety of diverging forms of liability encompassed within the category of "extracontractual civil liability". The Committee was of the opinion that it was more convenient to draft and adopt a series of Inter-American instruments governing jurisdiction and applicable law with regard to specific sub-categories of extracontractual civil liability which do not present a high degree of difficulty.

Among these sub-categories are the extracontractual liability resulting from traffic accidents and from product manufacturing and distribution of faulty products (product liability). These two areas were mentioned as susceptible of being regulated through a convention or other regional instruments. On the other hand, the Committee understood that the drafting of an Inter-American instrument on extracontractual liability for transboundary environmental damage presented a more difficult question.

Finally, the Committee was of the opinion that the time would be ripe for treatment of an Inter-American instrument on jurisdiction and applicable law as regards extracontractual obligations resulting from acts taking place in cybernetic space, as the Permanent Council has not yet decided on the direction to be followed by the Committee in its future work in this area.

Competition and cartels in the Americas

Another topic within the arena of private international law addressed at length by the Committee in the last few years concerns "cartels in the area of competition law in the Americas".

Committee members Drs. João Grandino Rodas and Jonathan Fried submitted a report on

cartels for discussion by the other members of the Committee. The report reviewed the different kind of cartels – which are defined as being groups of companies which instead of competing among themselves, coordinate their procedures – and are classified as *hard-core* cartels, exportation cartels and importation cartels. The study also included the review of competition laws and regulations in force in the countries of the Hemisphere. The study on this topic is the first step towards promoting more effective control over anticompetitive practices in the Americas and also towards providing a contribution for a better understanding of the legislation and policies governing cartels.

The Committee's resolution CJI/RES.58 (LXIII-O/03) of August 7, 2003) requests, among other things, the General Secretariat to distribute the report on competition and cartels in the Americas among the competent authorities of the member States, encouraging the member States to give top priority to the adoption and application of competition laws and reach agreements on extending the inquiries, cooperation and exchange of information on matters relating to competition. In the last session in June this year, the General Assembly of the Organization recommended member States to consider the recommendations included in the Committee's report and confirmed the requests of the organ, which are contained in the aforementioned resolution of August 2003.

Compliance with decisions awarded by international courts or organs

The Committee has recently started to consider the topic of the "legal aspects of the compliance within the States with decisions of international courts or other international organs with jurisdictional functions".

The topic was suggested by the Chairman of the Inter-American Court of Human Rights, who recalled that in the extensive area of compliance with international sentences in the region, there were some cases of non-compliance by some States with sentences awarded by the Court, in particular sentences that involved amendments to the legislation of the State in question.

The Committee is currently in the preparatory steps of this work, which is coordinated by Dr. Luis Herrera Marcano, consisting in the compiling and analyzing information on the topic provided by the States in the region, and to that end conducting a questionnaire with questions on the local legislation prevailing on the conditions and procedures involved in the enforcement of sentences awarded by international courts, as well as the practice of the States regarding the effective compliance with those decisions. In most States there are norms for the enforcement of foreign decisions, that is, decisions awarded by courts of other national States. However, the same does not happen with decisions awarded by international courts.

On the basis of the information provided by Committee members on their own countries, as well as on the information which is expected from other States, the Committee intends to carry out an evaluation of the national legislations in force in the region, as well as the procedures and enforcement modes observed in practice, including in compliant cases and their causes, together with an examination of the difficulties most frequently encountered by the obliged countries. The Committee is proposing to discuss in due time the measures to be adopted, or the recommendations to be issued with the aim of ensuring the rapid and accurate compliance of these acts by the States in the region. The recent proliferation of international courts and other organizations with jurisdictional functions, such as the Caribbean Court of Justice and the criminal courts established by the Security Council on the grounds of the provisions contained in Chapter VII of the United Nations Charter, seems in the opinion of the Committee to justify this study, whose basic aim is to strengthen the international jurisdictional system in the Inter-American environment.

Inter-American security

The topic related to the Inter-American security has been focused on with interest by some members of the Committee for a long time now, although this focus has changed to accompany the changes in the international arena. As is known, there prevail in the Inter-American area some regional instruments which complement the general international norms of the *United Nations Charter* and other global instruments. Perhaps the most important of these regional instruments so far has been the TIAR (*Inter-American Treaty of Reciprocal Assistance*) adopted in Rio de Janeiro in 1948, but this treaty, besides not being adopted by all the members in the Inter-American system (out of the 34 countries in the system, only 15 have adhered to the *Rio Treaty*), the Treaty does not seem to offer an adequate and effective response to the threats posed to international peace and security in today's world. Some even consider that the *Rio Treaty* should be replaced by a more modern instrument.

The States in the region have acknowledged in several meetings that in the last few years the sources and nature of the threats to the international peace and security have diversified, and accordingly the traditional concepts and approaches which have been used to effectively tackle these threats must be modified so as to adapt them to the current circumstances, bearing in mind not only the military and political aspects of the problems, but also their economic, social and environmental dimension. For that reason, the OAS convened a Special Conference on Security held in Mexico in October last year and which resulted in the adoption of the *Declaration on Security in the Americas*.

The *Declaration* establishes quite a few undertakings and cooperative actions, following the enumeration of a series of shared values and approaches, including recommendations on institutional matters. In one of these recommendations the Permanent Council is asked to continue with the process under examination and assessment of the Inter-American Treaty of Reciprocal Assistance (the *Rio Treaty*) and the *American Treaty on Pacific Settlement* (the *Bogota Pact*), as well as other instruments in force, bearing in mind, among other things, the distinct nature of traditional and non-traditional threats to security.

The Committee is currently engaged in studying how to tackle this problem, so as to provide a contribution to the major task of updating the system of Inter-American security on the grounds of the Declaration adopted in October 2003. For the time being, the Committee is involved in systematizing all the norms prevailing in the American Continent in the area of peace and security, either of a global, regional or sub-regional nature, in determining their adaptability to the principles contained in the Declaration on Security in the Americas and detecting areas for progressive development.

Dr. Eduardo Vío Grossi, a Committee member, submitted to its consideration some thorough reports detailing the legal framework within which the topic is to be discussed, encompassing proposals under study by the Committee.

In the initial discussions which took place during the last regular session of the Committee, it was highlighted that whatever the trend might be in this study, the multidimensional nature of hemispheric security should be borne in mind. This peculiar nature is stressed in the *Mexico Declaration*, which will determine the consideration of matters such as eradication of poverty, human security and humanitarian intervention.

Draft project for an inter-American convention against racism and all forms of discrimination and intolerance

Some members of the Organization have expressed the view that the countries in the hemisphere should necessarily draft and adopt a new Inter-American convention against racism and any other form of discrimination and intolerance. This purpose is reflected in the resolution AG/RES.1774 (XXXI-O/01) of the General Assembly, which requested the Committee to prepare a document for analysis with the aim of making a contribution to the works of the Permanent Council on the need to adopt an inter-American convention on the issue.

Based upon a report submitted by this speaker, the Committee submitted to the General Assembly a preliminary report, in which, following a review of the global and regional (American) instruments on the matter, identified the areas which could be included in a regional instrument without incurring in overlapping, repetitions or contradictions vis-à-vis the international norms in force. The report suggests some areas which might be encompassed in a treaty or other inter-American instrument, such as strengthening the monitoring mechanisms and those related to enforcement of obligations posed by the conventions on human rights; the protection of the rights of specific and especially vulnerable groups, such as the indigenous populations; and current forms of racism and racial discrimination, such as the use of information technology and means for promoting racism. This topic is still on the Committee's agenda, awaiting a decision from the Permanent Council or the General Assembly in this regard.

Joint Meeting

The General Assembly of the OAS adopted resolutions AG/RES.1844 (XXXII-O/02) and 1900 (XXXII-O/02), which encourage the Juridical Committee to continue promoting periodic joint meetings of its members with the Legal Advisors of the Ministries of Foreign Affairs of the member States of the OAS.

Based on these recommendations, a joint meeting of the Committee with the Legal Advisors

from 11 member States of the Organization was held in August last year, a considerably reduced number taking into consideration the number of OAS members, but nonetheless higher than the number of participants in previous meetings.

Some ideas were exchanged on the Inter-American juridical agenda and on humanitarian international law and the role of the International Criminal Court.

Other Matters

Other matters on the Committee's agenda are "the right to information: access and protection of information and personal data" and the "development of the systems for the administration of justice in the Americas", on which Dr. Brynmor Pollard made a presentation before the recently created Caribbean Court of Justice.

Future work

According to the mandate of the General Assembly of the OAS, expressed in Resolution AG/RES.2022 (XXXIV-O/04) of June 8 this year, the Committee shall now consider, within the framework of the "joint effort of the Americas in the fight against corruption and impunity", the study on the legal effects of giving safe haven to public officials and persons accused of crimes of corruption during the exercise of political power, and on cases in which the principle of dual nationality may be considered fraud or abuse of the law.

In addition, the General Assembly of the OAS requested the Committee, during its last session, to provide its contribution to the preliminary works for the Seventh Specialized Inter-American Conference on International Private Law (CIDIP-VII) once the Permanent Council makes a decision on the agenda for the conference.

Furthermore, the General Assembly requested the Committee to analyze - within the context of the item on "Application of the Inter-American Democratic Charter" - the legal aspects of the interdependence between democracy and economic and social development, taking account the objectives stated in the Declaration of the Millennium of the United Nations, the Monterrey consensus and other regional instruments.

Courses

Finally I wish to mention the successful Courses on International Law that the Committee has been organizing yearly for more than 30 years, with scholarship-holders from the continent enjoying the opportunity of listening to renowned lecturers on topics of current interest. Last year the theme of the course was *International law and the maintenance of international peace and security*. The courses were administered to 49 participants from across the continent by 24 lecturers from the Americas and Europe.

Thank you very much.

Visits to the Inter-American Juridical Committee

The Inter-American Juridical Committee invited the following guests to participate in the sessions in 2004:

- Ambassador João Clemente Baena Soares, former Secretary General of OAS.
- Dr. Antônio Augusto Cançado Trindade, Member of the Inter-American Court of Human Rights.
- Ambassador Allan Wagner Tizón, Secretary General of the Andean Community.
- Dr. Jonathan Fried, Senior Foreign Policy Advisor to the Canadian Prime Minister.
- Dr. A. Ralph Carnegie, Executive Director, Caribbean Law Institute, University of the West Indies.
- Dr. Diego Fernandez Arroyo, professor of Complutense University of Madrid.
- Dr. Dalva Marques Martins, professor of Estácio de Sá University, Rio de Janeiro.
- Dr. Cecilia Fresnedo, professor of private international law from the University of the Republic and Catholic University of Uruguay.
- Dr. Alejandro Daniel Perotti, legal advisor of the Secretariat of MERCOSUR.

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