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INTER-AMERICAN JURIDICAL COMMITTEE

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OF THE INTER-AMERICAN JURIDICAL COMMITTEE
TO THE GENERAL ASSEMBLY

2006

EXPLANATORY NOTE

Until 1990, the OAS General Secretariat published the *Final Acts* 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 (now the Office of International Law of the Department of International Legal Affairs) of the OAS General Secretariat began to publish those documents under the title *Annual Report of the Inter-American Juridical Committee to the General Assembly*.

According to 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 2006, 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 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), AG/RES.2042 (XXXIV-O/04), AG/RES.2136 (XXXV-O/05), and AG/RES.2197 (XXXVI-O/06), 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 International Criminal Court; legal aspects of the interdependence between democracy and economic and social development; preparations for commemoration of the centennial of the Inter-American Juridical Committee; the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII); consideration of the task of codifying and standardizing international law in the Americas; the right to information: access to and protection of information and personal data; principles of judicial ethics; legal aspects of inter-American security; joint efforts of the Americas in the struggle against corruption and impunity; follow-up on the application of the *Inter-American Democratic Charter*; preparation of a draft inter-American convention against racism and all forms of discrimination and intolerance; and thoughts on the challenges of the Inter-American Juridical Committee.

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 2006 and contains 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, as well as thematic and keyword indexes to help the reader locate documents in this *Report*.

Dr. Jean-Paul Hubert, Chair 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 Board 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, with 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 20 years later, in 1967, the Third Special Inter-American Conference convened in Buenos Aires, Argentina, 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 Inter-American Juridical Committee is in Rio de Janeiro, in special cases it may meet elsewhere that may be appointed after consulting the member State concerned. The Juridical Committee consists of eleven jurists who are nationals of the member States of the Organization. Together, those jurists represent all the States. The Juridical Committee also enjoys as much technical autonomy as possible.

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

A. 68th regular session

The Inter-American Juridical Committee held its 68th regular session at the headquarters of the Organization of American States, in Washington, D.C., from March 20 to 31, 2006. The opening session was attended by the Secretary General of the OAS, José Miguel Insulza, who delivered welcoming remarks.

The members of the Inter-American Juridical Committee present at that regular session are listed below, in the order of precedence determined by lot during the first session, in accordance with Article 28.b of the *Rules of Procedure of the Inter-American Juridical Committee*.

Mauricio Herdocia Sacasa (Chair)
Luis Marchand Stens
Galo Leoro Franco
Ana Elizabeth Villalta Vizcarra
Jean-Paul Hubert (Vice-Chair)
Antonio Fidel Pérez
Jaime Aparicio
José Manuel Delgado Ocando

Drs. João Grandino Rodas, Eduardo Vio Grossi, and Alonso Gómez-Robledo Verduzco did not attend the 68th regular session.

On behalf of the General Secretariat, technical and administrative support was provided by Dr. Jean-Michel Arrighi, Director of the Department of International Legal Affairs; and, from the Office of International Law, Dante M. Negro, Director, Manoel Tolomei Moletta, Principal Legal Officer, and John Wilson and Luis Toro, Legal Officers.

In keeping with Article 12 of the *Rules of Procedure of the Inter-American Juridical Committee*, Dr. Mauricio Herdocia Sacasa, Chair of the Juridical Committee, presented his report on the Committee's activities since its last session.

He also welcomed Dr. Jaime Aparicio (Bolivia) and Dr. José Manuel Delgado Ocando (Venezuela), who had recently been elected as members by the General Assembly, at its thirty-fifth regular session, held in Fort Lauderdale, United States of America, in June 2005.

At this regular session, the Inter-American Juridical Committee also adopted resolution CJI/RES.109 (LXVIII-O/06), *Homage to the memory of Dr. Jorge Antonio Aja Espil*, in honor of the late former member and chair of the Juridical Committee.

CJI/RES.109 (LXVIII-O/06)

HOMAGE TO THE MEMORY OF DR. JORGE ANTONIO AJA ESPIL

THE INTER-AMERICAN JURIDICAL COMMITTEE,

BEARING IN MIND the sad demise on August 31st of Dr. Jorge Antonio Aja Espil, distinguished Argentine jurist, former member and chairman of the Inter-American Juridical Committee;

RECALLING that Dr. Aja Espil was a member of the Inter-American Juridical Committee for seventeen years running from 1967 to August 1984, and chair from 1983 to 1984, on which occasions he offered his vast cultural, academic and scientific expertise to valuable contributions to the work of the Juridical Committee and toward developing and codifying inter-American and international law;

CONSIDERING the senior positions that Dr. Aja Espil held in his country, and as Ambassador for the Argentine Republic to the OAS and government of the United States of

America, as well as his numerous legal papers that are an intellectual legacy to the law of the Americas,

RESOLVES:

1. To pay sincere tribute and recognition to the memory of Dr. Jorge Antonio Aja Espil whose decease is a painful loss not only to Argentina, his country, but also to the international community.

2. To send a copy of this resolution offering most sincere condolences to the family of Dr. Jorge Antonio Aja Espil.

This resolution was unanimously adopted at the session on March 31st, 2006 in the presence of the following members: Drs. Mauricio Herdocia Sacasa, Jean-Paul Hubert, Luis Marchand Stens, Galo Leoro Franco, Ana Elizabeth Villalta Vizcarra, Antonio Fidel Perez, Jaime Aparicio and José Manuel Delgado Ocando.

Lastly, the Inter-American Juridical Committee decided to adopt resolution CJI/RES.107 (LXVIII-O/06), *Date and venue of the 69th regular session of the Inter-American Juridical Committee*, whereby it resolved to hold the 69th regular session at its seat, in Rio de Janeiro, from August 7 to 25, 2006.

CJI/RES.107 (LXVIII-O/06)

**DATE AND VENUE OF THE
69th REGULAR SESSION OF THE
INTER-AMERICAN JURIDICAL COMMITTEE**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that article 15 of its Statutes provides for holding two regular sessions a year,

RESOLVES to hold its 69th regular session at its headquarters in the city Rio de Janeiro in the month of August, 2006.

This resolution was unanimously adopted during the session held on March 29, 2006, in the presence of the following members: Mauricio Herdocia Sacasa, Jean-Paul Hubert, Luis Marchand Stens, Ana Elizabeth Villalta Vizcarra, Jaime Aparicio, Galo Leoro Franco, Antonio Fidel Pérez and José Delgado Ocando.

During this session, the Inter-American Juridical Committee had before it the following agenda, adopted by resolution CJI/RES.99 (LXVII-O/05), *Agenda for the 68th regular session of the Inter-American Juridical Committee*:

CJI/RES.99 (LXVII-O/05)

**AGENDA FOR THE 68TH REGULAR SESSION
OF THE INTER-AMERICAN JURIDICAL COMMITTEE**

(Washington, DC, March 20th to 31st, 2006)

A. Topics under consideration

1. Legal aspects of the interdependence between democracy and economic and social development
Rapporteur: Dr. Jean-Paul Hubert
2. Seventh Inter-American Specialized Conference on Private International Law – CIDIP-VII
Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra, João Grandino Rodas and Antonio Fidel Pérez
3. Consideration on the codification and standardization of international law in the Americas
Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra, João Grandino Rodas and Antonio Fidel Pérez

4. Right to information: access and protection of information and personal data
Rapporteur: Dr. Alonso Gómez Robledo
5. Principles of Judicial Ethics
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. International Criminal Court
Rapporteur: Dr. Mauricio Herdocia Sacasa

B. Topics for follow-up

1. Legal aspects of the inter-American security
Rapporteurs: Drs. Eduardo Vio Grossi, Luis Marchand Stens, Ana Elizabeth Villalta Vizcarra and Mauricio Herdocia Sacasa
2. Joint efforts of the Americas in the struggle against corruption and impunity
Rapporteur: Dr. Ana Elizabeth Villalta Vizcarra
3. Follow-up on the application of the Inter-American Democratic Charter
Rapporteurs: Drs. Eduardo Vio Grossi and Antonio Fidel Pérez
4. Preparation of a draft Inter-American convention against racism and any kind of discrimination and intolerance

This resolution was adopted unanimously at the session held on August 18, 2005 in the presence of the following members: Drs. Mauricio Herdocia Sacasa, Luis Herrera Marcano, Galo Leoro Franco, Antonio Fidel Pérez, Eduardo Vio Grossi, Ana Elizabeth Villalta Vizcarra, Stephen C. Vasciannie, Luis Marchand Stens and João Grandino Rodas.

At this regular session the Juridical Committee also held two workshops with the American Society of International Law. The first dealt with democracy in the Americas. It was moderated by the Chair of the Juridical Committee, Dr. Mauricio Herdocia Sacasa, and had four panelists: Antonio Fidel Pérez, member of the IAJC, who spoke on means of defending democracy within the inter-American system; Jean-Paul Hubert, Vice-Chair of the IAJC, who spoke on the links between democracy and economic and social development; Ruti Teitel, Professor of Comparative Law at New York Law School, who spoke on democratization, the rule of law, and hemispheric security; and Lisa Davis, of Freedom House, who spoke on the various regional systems for protecting democracy.

The second workshop was on the International Criminal Court. It was moderated by Professor José Alvarez of Columbia University, president-elect of the American Society of International Law. Two of the panelists were members of the Juridical Committee: Dr. Ana Elizabeth Villalta Vizcarra, who addressed the topic in general terms, and Dr. Mauricio Herdocia Sacasa, who spoke on OAS member States and the International Criminal Court. The other two speakers were Professor Allison Danner, of Vanderbilt University School of Law and the University of California, who spoke on the implementation of the *Rome Statute*, and Dr. Silvia Fernández of Gurmendi, Chief of Staff and Special Adviser to the Prosecutor of the International Criminal Court, who spoke on the structure and operations of that Court.

In the context of these two workshops, the Juridical Committee members attended a dinner and informal discussion on legal education in the United States, held at the Washington College of Law of the American University; a talk given by Judge Thomas Buergenthal of the International Criminal Court, at George Washington University; and a dinner given by the American Society of International Law at the Cosmos Club.

Also, on March 30, the Inter-American Juridical Committee participated in a special meeting of the Committee on Juridical and Political Affairs, in response to resolution AG/RES.2150 (XXXV-O/05), *Obligation of Member States to respect the rules and principles of International Law contained in the OAS Charter in order to preserve and strengthen peace in the Hemisphere*, and at the invitation of the Chair of the CAJP.

Finally, in commemoration of the centennial of the Inter-American Juridical Committee, the Permanent Council, in view of the presence of the IAJC members at OAS headquarters, held a ceremony on March 29 with the delegations of the OAS member States.

B. 69th regular session

The 69th regular session of the Inter-American Juridical Committee was held from August 7 to 25, 2006, at its seat, in Rio de Janeiro, Brazil.

The members of the Inter-American Juridical Committee present at that regular session are listed below, in the order of precedence determined by lot during the first session, in accordance with Article 28.b of the *Rules of Procedure of the Inter-American Juridical Committee*.

Jean-Paul Hubert (Chair)
Eduardo Vio Grossi
João Grandino Rodas
Jaime Aparicio (Vice-Chair)
Ana Elizabeth Villalta Vizcarra
Galo Leoro Franco
Mauricio Herdocia Sacasa
Antonio Fidel Pérez

Drs. Alonso Gómez Robledo Verduzco, Luis Marchand Stens and José Manuel Delgado Ocando were unable to attend the 69th regular session. The Chair of the IAJC read aloud a letter of resignation from Dr. Delgado Ocando. He indicated that the resignation had been reported to the Permanent Council of the Organization, which had already set the timeframe for election of a new member of the Committee to fill the vacancy.

On behalf of the General Secretariat, technical and administrative support was provided by Dr. Jean-Michel Arrighi, Director of the Department of International Legal Affairs; and, from the Office of International Law, Dante M. Negro, Director, Manoel Tolomei Moletta, Principal Legal Officer, and John Wilson, Legal Officer.

In keeping with Article 12 of the *Rules of Procedure of the Inter-American Juridical Committee*, the Chair of the Juridical Committee presented his report on the Committee's activities since its last session.

Likewise, the Chair of the IAJC reported that the General Assembly, at its thirty-sixth regular session (Santo Domingo, June 2006), had elected as members of the Juridical Committee Dr. Hyacinth Evadne Lindsay (Jamaica), Dr. Jorge Palacios Treviño (Mexico) and Dr. Ricardo Antônio Silva Seitenfus (Brazil). The terms of these three members begin on January 1, 2007, and last four years. Later, on October 12, 2006, the OAS Permanent Council elected Dr. Freddy Castillo Castellanos (Venezuela) to complete the term of Dr. José Manuel Delgado Ocando, who had resigned; that term runs through December 31, 2009.

The Inter-American Juridical Committee also adopted resolutions CJI/RES.110 (LXIX-O/06) and CJI/RES.112 (LXIX-O/06), whereby they expressed appreciation for the work performed by Dr. Luis Marchand Stens and Dr. João Grandino Rodas in their capacity as Committee members. The two completed their terms on December 31, 2006.

CJI/RES.110 (LXIX-O/06)**HOMAGE TO AMBASSADOR LUIS MARCHAND STENS**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that the 31st December will bring to an end Ambassador Luis Marchand Stens's mandate as a member of the Inter-American Juridical Committee;

RECALLING that Ambassador Marchand was also a member of the Inter-American Juridical Committee between January 1997 and August 2000;

AWARE of the meritorious contribution lent by Ambassador Luis Marchand Stens to the work of the Juridical Committee and to the development and codification of international law, especially on the topics of hemispheric and inter-American security, improvement of the administration of justice in the Americas, inter-American cooperation against terrorism, and the legal dimension of international integration and commerce,

HIGHLIGHTING the various qualities of Ambassador Marchand, among which are his vast legal expertise, diplomatic skills and cordial approach which have distinguished him among the members of the Juridical Committee,

RESOLVES:

1. To express its deep gratitude to Ambassador Luis Marchand Stens for his dedication and invaluable contribution to the work of the Inter-American Juridical Committee.

2. To wish Ambassador Luis Marchand Stens continued success in the work that undertakes in the future, in the hope that this work will enable him to maintain his close ties with the Inter-American Juridical Committee.

3. To convey this resolution to Ambassador Luis Marchand Stens, as well as to the other bodies of the Organization.

This resolution was adopted unanimously at the session held on August 17, 2006, by the following members: Drs. Jean-Paul Hubert, Eduardo Vio Grossi, João Grandino Rodas, Jaime Aparicio, Ana Elizabeth Villalta Vizcarra, Galo Leoro Franco, Mauricio Herdocia Sacasa and Antonio Fidel Pérez.

CJI/RES.112 (LXIX-O/06)**HOMAGE TO DOCTOR JOÃO GRANDINO RODAS**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that the 31 December will bring to an end Dr. João Grandino Rodas's mandate as a member of the Inter-American Juridical Committee;

RECALLING that Dr. João Grandino Rodas was elected as member of the Inter-American Juridical Committee for three consecutive mandates since April 1994, having acted as Vice-Chairman during the period from 1998 to 1999, when he replaced the Chairman, and as Chairman in the 2000-2002 period;

BEARING IN MIND that in the exercise of his duties within the Inter-American Juridical Committee, Dr. João Grandino Rodas worked tirelessly to develop studies on the topics for which he was rapporteur, notably *Preparing model legislation concerning illicit traffic and transnational bribery*, the various topics in preparation of the Specialized Inter-American Conferences on Private International Law (CIDIPs), *Abduction of children by one of the parents*, and *Competition Law in the Americas*,

RESOLVES:

1. To express its heartfelt gratitude to Dr. João Grandino Rodas for his dedication and invaluable contribution to the work of the Inter-American Juridical Committee both as a member

and as Chairman, at which time he showed his high personal qualities and prominence as international jurist.

2. To wish Dr. João Grandino Rodas continued success in the activities he undertakes in the future.

3. To convey this resolution to Dr. João Grandino Rodas, as well as to the other bodies of the Organization.

This resolution was adopted unanimously at the session held on August 18, 2006, by the following members: Drs Jean-Paul Hubert, Eduardo Vio Grossi, Jaime Aparicio, Ana Elizabeth Villalta Vizcarra, Galo Leoro Franco, Mauricio Herdocia Sacasa and Antonio Fidel Pérez.

During its 69th session, the Inter-American Juridical Committee had before it the following agenda, adopted by resolution CJI/RES.108 (LXVIII-O/06), *Agenda for the 69th regular session of the Inter-American Juridical Committee*.

CJI/RES.108 (LXVIII-O/06)

AGENDA FOR THE 69TH REGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE

(Rio de Janeiro, Brazil, August 7 to 25, 2006)

A. Topics under consideration

1. Preparations in commemoration of the centennial of the Inter-American Juridical Committee
Coordinators: Drs. Eduardo Vio Grossi, João Grandino Rodas and Mauricio Herdocia Sacasa
2. Seventh Inter-American Specialized Conference on Private International Law – CIDIP-VII
Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra, João Grandino Rodas and Antonio Fidel Pérez
3. Consideration on the task of codifying and unifying international law in the Americas
Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra, João Grandino Rodas and Antonio Fidel Pérez
4. Right to information: access to and protection of information and personal data
Rapporteurs: Drs. Alonso Gómez Robledo, Antonio Fidel Pérez and Jaime Aparicio
5. Principles of Judicial Ethics
Rapporteur: Dr. José Manuel Delgado Ocando
6. International Criminal Court
Rapporteur: Dr. Mauricio Herdocia Sacasa
7. Preparation of a draft inter-American convention against racism and any kind of discrimination and intolerance
Rapporteur: Dr. Jaime Aparicio

B. Topics for follow-up

1. Legal aspects of the interdependence between democracy and economic and social development
Coordinator: Dr. Jean-Paul Hubert
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. Follow-up on the application of the Inter-American Democratic Charter
Rapporteur: Drs. Eduardo Vio Grossi and Antonio Fidel Pérez

This resolution was adopted unanimously at the session held on March 29, 2006 in the presence of the following members: Drs. Mauricio Herdocia Sacasa, Jean-Paul Hubert, Luis Marchand Stens, Ana Elizabeth Villalta Vizcarra, Jaime Aparicio, Galo Leoro Franco, Antonio Fidel Pérez and José Miguel Delgado Ocando.

During this session, the IAJC also adopted its agenda for the 70th regular session, set forth in resolution CJI/RES.113 (LXIX-O/06), *Agenda for the 70th regular session of the Inter-American Juridical Committee*. And it decided, by way of resolution CJI/RES.114 (LXIX-O/06), *Date and venue of the 70th regular session of the Inter-American Juridical Committee*, to hold that session at its headquarters, in Rio de Janeiro, from February 26 to March 9, 2007, without prejudice to delegating to its Chair the decision to hold the session elsewhere, should such a proposal be received from a government. Later, on October 9, 2006, the Minister of Foreign Affairs of El Salvador, Mr. Francisco Esteban Lainez Rivas, formally invited the Juridical Committee to hold its 70th regular session in San Salvador. The Chair of the IAJC sent a note to the Minister of Foreign Affairs of El Salvador, dated October 18, 2006, accepting that invitation on behalf of the Juridical Committee.

CJI/RES.113 (LXIX-O/06)

AGENDA FOR THE 70th REGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE

(Rio de Janeiro, March 2007)

B. Topics under consideration

1. Seventh Inter-American Specialized Conference on Private International Law – CIDIP-VII
Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra, João Grandino Rodas and Antonio Fidel Pérez
2. Consideration on the task of codifying and unifying international law in the Americas
Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra, João Grandino Rodas and Antonio Fidel Pérez
3. Right to information: access to and protection of information and personal data
Rapporteurs: Drs. Alonso Gómez Robledo, Antonio Fidel Pérez and Jaime Aparicio
4. Principles of judicial ethics
Rapporteur: Dr. Ana Elizabeth Villalta Vizcarra
5. International Criminal Court
Rapporteur: Dr. Mauricio Herdocia Sacasa
6. Preparation of a draft inter-American convention against racism and any kind of discrimination and intolerance
Rapporteur: Dr. Jaime Aparicio
7. Thoughts on the challenges of the Inter-American Juridical Committee
Rapporteur: Dr. Eduardo Vio Grossi

B. Topics for follow-up

1. Legal aspects of the interdependence between democracy and economic and social development
Coordinator: Dr. Jean-Paul Hubert

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. Follow-up on the application of the Inter-American Democratic Charter
Rapporteur: Drs. Eduardo Vio Grossi and Antonio Fidel Pérez

This resolution was adopted unanimously at the session held on August 18th 2006 in the presence of the following members: Drs. Jean-Paul Hubert, Eduardo Vio Grossi, João Grandino Rodas, Jaime Aparicio, Ana Elizabeth Villalta Vizcarra, Galo Leoro Franco, Mauricio Herdocia Sacasa and Antonio Fidel Pérez.

CJI/RES.114 (LXIX-O/06)

**DATE AND VENUE OF THE 70TH 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 70th regular session in the offices of the Inter-American Juridical Committee in the city of Rio de Janeiro, from February 26th to March 9th, 2007, 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 18th, 2007, by the following members: Drs. Jean-Paul Hubert, Eduardo Vio Grossi, João Grandino Rodas, Jaime Aparicio, Ana Elizabeth Villalta Vizcarra, Galo Leoro Franco, Mauricio Herdocia Sacasa and Antonio Fidel Pérez.

Lastly, during this session, the Inter-American Juridical Committee elected a new Chair and a new Vice-Chair to two-year terms. On August 11, Dr. Jean-Paul Hubert was elected Chair and Dr. Jaime Aparicio was elected Vice-Chair.

CHAPTER II

**TOPICS DISCUSSED BY THE
INTER-AMERICAN JURIDICAL COMMITTEE
AT THE REGULAR SESSIONS HELD IN 2006**

During 2006 the Inter-American Juridical Committee held two regular sessions. The Juridical Committee had the following topics on its agenda for those two meetings: the International Criminal Court; legal aspects of the interdependence between democracy and economic and social development; preparations for commemoration of the centennial of the Inter-American Juridical Committee; the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII); consideration of the task of codifying and harmonizing international law in the Americas; the right to information: access to and protection of information and personal data; principles of judicial ethics; legal aspects of inter-American security; joint efforts of the Americas in the struggle against corruption and impunity; follow-up on the application of the *Inter-American Democratic Charter*; preparation of a draft inter-American convention against racism and all forms of discrimination and intolerance; and thoughts on the challenges of the Inter-American Juridical Committee.

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. International Criminal Court

Resolution

CJI/RES.105 (LXVIII-O/96) - *Promotion of the International Criminal Court*

Annex: CJI/doc.211/06 corr.1- *International Criminal Court*
(presented by Dr. Mauricio Herdocia Sacasa)

During its 68th regular session (Washington, D.C., March 2006), with the support of the Office of International Law and the American Society of International Law, the Inter-American Juridical Committee conducted a workshop entitled “Democracy in the Americas and the International Criminal Court.” The second meeting of that workshop addressed Topic II on the International Criminal Court. The moderator for that meeting was Professor José Álvarez of Columbia University and President-elect of the American Society of International Law.

Two members of the Inter-American Juridical Committee took part as panelists: Dr. Ana Elizabeth Villalta Vizcarra, who spoke about the broad background to the topic and Dr. Mauricio Herdocia Sacasa, who spoke about OAS member States and the International Criminal Court. The other two guest speakers were Professor Allison Danner of the Vanderbilt University School of Law and the University of California, who spoke about implementation of the *Rome Statute*, and Dr. Silvia Fernández of Gurmendi, Chief of Staff and Special Advisor to the Prosecutor of the International Criminal Court, who spoke about the structure and *modus operandi* of the International Criminal Court.

During its 68th regular session (Washington, D.C., March 2006), the Inter-American Juridical Committee examined document CJI/doc.211/06, *International Criminal Court*, presented by Dr. Mauricio Herdocia Sacasa, pursuant to operative paragraph 6 of General Assembly resolution AG/RES.2072 (XXXV-O/05).

Dr. Herdocia stated that the report contains a background section with statistics and an analysis of certain relevant provisions of the *Rome Statute*, such as *ne bis in idem*, the irrelevance of official capacity, the functions and powers of the Prosecutor of the International Criminal Court, detention procedure, life imprisonment, and pardons and amnesties. He said it also refers to studies by the Inter-American Commission on Human Rights, the Inter-American Juridical Committee, and the International Criminal Court’s Working Group. At the end of the report, the rapporteur summarizes the answers to the questionnaire of the member States who replied and the conclusions of the report. Eleven of the 17 countries that replied to the questionnaire are parties to the *Rome Statute*: Argentina, Bolivia, Brazil, Canada, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Uruguay, and Paraguay. The countries that replied to the questionnaire, but which are not parties to the *Rome Statute*, are: Chile, El Salvador, Guatemala, Nicaragua, Suriname, and United States.

Finally, the Inter-American Juridical Committee adopted resolution CJI/RES.105 (LXVIII-O/06), *International Criminal Court*, which approves document CJI/doc.211/06 corr.1, presented by the rapporteur, and asks the General Secretariat to forward said document to the OAS Permanent Council in order for it to submit it in turn to the OAS General Assembly at its thirty-sixth regular session. Via the General Secretariat, it also requests member States that have not yet replied to the questionnaire drawn up by the Committee to fill it in, while asking States Parties to the *Statute of the International Criminal Court* that have completed the process of adopting laws and implementing Parts IX and X of that *Statute* to notify the Inter-American Juridical Committee of that fact. The resolution also requests States that have completed the process of adopting laws that incorporate, modify, or add the criminal offenses addressed in the *Rome Statute* to provide updated information thereon to the Inter-American Juridical Committee. States Parties to the *Rome Statute* are also requested to report any other amendment that facilitates cooperation with the International

Criminal Court. Finally, the Inter-American Juridical Committee decided to retain among the agenda items under consideration that which refers to “Promotion of the International Criminal Court” and to request the rapporteurs on this subject to submit an updated report to the Committee at its next regular session, based on fresh information from OAS member States on the aforementioned issues.

On April 29, 2006, the Chairman of the Inter-American Juridical Committee wrote a note to the OAS Secretary General, forwarding resolution CJI/RES.105 (LXVIII-O/06) for the attention of the OAS Permanent Council and attaching report CJI/doc.211/06 corr.1.

For its part, the Office of International Law notified the Permanent Missions to the OAS on May 18, 2006 of the contents of said resolution. Both documents are included at the end of the present sub-chapter.

At its thirty-sixth regular session (Santo Domingo, June 2006), the OAS General Assembly adopted resolutions AG/RES.2218 (XXXVI-O/06) and AG/RES.2176 (XXXVI-O/06), in which it asked the Inter-American Juridical Committee to continue addressing the issue. Furthermore, it asked the Committee to prepare a set of recommendations to OAS member States, based on the findings of the report submitted (CP/doc. 4111/06), regarding ways to strengthen cooperation with the International Criminal Court and any progress made, and to submit them to the Permanent Council for forwarding to the General Assembly at its thirty-seventh regular session.

At its 69th regular session (Rio de Janeiro, August 2006), and in compliance with General Assembly resolutions AG/RES.2218 and AG/RES.2176, the Inter-American Juridical Committee discussed this topic. The rapporteur gave an overview of the contributions received at the working session that the OAS Committee on Juridical and Political Affairs held with the representative of the International Criminal Court on February 3, 2006, and explained that with the results of that session he would proceed to study and draw up the documents necessary to fulfill the applicable mandates.

CJI/RES.105 (LXVIII-O/06)

PROMOTION OF THE INTERNATIONAL CRIMINAL COURT

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING resolution AG/RES.2072 (XXXV-O/05) adopted by the OAS General Assembly during its 35th regular session (Fort Lauderdale, June 2005), by which the Inter-American Juridical Committee was requested to draw up a questionnaire to be presented to the member States of the OAS concerning the manner in which their legislation is able to cooperate with the International Criminal Court, and to present a report on the results of this questionnaire to the Permanent Council, which in turn will present it at the 36th regular session of the General Assembly of the Organization;

BEARING IN MIND that during its 68th regular session (Washington, D.C., March 2006), the Inter-American Juridical Committee considered document CJI/doc.211/06, *International Criminal Court*, presented by the rapporteur of the topic, Dr. Mauricio Herdocia Sacasa,

RESOLVES:

1. To thank the rapporteur of the topic, Dr. Mauricio Herdocia Sacasa, for his presentation of document CJI/doc.211/06, *International Criminal Court*.
2. To approve document CJI/doc.211/06, *International Criminal Court*, and ask the General Secretariat to forward it to the Permanent Council of the OAS so that it, in turn, can present it at the 36th regular session of the General Assembly of the Organization, as stated in resolution AG/RES.2072 (XXXV-O/05).
3. To request the member States of the OAS through the General Secretariat that have not yet answered the questionnaire prepared by the Inter-American Juridical Committee to complete said questionnaire, and to those States Parties to the *Statute of the International*

Criminal Court that undertook the law approval process to implement parts IX and X of the *Statute*, to send such information to the Inter-American Juridical Committee.

4. Also to request the States that completed the law approval process of including, modifying or adding the types of crime stated in the *Rome Statute*, to provide the Inter-American Juridical Committee with that updated information.

5. Also to request the States Parties to the *Rome Statute* to inform about any other reform that enables cooperation with the International Criminal Court.

6. To keep on their agenda among the topics under study the subject of the “Promotion of the International Criminal Court”, and to request the rapporteur of the topic, Dr. Mauricio Herdocia Sacasa, as new information is received by the OAS member States in relation to points 3, 4 and 5 herein, to present an updated report at the next regular session of the Inter-American Juridical Committee.

This resolution was adopted unanimously at the regular session on March 28, 2006 by the following members: Drs. Mauricio Herdocia Sacasa, Jean-Paul Hubert, Luis Marchand Stens, Galo Leoro Franco, Ana Elizabeth Villalta Vizcarra, Antonio Fidel Pérez, Jaime Aparicio and José Manuel Delgado Ocando.

CJI/doc.211/06 corr.1*

INTERNATIONAL CRIMINAL COURT

(presented by Dr. Mauricio Herdocia Sacasa)

I. MANDATE AND ORIGIN OF THE REPORT¹

The General Assembly of the Organization of American States (OAS), under resolution AG/RES. 2072 (XXXV-O/05) of 7th June 2005, in its resolute paragraph 6 decided “To urge the Inter-American Juridical Committee to prepare a questionnaire to be presented to the member States of the OAS concerning the manner in which their legislation is able to cooperate with the International Criminal Court and to present a report on the results of this questionnaire to the Permanent Council, which in turn will present it at the 36th Regular Session of the General Assembly of the Organization”.

On this basis, during its 67th regular session in August 2005, the Inter-American Juridical Committee approved the inclusion in its agenda of the subject: “Promotion of the International Criminal Court”.

The final document of the *Questionnaire on the International Criminal Court* corresponds to resolution CJI/doc.198/05 rev.1, approved by resolution CJI/RES.98 (LXVII-O/05), in accordance with the mandate issued by the General Assembly. This questionnaire covers both States Parties and those that are not party of the Rome Statute.

The questionnaire was answered by 17 countries, 11 of which are Parties to the Rome Statute, namely: Canada, Argentina, Ecuador, Bolivia, Colombia, Mexico, Uruguay, Dominican Republic, Costa Rica, Brazil y Paraguay; and six are not party to the Rome Statute, namely: Surinam, El Salvador, Nicaragua, Chile, Guatemala and the United States of America².

II. GENERAL STATUS OF THE ROME STATUTE³

The Rome Statute created the International Criminal Court in Rome on July 17, 1998 and came into effect on July 1, 2002.

* A corrigendum of this document was issued in order for the English version, which had misplaced a member State in Annexes I to III, to comply with the correct Spanish original.

¹ This report does not intend nor was able to include all answers given by the States but provides what seems to be an indicative for the established purposes.

² The United States of America made a reservation to resolution AG/RES. 2072 (XXXV-O/05). It states, among other issues, that “...it will continue to firmly defend the principle of responsibility for war crimes, genocide and crimes against humanity, but cannot endorse the International Criminal Court because it considers that it has serious deficiencies...”

³ Data on November 14, 2005. www.icc.cpi.int.

The Statute currently has 139 signatories, 25 of which belong to the inter-American system. Almost 25 percent of the 100 ratifications or adhesions worldwide correspond to OAS member States.

There are 22 countries in the inter-American system that ratified or adhered to the Rome Statute, as follows:

Antigua & Barbuda (June 18, 2001), Argentina (February 8, 2001), Barbados (December 10, 2002), Belize (April 5, 2000), Bolivia (June 27, 2002), Brazil (June 14, 2002), Canada (July 7, 2000), Colombia (August 5, 2002), Costa Rica (June 7, 2001), Dominica (February 12, 2001), Dominican Republic (May 12, 2005) Ecuador (February 5, 2002), Guyana (September 24, 2004), Honduras (July 1, 2002), Mexico (October 28, 2005), Panama (March 21, 2002), Paraguay (May 14, 2001), Peru (November 10, 2001), St Vincent & the Grenadines (December 3, 2002), Trinidad & Tobago (April 6, 1999), Uruguay (June 28, 2002), Venezuela (June 7, 2000).

Thirteen member States of the Organization did not ratify or adhere to the Rome Statute. They are: Bahamas, Chile, Haiti, Jamaica, St. Lucia, USA, Grenada, Guatemala, Nicaragua, El Salvador, St. Kitts & Nevis, Cuba and Surinam.

The Agreement on the Privileges and Immunities of the International Criminal Court was ratified or accepted by the following countries: Belize (September 14, 2005), Canada (June 22, 2004), Guyana (November 16, 2005), Panama (August 16, 2004), Paraguay (July 19, 2005) and Trinidad & Tobago (February 6, 2003).

III. SOME OF THE MAIN WORKING MEASURES PROVIDED FOR IN THE STATUTE

Part IX. International Cooperation and Judicial Assistance

- The States shall cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.
- The States must assure that the national law contains procedures to apply the forms of cooperation that the Statute specifies.
- The States shall meet requests for arrest and surrender of people, pursuant to the Statute and procedure of national law.
- In a case of *ne bis in idem*, the Court will determine whether it should accept the case. If it is admissible, the State shall proceed to perform the request.
- A State Party shall authorize transit through its territory of a person being surrendered to the Court by another State.
- If, besides the Court, another party requests a certain person, then priority will be given to the Court, unless in specific cases.
- The Court may request the arrest of a person in case of urgency, immediately collecting the necessary formalities.
- The States shall proceed to perform requests made by the Court in relation to criminal investigations or trials whenever they are not contrary to the requesting party's legislation and help facilitate investigations and trials.
- The Court may also cooperate with the States Parties or non-parties (at their request) on matters constituting a crime submitted to the competence of the Court, or a serious crime in accordance with the national law of the requesting State.

Part X. Enforcement

- A prison sentence will be served in a State appointed by the Court based on a list of States that have informed the Court of their willingness to receive convicts.
- Fines or orders of seizure decreed by the Court will be made effective by the States Parties, and should the State fail to do so, it will take measures to charge

the value of the product, goods or proceeds whose forfeit is decreed by the Court. The goods or their proceeds will be transferred to the Court.

IV. POINTS THAT MAY BECOME CONFLICTUAL

From precedents, it is important to comment briefly on some points that have arisen as possible sources of conflict deriving from the Statute for national legislations, in order to facilitate the understanding of the answers to the questionnaire.

Art. 20 - *NE BIS IN IDEM*

As a general rule, the Statute does not permit a double trial, but in some particular cases if, for example, when a proceeding is judged by another court, it fulfills the intent to remove the defendant from his criminal responsibility for crimes under the Court's competence, or when the court was not constituted independently or impartially, with the due procedural guarantees recognized by International Law.

Acceptance of the exceptions to a double trial is one of the problems commonly found in the application of the Statute. Many countries have succeeded in overcoming it but not others.

In the case of El Salvador, it indicates that its Constitution does not permit the re-opening of the *ne bis in idem*.

Art. 27 - IRRELEVANCE OF OFFICIAL CAPACITY

Many constitutions also regulate a special process for judging people who hold a certain office, acting sometimes as immunity for the person, as in the case of heads of State or government of certain States.

The Statute makes no distinction of an official capacity and judges everyone as an equal. Immunities and special rules of procedure included in a person's official capacity will not prevent the Court from exercising its competence.

Mexico and El Salvador establish a special procedure for certain persons as a result of their position. Costa Rica poses constitutional questions in relation to this article 27 of the Statute.

Art. 54 Item 2 - DUTIES AND POWERS OF THE PROSECUTOR WITH RESPECT TO INVESTIGATIONS

The Rome Statute gives major legal authority to the prosecutor, who is permitted to conduct investigations in the territory of a State. Chile comments on the problems in fulfilling certain duties between the national Prosecutor and that of the ICC.

Art. 59 - ARREST PROCEEDINGS IN THE CUSTODIAL STATE and Art. 89 - SURRENDER OF PERSONS TO THE COURT

This is one of the points that has raised most problems for ratification or adhesion to and application of the Statute by the States.

In fact, the Statute makes a clear distinction between "extradition" and "surrender". Extradition refers to an inter-State relationship, while surrender refers to the relationship between a State and the Court. Constitutions normally do not make this kind of distinction but the adopting of this criterion would seem to have enabled some States that do not permit extradition of nationals the possibility to accept their surrender solely to the Court. Various opinions of the courts that exercise different forms of Constitutional control (Ecuador, Guatemala, Colombia and Costa Rica) accepted a harmonious interpretation between the Constitution and Statute, considering also the Criminal Court in its complementary dimension.

Nicaragua and Surinam do not permit extradition of nationals, and in the case of Surinam extradition of aliens is regulated by bilateral and multilateral agreements.

Art. 77 - LIFE IMPRISONMENT

Life imprisonment does not exist in the national legislation of most American countries. This means a problem for some countries, as in the case of Nicaragua and El Salvador. Other

countries overcame this problem by reforming their Constitution, as happened in the case of Brazil.

PARDONS AND AMNESTIES

Another potential incompatibility indicated by the Constitutional Court of Chile expressed that the Criminal Court could be unaware of its sentences, pardons or amnesties previously granted by the competent authorities.

COMMENT

As an earlier comment by the rapporteur on these conflicting points, mention is made as an introduction that countries such as Colombia did not make specific amendment to each one of the different regulations that might clash with the Rome Statute. On this matter, they chose to make a single overall reform that permits the Rome Statute to be more assertive before the guaranties contained in the Constitution.

In fact, the Colombian addition to Article 93 of the Constitution indicates that "the admission of a different treatment in matters of substance by the Rome Statute regarding the guaranties in the Constitution will have effects solely within the sphere of the matter regulated therein."

El Salvador is also considering choosing this kind of reform.

In the case of Brazil, some of these possibly contradictory topics caused legal discussions on constitutionality. Nevertheless, Amendment No. 45 to the Federal Constitution, in the chapter on individual and collective rights and duties, states that "Brazil submits to the jurisdiction of the International Criminal Court to whose creation it adhered", which gives full support to the Statute.

V. OTHER REPORTS AND RECOMMENDATIONS REGARDING THE TOPIC, ISSUED PRIOR TO THE MANDATE GIVEN TO IAJC

1. IACHR Report (1999)

The Inter-American Commission on Human Rights in its report OAS/Ser.L/V/II.102/doc. 6 rev., dated April 16, 1999, in chapter VII, issued a series of recommendations on the universal jurisdiction and International Criminal Court, in commemoration of the fifty years of the enactment of the American Declaration of Human Rights and Duties and the Universal Declaration of Human Rights. On this occasion, it registered as one of the most important milestones in contemporary public international law the establishment of the principle of criminal responsibility of the individual in the international system. It stressed that the Diplomatic Conference of Rome approved the Statute of the International Criminal Court as permanent. On this occasion, it recommended "...the member States of the Organization of American States to adopt the necessary legislative and other measures to urge and exercise universal jurisdiction before individuals in terms of crimes of genocide, crimes against humanity, and war crimes". It also recommended, "...the member States of the Organization of American States that did not to do so to sign and ratify the Statute of the International Criminal Court...". On the other hand, in its resolution No. 1/03 dated October 24, 2003, on the judgment of international crimes, the Inter-American Commission of Human Rights resolved, among other questions, the following:

- To urge the States to combat impunity of international crimes by calling upon and exercising their jurisdiction on such crimes based on the different forms of existing jurisdictions.
- To urge the States to take the necessary measures to consider these international crimes as offenses that incur extradition and grant extradition of any person accused of having committed an international crime or proceed to his judgment.
- To urge the States to cooperate in the basic work of preventing, sanctioning, repairing and eradicating such international crimes. Therefore, should two or more States call upon their jurisdiction to judge people accused of having committed

international crimes, they should give preference to the State whose jurisdiction is best for judging such crimes.

- To point out that the principle of territoriality must prevail over that of nationality in cases in which the State where the international crimes occurred is willing to take them to court and offer the appropriate guaranties of the due process of those accused as responsible.
 - To demonstrate that when a State does not grant extradition it will submit the case to its competent authorities as if the crime were committed in the sphere of its jurisdiction, for the purpose of investigation, judgment, and when applicable, sanction those responsible.
2. IACJ report on legal aspects of internal compliance with international court decisions (2005)

Under resolution CJI/RES.67 (LXIII-O/03) the Inter-American Juridical Committee undertook a study on the topic that was finally called: "Legal aspects concerning the States complying internally with sentences passed by international courts or other international organizations with jurisdictional functions".

The study included a questionnaire that was sent to the States with a series of specific questions on the different courts or other international organs with jurisdictional functions. Three of these questions worth mentioning with regard to the International Criminal Court are as follows:

1. Has your country ratified the Statute of the International Criminal Court?
2. Has your country offered that prison sentences stated by the court be served in its territory?
3. Are there constitutional or legislative provisions or administrative practices in your country applicable to serving the Court sentences?

The final report on the topic is "Legal aspects of compliance within the States with decisions of international courts or tribunals other international organs with jurisdictional functions" under abbreviation CJI/doc.199/05 rev. 1, August 15, 2005. A total of 20 countries answered the questionnaire, but Argentina could not be considered in the report since it submitted its answer at a later date.

Fourteen of the States that answered the questionnaire are currently Parties while six are not Party to the Statute of the International Criminal Court⁴.

The report also concludes that no State Party offered its territory for the compliance with sentences of the Court, although two States expressed their intention to do so. Argentina's answer indicated that: "The draft law on implementing the Statute presented by the national Executive in 2002 provides for compliance with prison sentences passed by the Court in the territory of the Republic with regard to nationals".

Lastly, it informs that no decisions of the Court were passed.

3. Working meeting on the International Criminal Court (2005)

Pursuant to resolution AG/RES.2072 (XXXV-O/05) approved on June 7, 2005, in Fort Lauderdale, Florida, the Committee on Juridical and Political Affairs (CAJP) held a working meeting on February 3, 2006, to promote cooperation among OAS member States and the International Criminal Court.

The report by the rapporteur of the working meeting on the International Criminal Court (CP/CAJP-2327/06 corr.1) presents a series of cooperation measures that were proposed and could consider the OAS member States, among which it is worth mentioning the following:

⁴ Mexico was not a Party when the report was written.

- Circulation of information and documents between the States and the Court on crimes that come under its jurisdiction.
- Provision of logistical assistance, for example, transportation and lodging for investigators, witnesses or even victims in cases lodged with the Court.
- Possibility of providing a place of arrest for people convicted of an international crime⁵.
- Training officials to understand the Court's procedures the ICC procedures; and support the participation of civil society in the process of promoting and strengthening ICC.
- Suspending recourse to amnesty laws for such crimes, since they facilitate impunity and affect the policies of the Rome Statute and Court activities.

Added to this should also be one of the recommendations made by the third panel: "Bringing about universal jurisdiction as regards victims, regardless of their nationality or place of residence".

The rapporteur of this meeting said that the main conclusions reached would be the following:

- Delegates expressed great interest in the ways in which their States could cooperate with the ICC.
- The ICC expressed great interest in lending cooperation to and establishing closer ties with the OAS and the member States.
- Delegates recommended that member States that had not yet done so ratify the Rome Statute and the agreements on privileges and immunities and take the necessary measures to adapt their national law to make those instruments fully effective.
- Delegates recommended increased cooperation between the ICC and the OAS General Secretariat.
- Delegates expressed a strong desire to continue holding working meetings with the ICC and to secure the adoption of a General Assembly resolution supporting its activities.

VI. SUMMARY OF THE ANSWERS TO QUESTIONNAIRE APPROVED BY IAJC

- ◆ **(Has your legislation established the following crimes provided in the Statute: Crime of genocide, war crimes and crimes against humanity?)**

With regard to the crime of genocide, 11 States said that they had established it in their legislation, while six States answered in the negative.

Concerning war crimes, nine States affirmed that they had established it in their national legislation, while eight answered in the negative.

In relation to crimes against humanity, only six States answered in the affirmative, while 11 States said that they had not established this crime.

- ◆ **(If so, indicate such definitions and their elements)**

The States in their national laws tend to adopt certain elements of these crimes, but leave others without regulation or address them differently.

Some countries chose to avoid the precise definition of the Statute in their national laws, remitting the content to that established in international conventions.

⁵ The ICC Secretariat, it seems, already requested the OAS member States to consider the possibility of receiving prisoners to serve their sentences in accordance with their national criminal system.

One State informed in detail about certain laws to implement specific conventions relating to those crimes⁶.

Certain countries mention that it is not always possible to find even one regulation applicable to the punishable fact, and it is necessary to resort to a number of provisions in different legal texts.

Other States state that they did not consider such crimes in their laws; however, they said that they included some of the elements of these crimes, mentioning, as an example, the case of war crimes, which many States included in the laws regulating their armed forces.

In the case of the crime of genocide, certain States have defined it with an apparently broader coverage than even established in the Statute⁷.

Although not all States have established these crimes, the vast majority say that they are working to integrate these definitions of crimes provided in the Statute in their own national legal system.

◆ **(Indicate whether the State does or does not have procedures applicable to all forms of cooperation provided for in Part IX (On international cooperation and judicial assistance) and X (On enforcement of sentence), including –but not limited to– the following):**

- Surrender of persons accused, including the implementation of requests for provisional arrest;
- The taking and submission of evidence, both documentary evidence and evidence in the form of testimony of witnesses; and
- The execution of orders of the ICC: (1) concerning the property of persons found criminally responsible for the purpose of providing for the forfeit of proceeds derived from the crime and for the award of reparations to victims; y (2) where applicable, to the serving of sentences.

(The States Parties to the Statute are asked this question)

Bearing in mind the 11 States Parties to the Statute that answered the questionnaire – not including the States that did not ratify or support it – three of them (Costa Rica, Canada and Colombia) state that they have mechanisms specially created for cooperation with ICC, some to a greater degree than others; three States (Mexico, Bolivia and Brazil) say that they do not have a special cooperation procedures for ICC and five States (Uruguay, Argentina, Paraguay, Ecuador and the Dominican Republic) seem to suggest – some more clearly than others - that although they do not have at present a law or regulation specifically created for cooperation with the Court, they would eventually be obliged to provide it through the competent authorities, under the prevailing legal framework before the ratification of or adhesion to the Statute.

Paraguay mentioned that, although it answered positively, certain partial reforms are being discussed in the national Parliament in terms of the order of form and content.

Costa Rica fixed specific regulations for cooperation with the Court in the sphere of the administrative police and legal authorities, Attorney General's and Prosecutor's office and interpreted that the provision in the second paragraph of Article 27 of the Statute (Irrelevance of official capacity) would not be applicable in detriment to certain articles of the Costa Rica political Constitution.

Mexico said that today its legislation does not consider mechanisms of cooperation with the International Criminal Court. However, it did mention that it is drafting the law that will permit meeting requests of cooperation with the Court. This task is done in two stages. The first covers

⁶ The Statute establishes that genocide considers the forced transfer of children from one group, but certain States also include adults.
⁷ This is the case, for example, of the United States of America with the Act of Implementation of the Convention on Genocide; the 1996 Act on war crimes and different domestic statutes on the convention against torture, for example.

the design of procedural regulations while the second refers to drafting fundamental regulations for updating its criminal laws.

Bolivia said that it had begun the process of implementing the Statute under an implementation bill for adapting the regulations to Part IX (International Cooperation and Judicial Assistance).

Argentina mentioned that until the time when the law of implementation is sanctioned, which contains a special procedure for regulating international cooperation with the Court, the provisions in Law 24,767 on International Cooperation in Criminal Terms are considered applicable as a supplement. This regulatory content was used by the Ministry of Foreign Affairs, Foreign Trade and Culture, as the central authority in terms of international legal cooperation, to start processing the request for surrender of the accused Milan Lukic, made by the International Criminal Court for former Yugoslavia. This request had already been granted by the competent court.

The Eastern Republic of Uruguay informed about the existence of a bill on "Genocide, Crimes against Humanity, War crimes and cooperation with the International Criminal Court (Rome Statute)", which was formally submitted to the Senate in November 2005.

Ecuador said that it had begun a process of legal reforms that are awaiting approval from the National Congress to have a legal basis for cooperation with the Court.

Canada stated that it had a procedure applicable to the forms of cooperation in Part IX, but not in relation to Part X of the Statute.

Colombia mentioned that the Bill 225 of 2004 is going through Congress, which provides for regulations of cooperation with the Court.

Brazil informed that there is a bill on internal implementation of the Rome Statute that includes cooperation with the Court.

- ◆ **(If not, indicate whether your country is prepared to amend its legislation in order to cooperate with the International Criminal Court.)**

(This question is directed at the States Parties and non-party to the Statute)

In this case all States that ratified or supported the Statute that do not have specially created cooperation procedures or that require to strengthen them indicated that they are working to include in their laws the necessary measures for cooperating with the ICC.

- ◆ **(Has your country found particular obligations in the Rome Statute inconsistent with the provisions of your Constitution?)**

(This question is directed at the States Parties and non-party to the Statute)

Three of the State Parties to the Statute (Colombia, Mexico and Brazil) answered that they had particular obligations contradicting their Constitutions, while eight States (Uruguay, Argentina, Paraguay, Canada, Costa Rica, Ecuador, Bolivia and the Dominican Republic) answered that the Statute did not contain provisions against their Constitutions.

Three States that are non-Party to the Statute (El Salvador, Nicaragua and Chile) said that they have contrary provisions and two States (Guatemala and Surinam) affirmed that there was no contradiction between their own Constitutions and the Statute. The United States of America considered the question not applicable.

- ◆ **(If so, please indicate which obligations could be inconsistent with your Constitution and the nature of that inconsistency?)**

(This question is directed at the States Parties and non-party to the Statute)

Of the States Parties, Colombia said that there were no contradictions concerning topics such as immunities, life imprisonment, imprescriptibility of crimes and the principle of *ne bis in idem*, even if overcome by a Constitutional reform.

Mexico presented problems arising from the fact that its Constitution did not permit a double trial (Art. 20 *Ne bis in idem* of the Statute); the lifting of immunities and privileges of certain employees (Art. 27 “Irrelevance of Official Capacity” of the Statute) and life imprisonment; (Art. 77 Life imprisonment) and although the legislation of that country does not refer to the surrender of persons to international courts, it was an omission that while it was not in itself contrary to the Constitution, if not corrected would cause problems of application.

Brazil listed the topics of surrender of nationals, question of immunities and life imprisonment, stressing that Constitutional Amendment 45 gives constitutional support to the Rome Statute.

For States that are not Party to the Statute: The resulting contradictions were: a ban on extraditing nationals (two States), prohibited life imprisonment (one State), special procedures for an official capacity (one State), pardons and amnesties (one State); contradictions between functions of the national Prosecutor and ICC Prosecutor (one State). The constitutional court of a State said that the Constitution contradicted because the ICC establishes a jurisdiction that can be corrective and substitutive. One State said that the question was not applicable.

- ◆ **(Do you know of any other legal issue that could affect your country’s compliance with the obligations provided for in the Statute? If so, could you please inform what questions are they?)**

(This question is directed at the States Parties and non-party to the Statute)

For the States Parties to the Statute: Colombia informed, when depositing the ratification instrument of the Statute and with regard to war crimes, that “...it does not accept the competence of the Court in the category of crimes under reference in Art. 8, when it is reported that one of these crimes is committed by Colombian nationals or in Colombian territory”.

For the States non-Party to the Statute: Nicaragua mentioned that a legal question that would affect its compliance would be the current lack of legal mechanisms for cooperation with international courts. In the case of Surinam extradition of nationals is prohibited and extradition of aliens is regulated by bilateral or multilateral agreements.

- ◆ **(Has your country enacted or does it intend to enact amendments to ratify or adhere to the Rome Statute?)**

(This question is directed at the States that are not party to the Statute)

Among the six States non-Party to the Statute considered, Guatemala and the USA answered negatively to this question. The other States mentioned that they are working on studies and consultations (Nicaragua) and on reform projects (Chile and El Salvador).

Surinam expressed its intention to issue new legislation or amend the existing law.

Chile, for example, said that the process required for ratification began on January 6, 1999 and on April 9, 2002 a reform project to the political Constitution was submitted to the National Congress to recognize the Court’s jurisdiction.

El Salvador said that it submitted for consultation a proposed constitutional reform inspired on the formula used by France and Colombia.

- ◆ **(Is there any impediment of a legal nature to cooperate with the ICC in the cases provided for in the Statute for a State that is not party?)**

Chile and Surinam answered that it was necessary to establish agreements with the Court to overcome impediments of cooperation with it.

The United States of America indicated that the 2002 American Service Members’ Protection Act⁸ contains restrictions for cooperation.

⁸ “The American Service Members’ Protection Act of 2002, Title II of Public Law 107-206 (22 U.S.C sec.7421 et seq.).

◆ **(Does your country have any additional comments of a legal nature?)**

(This question is directed at the States Parties and not party to the Statute)

Surinam in turn made comments on the Statute and mentioned, among other questions, that it is not convenient for the Statute to restrict its jurisdiction solely to natural persons (Art.25 of the Statute); it also added that corporate bodies must be taken into consideration; it commented that the constitutional instrument of the Court does not define the crime of aggression or other inhuman acts with similar characteristics.

Argentina informed that on June 23, 2004 its Senate sanctioned the bill to implement the Rome Statute of the International Criminal Court, which at the moment of sending this questionnaire was being put to the consideration of the Chamber of Deputies.

Chile said that a bill is going through its National Congress to penalize crimes of genocide, against humanity and war crimes.

Nicaragua referred to the new military code and draft criminal code approved in general, considering crimes of genocide, against humanity and war crimes.

VII. CONCLUSIONS

1. There is strong interest by the member States of the Organization of American States in the topic of cooperation with the International Criminal Court, which is fully demonstrated by the fact that 16⁹ States initially answered the questionnaire from the Committee in a relatively short time (September 13 to January 30, 2006). The reports differed in terms of detail with which they addressed the matters of cooperation with the Court.

2. The number of answers received altogether (17), although not offering final universal conclusions, is significant and comprehensive enough to show certain tendencies and valuable signs that are very useful for analyzing, albeit in general terms, the measuring of authorization of such national laws for cooperation with the Court in an important number of OAS member States.

3. Most States have included in their legislation the crime of genocide; a smaller number of States have included war crimes. Crimes against humanity are the lowest number of provisions in the national legislation of the States that answered the questionnaire, which seems to indicate a more complex problem in the process of adapting the legislations in relation to the latter states.

4. In the case of war crimes and crimes against humanity, some of the definitions given by the States are often scattered in their laws and not necessarily cover the wide range of the Rome Statute.

5. Although the result is clear that not all countries included the crimes established in the Rome Statute in their national laws, the answers to the questionnaire clearly reflect that a majority is working to integrate or broaden these definitions in their national legislation.

6. A large part of the States Parties to the Statute that answered the questionnaire said that they have regulations to implement the cooperation with the Court, since they have been specially devised or because they consider that the prevailing law always permits them to cooperate with the Court. Emphasis then is placed on the fact that for some States Parties to the Statute the lack of specific laws would not seem to necessarily prevent their capacity to attend the Court's requests for cooperation under the already existing legal system, while they undertake the corresponding reforms.

7. In the case of the States Parties to the Statute that do not yet have a specially created law to implement cooperation with the Court, they all said that they have processes underway to form the corresponding legislation at different stages of progress.

8. To settle the problems of a constitutional clash that the Statute causes at the discretion of some States, recourse was made to certain mechanisms worth considering for the

⁹ Also one country delivered the questionnaire after this date.

case of the States that are not yet party to the Statute. Some of these mechanisms were as follows:

- a) One single global constitutional reform that overcomes any contradiction or opposition, accompanied or not by interpretative statements.
- b) A request to the relevant control agencies of constitutionality of a report, statement or opinion that permitted in some cases the simple interpretation pursuant to the Statute and Constitution and, in one case, the direct request for a prior constitutional reform.
- c) Studies and inquiries that permitted ratification or direct adhesion, with no further inconveniences.

9. It would be useful to ask the OAS member States to consider the possibility of completing the questionnaire prepared by the IAJC, in the case of States that have not answered. It would also be useful for the States Parties to the Statute that completed the process of approving laws implementing Part IX and X of the Statute to provide the Inter-American Juridical Committee with such updated information.

10. This same recommendation is applicable to all States that complete the process of approving laws that include, modify or add the kinds of crime stated in the Rome Statute, providing the Committee with updated information.

11. It is suggested that it is advisable that the IAJC keep on its agenda, among the topics under consideration, the subject relating to the "Promotion of the International Criminal Court" and that the Committee, in possession of the information provided in points 9 and 10 herein – if it so decides – submit an updated report including the new information provided by the States that have already answered the questionnaire, and the information given by the States that have not yet done so.

12. Given the complementary nature of the ICC jurisdiction in relation to the national criminal jurisdictions, it is important – also as a form of cooperation (generally speaking) and to facilitate the work of the Court – to strengthen the national jurisdiction itself. It implies properly establishing the crimes stated in the Statute, national criminal codes and the qualification of the national legal system for judging the crimes in a national court.

13. It is worth mentioning the value itself of the answers to the questionnaire presented by the IAJC, inasmuch as it permits updated information and sharing legal actions and measures that could be of benefit to the States in their efforts to quality the national laws to cooperate with the Court, in its broad sense.

14. It is grateful to the member States that answered the questionnaire so far for their cooperation with the Inter-American Juridical Committee in complying with the mandate received from the OAS General Assembly.

ANNEX I¹

CRIME OF GENOCIDE					
	EQUAL	SIMILAR	WITH DIFFERENCES	NOT ALIKE	NOT CONSIDERED
<u>Non-Party</u>					
El Salvador		X			
Nicaragua		X			
Chile					x
Guatemala	x				
Surinam					x
USA		x			
<u>Party</u>					
Uruguay					x
Dominican Republic					x
Costa Rica					x
Brazil	x				
Canada	x				
Argentina			x		
Ecuador					x
Bolivia		x			
Colombia		x			
Mexico		x			
Paraguay		x			
TOTAL	3	7	1	0	6

¹ The Annex herein in no way whatsoever acts as qualification and is merely the rapporteur's guide for organizing the documents received, in some cases voluminous.

ANNEX II¹

WAR CRIMES					
	EQUAL	SIMILAR	WITH DIFFERENCES	NOT ALIKE	NOT CONSIDERED
Non-Party					
El Salvador			x		
Nicaragua			x		
Chile					x
Guatemala					x
Surinam					x
USA			x		
Party					
Uruguay					x
Dominican Republic					x
Costa Rica			x		
Brazil					x
Canada			x		
Argentina			x		
Ecuador					x
Bolivia			x		
Colombia			x		
Mexico					x
Paraguay		x			
TOTAL	0	1	8	0	8

¹ *Ibid.*

ANNEX III¹

CRIMES AGAINST HUMANITY					
	EQUAL	SIMILAR	WITH DIFFERENCES	NOT ALIKE	NOT CONSIDERED
Non-Party					
El Salvador					x
Nicaragua					x
Chile					x
Guatemala					x
Surinam					x
USA			x		
Party					
Uruguay					x
Dominican Republic					x
Costa Rica	x				
Brazil					x
Canada		x			
Argentina			x		
Ecuador					x
Bolivia			x		
Colombia					x
Mexico					x
Paraguay			x		
TOTAL	1	1	4	0	11

¹ *Ibid.*

2. Legal aspects of the interdependence between democracy and economic and social development

Resolution

CJI/RES.106 (LXVIII-O/96) - *Legal aspects of the interdependence between democracy and economic and social development*

Annex: CJI/doc.190/05 rev.3 – *Legal aspects of the interdependence between democracy and economic and social development*
(presented by Dr. Jean-Paul Hubert)

During its 68th regular session (Washington, D.C., March 2006), the Inter-American Juridical Committee examined the final report entitled *Legal aspects of the interdependence between democracy and economic and social development*, document CJI/doc.190/05 rev.3, presented by the rapporteur for that topic, Dr. Jean-Paul Hubert.

Dr. Hubert described the structure and contents of the report. He said that Part One contained background information on the General Assembly mandate, the documents that should be examined in order to reach a conclusion on the subject, and the reason why the General Assembly wished to analyze legal aspects of the link between democracy and development.

In Part Two, Dr. Hubert included an analysis of the *Inter-American Democratic Charter* as one of the principal instruments of the OAS on democracy-related topics, together with an account of the progressive development of international law on the subject.

In Part Three, the Rapporteur presented general considerations and some important statements regarding the interrelation and interdependence of democracy and development. He asserted, first, that economic and social development does not constitute conditions for democracy: they strengthen it. He also mentioned that, on the one hand, lack of development may pose a threat to democracy, but, on the other hand, that cannot be used as an excuse for eliminating or curtailing it.

In that way, Dr. Hubert addressed the issue of which comes first: democracy or development. He pointed out that some people claim that democracy is a pre-condition for development, while others argue that development has to precede democracy. Dr. Hubert offered a few illustrations to support both these propositions. He declared, too, that although this debate was necessary for a full grasp of the General Assembly mandate, it was primarily a political issue and should not be dealt with exhaustively in the report.

The rapporteur also referred to the question of whether a right to democracy exists, or whether democracy is a fundamental human right. He explained that regardless of whether democracy is a human right or not, the two concepts should not be confused: human rights are one thing and democracy is another: two similar, but separate, concepts.

Dr. Hubert also mentioned that there are few grounds for saying that States are obliged under international law to promote development within their respective countries and/or to cooperate with other States to achieve that objective. He also discussed the subject of resources (or the lack of them) for achieving economic and social development as a threat to democracy and discussed whether the *Inter-American Democratic Charter* can be invoked if the lack of development in a particular country jeopardizes democracy.

In Part Four of the Report, Dr. Hubert put forward a series of preliminary conclusions, which he put to the other members of the Committee with a view to providing sufficient information for the adoption of a possible resolution.

The Rapporteur said that the key conclusions in this section were that: the Juridical Committee must eschew political considerations with respect to the General Assembly mandate; democracy is a legally protected value in the inter-American system; the OAS is empowered as an

organ to promote democracy; any State in which the democratic process is interrupted immediately incurs the obligation to restore it; the *Inter-American Democratic Charter* is a binding international instrument which takes into consideration the progressive development of international law; the debate about which comes first, development or democracy, addresses a complex issue regarding which there is considerable disagreement; moreover, it is, in principle, a political, not a legal, issue; the *Inter-American Democratic Charter* establishes the existence of a right of peoples to democracy and an obligation of governments to defend it; there is a growing consensus about the existence of a right to development; however, there is not a consensus that this right to development establishes an obligation of States such that sanctions could be applied for noncompliance; the Inter-American Charter is not designed for application to lack-of-development cases; a collective responsibility exists to promote regional development; while sanctions may be imposed on member States that stray away from democracy, the same does not apply to development; the current inter-American framework does not necessarily require additional instrumentation; and the development of a Social Charter taking into account the basic framework of the *OAS Charter* and that of *Inter-American Democratic Charter* could contribute to the understanding and effective implementation of the rights and obligations existing in this sphere.

Dr. Hubert's report was well received by the other members of the Inter-American Juridical Committee and it triggered a lengthy debate of its contents, especially its conclusions. In light of that debate, the Committee members requested a final version of the report that would take their contributions and other material on the subject into consideration, with a view to drafting a resolution to which the report could be attached.

To that end, the rapporteur prepared a preliminary draft of the resolution, based on three core operative paragraphs: the first, on democracy in the inter-American system; the second, on development as a right; and the third, on legal aspects of the interdependence between the two.

Having seen the draft resolution, the members of the Inter-American Juridical Committee proceeded to examine it, paragraph by paragraph. Some members of the Committee considered that the General Assembly mandate left open the possibility of going beyond current legal provisions with respect to economic and social development on the one hand, and democracy on the other. However, other members of the Juridical Committee were of the opinion that the mandate should be interpreted as simply a request to analyze what exists on the subject, not to recommend possible developments in this sphere.

Accordingly, the Chairman of the Inter-American Juridical Committee suggested that the rapporteur and the other members prepare an alternative version of the draft resolution. This revised version was presented with the amendments recommended by the members. In that version, it was agreed to keep to the existence of an interdependence between democracy and socio-economic development.

Finally, the Inter-American Juridical Committee adopted resolution CJI/RES.106 (LXVIII-O/06) on the legal aspects of the interdependence between democracy and economic and social development. The rapporteur's Report was attached to that resolution.

Subsequently, at its thirty-sixth regular session (Santo Domingo, June 2006), the OAS General Assembly asked the Inter-American Juridical Committee, in resolution AG/RES.2218 (XXXVI-O/06), to include a final report on the subject in its next annual report, based on the guidelines provided in resolution AG/RES.2042 (XXXIV-O/04).

On July 14, 2006, on instructions from the Chairman of the Inter-American Juridical Committee, the Office of International Law forwarded resolution CJI/RES.106 (LXVIII-O/06) to the Permanent Council, together with document CJI/doc.190/05 rev.3. The resolution is presented at the end of this sub-chapter and the document may be found as annex at the end of this *Annual Report*.

At its 69th regular session (Rio de Janeiro, August 2006), and since the rapporteur's report had already been submitted to the political bodies of the Organization, the matter was left as one of the topics under consideration on the agenda of the Inter-American Juridical Committee. At the request of the Juridical Committee's members, Dr. Dante M. Negro, Director of the Office of International Law, gave a verbal report on developments with the Social Charter for the Americas within the Organization. Dr. Negro explained that this topic arose from a mandate of the General Assembly held in Quito in June 2004 (AG/RES.2056 (XXXIV-O/04)) whereby the Permanent Council and the Permanent Executive Committee of the Inter-American Council for Integral Development (CEPCIDI) were instructed to prepare a joint draft Social Charter of the Americas and Plan of Action, reflecting the principles of social development set out in the *OAS Charter* and containing goals to reinforce the Organization's existing instruments on democracy, integral development, and the fight against poverty.

Dr. Negro continued by describing the methodology adopted by the Working Group and its approach to the topic, dividing it into the thematic areas in which studies will be conducted and regarding which the Juridical Committee, if it saw fit, could make juridical contributions. These areas are the right to life, adequate living standards, housing and food security, social protection, health, education, work, the environment, culture, vulnerable groups, nondiscrimination, natural disasters, science and technology, property rights, economic and social policies, cooperation for development partnerships, governance, and oversight and monitoring mechanisms. He also said that at the moment, the Working Group was chaired by Ecuador, with the United States, Canada, Honduras, and Saint Lucia serving as vice chairs. He then continued with his report by stating that the consolidated draft of the Social Charter had received contributions from other international agencies, including the IDB, PAHO, and the Economic Commission for Latin America and the Caribbean. From the member States, eight countries or groups of countries had presented proposals: (1) Venezuela, with the support of Argentina, Brazil, Uruguay, and Ecuador, (2) Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Panama, (3) the United States, (4) Canada, (5) Chile, (6) Bolivia, (7) Peru, and (8) CARICOM. He added that the General Secretariat was working on a document that would systematize all the contributions, but that as yet there was no final document with consensus on the matter. Dr. Negro concluded by saying that the Office of International Law again expressed its commitment of continuing to inform the Juridical Committee about developments with the Social Charter within the Permanent Council, as it had previously done regarding the International Criminal Court.

The Chairman noted his concern about whether the Committee would be expected to express its opinion on the work to date, as it had with the *Inter-American Democratic Charter*. Dr. Negro said that it was difficult to predict whether the States would lodge inquiries with the Juridical Committee, but that he thought that as their analysis of the report on the Legal aspects of the interdependence between democracy and economic and social development progressed, it was possible that the Committee would be asked to submit a supplementary report on developments with the topic.

Dr. Mauricio Herdocia Sacasa suggested that since the work was not yet fully mature and there were still apparently extensive differences between the States, it would be interesting for Dr. Hubert to be sent all the documents drawn up on the topic and, at the session to be held next March, for him to share his comments on the work being done in light of the mandate given to the Committee in connection with the topic of democracy.

Dr. Hubert and the other members agreed with Dr. Herdocia's proposal.

CJI/RES.106 (LXVIII-O/06)

**LEGAL ASPECTS ON INTERDEPENDENCE BETWEEN
DEMOCRACY AND ECONOMIC AND SOCIAL DEVELOPMENT**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING,

THAT the OAS General Assembly, during its 34th regular session in Quito, Ecuador, under Resolution AG/RES.2042 (XXXIV-O/04), requested the Inter-American Juridical Committee in the context of its agenda item "Application of the Inter-American Democratic Charter" to analyze "[in the light of the provision chapter III of the Inter-American Democratic Charter,] legal aspects of the interdependence between democracy and economic and social development, being present, for example, the recommendations of the High-Level Meeting on Poverty, Equality and Social Inclusion contained in the Declaration of Margarita, the Monterrey Consensus, the Declarations and Plans of Action issued at the Summits of the Americas, and the objectives of the United Nations Millennium Declaration"¹;

Document CJI/doc.190/05 rev.3 dated March 20, 2006, which contains the report submitted by the rapporteur of the topic, Dr. Jean-Paul Hubert, on *Legal aspects of interdependence between democracy and economic and social development*, and acknowledging that this report is a useful and valuable contribution;

The contents of its resolution CJI/RES.I-3/95 dated March 23, 1995 entitled *Democracy in the Inter-American System*, repeated in its resolution CJI/RES.17 (LVII-O/00) dated August 19, 2000, with the same title *Democracy in the Inter-American System*;

THAT the Inter-American Democratic Charter originates primarily in the OAS Charter and was conceived as a fundamental instrument for its interpretation, reaffirmation and update;

THAT the General Assembly provided, in relation to "interdependence between democracy and economic and social development", that such interdependence exists, and is fully and repeatedly stated in a large variety of hemispheric documents;

THAT the Inter-American Democratic Charter, as stated in its introduction, was expressly adopted "*BEARING IN MIND the progressive development of international law and the advisability of clarifying the provisions set forth in the OAS Charter and related basic instruments on the preservation and defense of democratic institutions, according to established practice*";

THAT, in relation to "democracy", the following emerges from *the Inter-American Democratic Charter* that:

- a. "the peoples of America have a right to democracy and their governments have an obligation to promote and defend it", pursuant to the *OAS Charter*, and that
- b. observation of the attributes inherent to democracy supported on the rule of law is indissolubly linked to the enforcement of representative democracy;

THAT, in relation to the part corresponding to "economic and social development", and pursuant to the OAS Charter and Inter-American Democratic Charter, it can be deduced that:

- a. both "economic" development and "social" development are now considered as components inherent to "integral development" established in the inter-American system and that the human being is the central subject of the development process, and that

¹ The English text of Resolution AG/RES.2042 (XXXIV-O/04) is formulated differently: "To request the Inter-American Juridical Committee, in the context of its agenda item "Application of the Inter-American Democratic Charter," to analyze legal aspects of the interdependence between democracy and economic and social development, taking account, inter alia, of the recommendations of the High-Level Meeting on Poverty, Equity, and Social Inclusion, contained in the Declaration of Margarita; the Monterrey Consensus; the Declarations and Plans of Action issued at the Summits of the Americas; and the objectives contained in the United Nations Millennium Declaration."

- b. the primary responsibility to achieve development corresponds to each of the member States that have the duty to cooperate with each other in accordance with the regulation on common and shared responsibility of the member States;

CONCLUDES THAT:

1. *"International legal regulations with regard to the effective exercise of representative democracy in the States of the Inter-American System form a specific and special order, and, therefore, albeit complementary, different from others with another purpose, (...)"* (CJI/RES.5/LII/98 dated March 19, 1998).

2. Although economic and social development consolidates and strengthens democracy, the absence of adequate levels of development cannot be a call to affect democracy, and that, without detriment to the former, eradication of abject poverty is an essential part of promoting and consolidating representative democracy.

3. On analyzing the possible legal aspects of interdependence between democracy and economic and social development, there are differences in focus, to the extent that:

- i. the countries in the hemisphere, in accordance with the inter-American legal system, assumed that democracy is an obligation whose violation gives rise to lawsuits by the Organization, while
- ii. the current inter-American system in terms of economic and social development does not provide sanctions or legal consequences referring to failure to comply with cooperation agreements for development.

Consequently, the obligation toward democracy and the obligation to cooperate with development have different legal effects, regardless of their interdependence stated in the OAS Charter and Inter-American Democratic Charter.

4. Development has a component of economic, social and cultural rights provided in international and inter-American declarations and legal instruments in the sphere of human rights, an essential part of democracy, and that its increasing execution strengthens the legal tie and interdependence between democracy, integral development and combating poverty, as stated in the Inter-American Democratic Charter,

RESOLVES:

To thank the rapporteur, Dr. Jean-Paul Hubert, for his valuable *Report on the Legal Aspects of Interdependence between Democracy and Economic and Social Development* (CJI/doc.190/05 rev.3), accept this report and attach it to the resolution herein.

This resolution was unanimously adopted during the session of March 29, 2006, in the presence of the following members: Drs. Mauricio Herdocia Sacasa, Jean-Paul Hubert, Luis Marchand Stens, Ana Elizabeth Villalta Vizcarra, Jaime Aparicio, Galo Leoro Franco, Antonio Fidel Pérez and José Delgado Ocando.

3. Preparations for the commemoration of the Inter-American Juridical Committee Centennial

Resolution

CJI/RES.111 (LXIX-O/96) - *Thanks to the Government of the Federative Republic of Brazil*

Documents

CJI/doc.219/06 *Address by the Chairman of the Inter-American Juridical Committee, at the special session of the OAS Permanent Council in commemoration of the centennial of the Inter-American Juridical Committee (Washington, D.C., March 29th, 2006)*
(presented by Dr. Mauricio Herdocia Sacasa)

CJI/doc.235/06 *Address by Dr. Mauricio Herdocia Sacasa, Chairman of the Inter-American Juridical Committee at the solemn celebration of the centennial of the Inter-American Juridical Committee (Rio de Janeiro, August 16, 2006)*

At the 68th regular session of the Inter-American Juridical Committee (Washington, D.C., March 2006), the Chairman of the Committee described the preparations and program for the commemoration of the Committee's centennial and initiated a dialogue on the subject, with a discussion about the book to be published to mark the Centennial. It was agreed to entitle it: *The Inter-American Juridical Committee: a century of contributions to international law*.

During this session, the Inter-American Juridical Committee also considered the topics that was going to discuss at the closure of the centennial and the events planned for the 14th, 15th, and 16th of August, 2006, which consist of five sessions on the inter-American challenges and the solemn session of commemoration of the centennial.

In addition, taking advantage of the presence of the Inter-American Juridical Committee at the Organization's headquarters in Washington, D.C., the Permanent Council held a Special Meeting to commemorate the Committee's centenary on March 29, 2006. In this Special Meeting, the Chairman of the Inter-American Juridical Committee, Dr. Mauricio Herdocia, addressed the member States. His speech appears in document CJI/doc.219/06, which is available at the end of the present sub-chapter.

At its thirty-sixth regular session (Santo Domingo, June 2006), the OAS General Assembly adopted Declaration AG/DEC.49 (XXXVI-O/06), "Declaration on the Centennial of the Inter-American Juridical Committee," which, among other things, declared that 2006 would be the year for commemorating the Centennial of the Inter-American Juridical Committee and invited the Committee to present its points of view before the Permanent Council of the Organization on the general principles of law that form the legal basis of the inter-American system.

At its 69th regular session (Rio de Janeiro, August 2006), Dr. Manoel Moletta gave a presentation about the publication of the book to commemorate the centenary of the Committee, titled *The Inter-American Juridical Committee: a century of contributions to international law*. Copies of the book were distributed among the members present, and the Chairman expressed his sincere thanks, both personally and on behalf of the Committee, to the members of the General Secretariat staff responsible for preparing the edition and to the authors who wrote the various articles contained in the volume.

The Chairman spoke about the solemn session held to commemorate the Centenary of the Inter-American Juridical Committee and thanked all the members of the Juridical Committee and of the General Secretariat who had helped prepare that session, as well as those who had attended. He then asked the Secretariat to collect all the information about the Centenary celebrations and publish it on the webpage of the Inter-American Juridical Committee.

The Chairman then began discussion of the General Assembly mandate set out in Declaration AG/DEC.49 (XXXVI-O/06) regarding the general principles of law that form the legal basis of the inter-American system. First, the Chairman reminded the meeting of the original text of the Draft Declaration on the Centenary of the Inter-American Juridical Committee, which contained a series of general legal principles recognized by the inter-American system, and said that it provided a good starting point for working toward fulfilling the mandate of the General Assembly. It was decided to hold talks with the Chairman of the Committee on Juridical and Political Affairs in order to identify the best way to tackle the subject. A decision was made to comply with the mandate within the framework of the presentation of the Juridical Committee's Annual Report to the OAS Committee on Juridical and Political Affairs in March 2007.

As part of the festivities to commemorate the centenary of the Inter-American Juridical Committee, its members met on August 14-16, 2006, at the premises of the Course of International Law, to attend the keynote lectures given by Drs. Antonio Remiro Brotóns, Julio Barboza, and João Clemente Baena Soares.

To inaugurate the series of classes to celebrate the centenary, the Chairman gave an introduction on the background to the course, its history over the past thirty-three years, and the great importance of the undertaking within the agenda of the Organization of American States. The address by the Chairman of the Juridical Committee was followed, over the ensuing three days, by the keynote lectures given by the aforesaid speakers. Professor Antonio Remiro Brotóns spoke about "the extraterritorial judicial pursuit of international crimes" and the "judicial settlement of disputes between the Latin American countries and the Pact of Bogotá." Professor Julio Barboza gave classes on the "general aspects of international responsibility and the current status responsibility for dangerous activities." Finally, Professor João Clemente Baena Soares gave a series of classes on "the actions of the United Nations Security Council" and "multilateral diplomacy."

In the afternoon of August 16, the main event of the Inter-American Juridical Committee centenary commemorations took place, attended by the members of the Committee, various celebrities, and by students of the Course of International Law at the Itamaraty Palace; it was followed by a reception.

The Chairman of the Inter-American Juridical Committee, Dr. Mauricio Herdocia, addressed those who were present. His speech appears in document CJI/doc.235/06, which is included at the end of the present sub-chapter.

Likewise, the Inter-American Juridical Committee received congratulations from personalities that were not able to attend the celebration. The list of persons that attended the commemoration of the centennial, as well as the messages and the speeches given at the solemn session, appear at the end of the Annual Report, as annexes.

The following authorities sat at the table of the solemn session:

Dr. Dante Caputo, Assistant Secretary of Political Affairs of the Organization of American States, representing Secretary General, Dr. José Miguel Insulza;

Dr. Mauricio Herdocia Sacasa, Chair of the Inter-American Juridical Committee;

Ambassador Maria Luiza Ribeiro Viotti, Director of the Department of International Organisms of the Ministry of Foreign Relations of Brazil, representing the Minister of Foreign Relations of Brazil, Ambassador Celso Amorim;

Ambassador Osmar Chohfi, Permanent Representative of Brazil to the OAS, Chair of the Committee on Juridical and Political Affairs of the OAS.

In light of the Brazilian government's support for the centenary celebrations and the publication of the book, the Inter-American Juridical Committee adopted resolution CJI/RES.111

(LXIX-O/06) *Thanks to the Government of the Federative Republic of Brazil*, in which it thanked the Brazilian government for the significant support it had given the Juridical Committee in its centenary celebrations and it drew particular attention to the Brazilian cooperation that made possible the publication of the commemorative centenary book and the successful holding of the solemn session.

CJI/RES.111 (LXIX-O/06)

THANKS TO THE FEDERATIVE REPUBLIC OF BRAZIL

THE INTER-AMERICAN JURIDICAL COMMITTEE,

IN RECOGNITION of the invaluable support received from the Federative Republic of Brazil with a view to the celebration of the Centenary of the Inter-American Juridical Committee;

ON ACCOUNT of the fact that for this purpose the Federative Republic of Brazil sponsored the publication of the book *The Inter-American Juridical Committee: a century of contributions to International Law*;

BEARING IN MIND that the Brazilian Government also contributed to the celebration of the solemn session held at Itamaraty Palace on 16 August 2006,

RESOLVES:

1. To express its deep thanks to the Government of the Federative Republic of Brazil for the significant support that it has offered to the Inter-American Juridical Committee as regards the celebration of its Centenary.

2. To emphasize particularly the cooperation made by the Federative Republic of Brazil that made it possible to publish the book commemorating the Centenary and to ensure the success of the solemn session.

3. To convey this resolution to the Government of the Federative Republic of Brazil and to the bodies of the Organization of the American States.

This resolution was adopted unanimously during the session held on August 17, 2006 by the following members: Drs Jean-Paul Hubert, Eduardo Vio Grossi, João Grandino Rodas, Jaime Aparicio, Ana Elizabeth Villalta Vizcarra, Galo Leoro Franco, Mauricio Herdocia Sacasa and Antonio Fidel Pérez.

CJI/doc.219/06

**ADDRESS BY THE CHAIRMAN OF THE
INTER-AMERICAN JURIDICAL COMMITTEE,
AT THE SPECIAL SESSION OF THE OAS PERMANENT COUNCIL
IN COMMEMORATION OF THE CENTENNIAL OF
THE INTER-AMERICAN JURIDICAL COMMITTEE
(Washington, D.C., March 29th, 2006)**

(presented by Dr. Mauricio Herdocia Sacasa)

Madam Chairwoman of the OAS Permanent Council, Ambassador Sonia Johnny,

The OAS Secretary General, José Miguel Insulza,

Ambassador Francisco Villagrán of León, Chairman of the Committee on Juridical and Political Affairs, whose father was a member of the Juridical Committee,

Permanent Representatives to the OAS, and here I remember the father of Roberto Álvarez, who was also a member of the Juridical Committee,

Assistant Secretary General, Albert Ramdin,

Government Delegates:

Antônio Cachapuz of Medeiros, Legal Advisor to the Brazilian Ministry of Foreign Affairs,

Joel Hernández-García, Legal Counsel of the Mexican Secretariat of Foreign Affairs,
Dear members of the Inter-American Juridical Committee,

On behalf of the Inter-American Juridical Committee, I am very grateful to the Permanent Council of the Organization of the American States and its Committee of Juridical and Political Affairs, and also the General Secretariat, for holding this Extraordinary Special Session in commemoration of the Centennial of the Inter-American Juridical Committee.

This is a unique opportunity to deepen the conviction stated in the *Charter* that juridical organization is a necessary condition for security and peace based on moral order and justice.

We cannot speak about the Inter-American Juridical Committee and its remarkable work since its origins a hundred years ago without referring, however briefly, to the original contribution of Latin America and the inter-American system as a whole to International Law, demonstrated in so many areas, such as the idea of “codification” of International Law.

BACKGROUND OF THE INTER-AMERICAN JURIDICAL COMMITTEE

This was precisely the original mandate on August 23, 1906, to the International Board of Jurists, which was set up “... to be encumbered with the preparation of the Draft Code on Private International Law and another on Public International Law, to regulate the relations between the Nations of America...”

It is worth mentioning that the International Board of Jurists precedes the Committee of Experts for Progressive Codification of International Law of the Society of the United Nations created in 1924, and which drafted the first group of topics on International Law with a view to its codification. It also precedes the United Nations of International Law Commission, which was only to be created more than 40 years later, thanks to a powerful drive by Latin America.

The International Board of Jurists was inaugurated at a ceremony on June 26, 1912. At that time, it was thought that the code drafted by the Board of Jurists, according to Alejandro Álvarez, would be a code of American international law.

In 1927 this was possibly one of the most significant periods of the Board, during which they drafted 12 Draft Conventions on Public International Law, and the *Bustamante Code* in the area of Private International Law, which was approved during the VI Conference in Havana in 1928. Many of the Chapters of the OAS Charter since then began to take shape in those instruments.

That was when the Board changed its name to International Commission of American Jurists and soon became known as the International Conference of American Jurists.

Some years earlier, the first steps had been taken toward building the system for pacific settlement of disputes, with the *Gondra Pact* in 1923.

INTER-AMERICAN PEACE SYSTEM

In 1938, the Eighth American International Conference in Lima, Peru, adopted Resolution No. XV, which states that: “the rules of law to prevent war in America are distributed over a large number of treaties, conventions, pacts and declarations which it is necessary to systematize in an organized and harmonic manner”.

THE BOGOTA PACT

On May 6, 1943, the Steering Council of the Pan-American Union stated that it would be convenient for the Inter-American Juridical Committee to prepare a coordinated draft.

In March 1944, the Juridical Committee adopted two preliminary drafts; the first was restricted to coordinating the existing inter-American agreements, with no amendments or proposed amendments. The second, called the Alternative Draft, was an attempt to take into consideration drafts and comments received from governments.

Resolution No. XXXIX of the Inter-American Conference on the Problems of War and Peace, meeting in Mexico in 1945, issued a recommendation for the Inter-American Juridical

Committee to prepare a preliminary draft on an "Inter-American System of Peace". The draft was sent to governments for their comments, and the Juridical Committee included them in preparing a new final draft to be considered during the IX American International Conference in Bogotá.

This was the start of the famous American Treaty on Pacific Settlement, the *Bogotá Pact* of 1948.

NON-INTERVENTION

We must recall that, at that time, also as a result of the Juridical Committee's contribution, it now approved, at a highpoint in International Law, the creation of the principle of non-intervention in the framework of the 1933 Convention on the Rights and Duties of States, after the first efforts in 1928 vigorously conducted by Dr. José Gustavo Guerrero, a universal Central-American personality. The principle of legal equality among the States was also adopted, which would find its place of honor among the fundamental principles of the *ius gentium*.

HUMAN DIGNITY

Shortly afterwards, the world received another contribution, this time in the sphere of human dignity. According to Resolution XL of the Conference on the Problems of War and Peace, the Inter-American Juridical Committee prepared a draft Declaration of International Rights and Duties of Man, which was then examined by the American governments.

On December 8, 1947, the Inter-American Juridical Committee submitted for the consideration of the Ninth American International Conference of Bogotá the Draft Declaration on the International Rights and Duties of Man, which later was to become the American Declaration on the Rights and Duties of Man, which preceded the Universal Declaration of Human Rights.

In the Statement of Reasons, the Inter-American Juridical Committee indicated that "...if, as expected, the Declaration contained in this draft is approved by the Conference of Bogotá, it is in America that an initiative of this kind will take place for the first time".

SOCIAL DIMENSION

Madam Chairwoman,

Right from its start, the Organization has never ignored social problems.

Resolution LVIII of the Inter-American Conference on Problems of War and Peace held in Mexico, commissioned the Juridical Committee "...in collaboration with the International Office of Labor and considering the agreements and recommendations of this Office, and the legislation of the American countries, to draft an "Inter-American Charter of Social Guarantees", to be submitted for the appreciation and approval of the Ninth American International Conference to be held in Bogotá.

The draft *Charter* was drawn up on October 21, 1947.

The mission assigned to the Juridical Committee was "...to establish the fundamental principles that must protect workers of all kinds in our Republics".

These pioneer efforts very possibly influenced the evolution of the Cultural, Economic and Social Rights that are inseparable from the Civil and Political Rights.

As expressed in the Statement of Reasons of the Inter-American Juridical Committee on the aforementioned Charter: "Thus the enhancement of the Inter-American System of Peace, the Declaration of the International Rights and Duties of Man, and the Charter of Social Guarantees are the tripod designed to support the American international organization".

1948 CHARTER

In 1948 the Ninth American International Conference meeting in Bogotá adopted the *Charter of the Organization of American States*, under which the Inter-American Council of Jurists was created. Its Permanent Committee would be the actual Inter-American Juridical

Committee responsible, with full technical autonomy, for undertaking the preparatory studies and work commissioned by certain agencies of the Organization.

SAN JOSE PACT

The Conference requested the Inter-American Juridical Committee to prepare a draft statute of an Inter-American Court to protect the rights of man.

In 1949 the Juridical Committee considered that the lack of a substantive law on the matter was a major obstacle to preparing the *Statute of the Court* and it was advisable to prepare a convention beforehand, the draft of which was submitted for the appreciation of the Second Special Inter-American Conference held in Rio de Janeiro, Brazil, in 1965. It was decided to convene an Inter-American Specialized Conference in San José, Costa Rica, which adopted an instrument that is a similar support in the Americas as the *American Convention on Human Rights* or the *San Jose Pact*.

At its 2nd Meeting held in Buenos Aires in 1953, the Council of Jurists adopted both drafts on Diplomatic Asylum and Territorial Asylum, which was the basis, at the Tenth Conference (Caracas, 1954), for approving the relevant Conventions.

The Specialized on Conference in Santo Domingo in March 1956 agreed unanimously to the description of the continental shelf or submarine areas that belonged to the coastal State, and its text was incorporated by the United Nations International Law Commission to the draft on the continental shelf, and later the same was done at the First Conference on the Law of the Sea (Geneva, 1958).

It should be pointed out that, according to García Amador, in 1965 the Council echoed the concerns already being expressed on the institutional and juridical problem of the economic, regional and sub-regional integration processes.

PROTOCOL OF BUENOS AIRES

Later, in 1967, the Third Special Inter-American Conference held in Buenos Aires, Argentina, adopted the *Protocol of Amendments to the Charter of the Organization of American States*, or the *Buenos Aires Protocol*, under which the Inter-American Council of Jurists was extinguished, whose functions were transferred to the present Inter-American Juridical Committee, thereby raising it to the level of principal organ of the OAS.

Since then, the contribution of the Inter-American Juridical Committee has been invaluable in spheres such as: extradition; the convention to prevent and sanction acts of terrorism configured crimes against persons and related extortion when they have international relevance; and codification and development of private international law, in Inter-American Specialized Conferences on Private International Law (CIDIPs), which have produced 26 instruments both in the form of conventions and model-laws; the *Inter-American Convention against Corruption*; the *Inter-American Convention to Eliminate all forms of Discrimination against Disabled Persons*; the *Inter-American Democratic Charter*; the *Inter-American Convention against Terrorism*; the *Rights of Indigenous Peoples*; and *Competition Law in the Americas*, for example.

Other major contributions by the Juridical Committee are:

CONTRIBUTIONS TO THE CONCEPT OF A SINGLE ECONOMIC ZONE

Since July 1952 a draft was prepared on "Territorial Waters and Like Questions", in which reference was made to a "Zone of Protection, Control and Economic Exploration within a limit of 200 nautical miles". A 1965 Opinion, on recognizing the right to set a limit of 12 nautical miles for the distance of territorial waters, kept intact the distance to be established in the seaboard zone in order to assure the productivity and conservation of marine life.

In March 1971, the rapporteur of the topic of the Law of the Sea proposed the idea of patrimonial waters, an offshore area in which the coastal State is entitled to exploit, explore and conserve the natural resources to promote economic development.

The initiative was contained in the report entitled "Territorial Waters and Patrimonial Waters: Grounds for a Latin American position on the Law of the Sea". In 1973 the Juridical Committee adopted a report for a unified American position on a new maritime regime. It indicated that the limit would not exceed 200 nautical miles.

This contribution by the Juridical Committee influenced national legislations and the discussions that took place in the United Nations on the Single Economic Zone at the Third United Nations Conference on the Law of the Sea.

Likewise, emphasis should also be given to the contribution of its work on territorial waters and, in particular, with regard to the continental shelf, as already mentioned in the background of the Inter-American Juridical Committee.

CONTRIBUTIONS ON THE TOPIC OF REPRESENTATIVE DEMOCRACY

As a starting point, since 1995 the Juridical Committee has indicated¹ that:

All States in the Inter-American System are obliged to effectively exercise Representative Democracy in their systems and political organizations.

This means that Representative Democracy in America, in its essential and untouchable elements, left the area of matters relating to domestic jurisdiction and moved to the area of matters governed by international regulations.

The Inter-American Juridical Committee also expressed that:

The principle of non-intervention and the right of each State in the Inter-American System to elect its political, economic and social system with no outside intervention and to organize itself in the manner most convenient thereto may not include any violation of the obligation to effectively exercise Representative Democracy in the above-mentioned system and organization.²

Finally, it is worth recalling what the Committee expressed on the matter:

... the international juridical norms corresponding to the effective exercise of Representative Democracy in the States of the Inter-American System constitute a specific and special order...

It highlights the contribution made by this organ of the OAS to enhance the Inter-American Democratic Charter through observations and comments on the draft instrument³ in 2001.

Democracy is actually the major contribution of the inter-American system to the 21st century. It is a right that is becoming universally consolidated. The idea that it contains elements that cannot be altered (separation of powers, free elections and basic rights and freedom, for example), as well as the subsequent responsibility that creates the tort of changing the democratic order and the legitimate exercise of power, tends to transform its original political nature into the jural relation as the Juridical Committee already anticipated, which sooner or later will have to reach the Charter of the United Nations itself.

The Amendment of the Charter of the United Nations, currently without a single mention of democracy, will be the form to consolidate this aspiration and, as I have already proposed, include among its proposals "promoting the values and principles of democracy within International Law". This pace has already begun in multiple resolutions, declarations and plans of action of groups for democracy within the framework of the United Nations.

SPECIAL OPINIONS

It will never be enough to insist on the contribution of the Juridical Committee's various opinions in special delicate environments such as: extra-territoriality of the laws and limits in exercising jurisdiction (case of the Helms-Burton Act); the question of the Organization's

¹. CJI/RES. I-3/95.

². CJI/RES. I-3/95.

³. CJI/doc.76/01.

headquarters (Tünnermann case) and the case of a sentence passed by a court of a member State (Álvarez-Machain case).

CONTRIBUTIONS TOWARD THE FIGHT AGAINST CORRUPTION

In its work on diplomatic immunity⁴, the Commission on International Law has established a principle according to which nationality must be acquired '*in a manner that does not contradict International Law*'.

Accordingly, a nationality acquired by committing fraud against the law or breach of law clearly contradicts International Law.

During the 66th Regular Session in Managua, the Inter-American Juridical Committee issued an Opinion⁵ in which it proposed, as part of the progressive development of International Law, the need for a regulation to combat corruption that states the following:

1. In case of a conflict of nationality, the Juridical Committee considers that if the nationality of the requesting State is the dominant or predominant nationality, or the genuine and effective link, extradition should not be refused on the basis of nationality.
2. When nationality is acquired or invoked through fraud or abuse of the law, extradition should not be refused solely on the basis of nationality.

Accordingly, certain jurisprudential criteria for diplomatic protection are extended to the sphere of extradition in order to prevent countries being occupied as safe havens for people accused of corruption, after having exercised political power.

The Juridical Committee has also contributed to major topics on the international agenda, such as the International Criminal Court.

INTERNATIONAL CRIMINAL COURT

The Juridical Committee has been requested to prepare a questionnaire that fundamentally reflects the way in which American legislations are qualified to cooperate with the Court. This questionnaire received 17 answers in a relatively short time.

COURSE ON INTERNATIONAL LAW

We must not forget to stress the valuable work of the Course on international law, which is now a benchmark in training, updating and projection of the Inter-American system from a universal perspective. The collection of the conferences is a monumental task undertaken by the General Secretariat that testifies to the depth, wealth and range of the course inaugurated in 1974, now with over 30 years of successful work.

Madam Chairwoman:

We also regard the Commemoration of the Centennial of the Inter-American Juridical Committee as a great opportunity to celebrate together and evidence our contribution to International Law and our determination to face today's new challenges in a spirit of solidarity, cooperation, responsibility and deep humanity.

This August we will also be commemorating this important centenary in Rio de Janeiro, Brazil, the seat of the Committee and, on behalf of my colleagues of the IAJC, I would like to invite the Permanent Representatives, Legal Advisors of the Ministries of Foreign Affairs to join us in this inter-American ceremony. We will also be sending invitations to the Honorable Ministers of Foreign Affairs of the member States, in a demonstration of the Juridical Committee's wish to have closer and stronger relations with the Permanent Council and its Committee on Juridical and Political Affairs.

Madam Chairwoman,

⁴. HERDOCIA SACASA, M. *La Obra de la Comisión of Derecho Internacional de las Naciones Unidas en el Quinquenio 1997-2001: el aporte global de América Latina*. 1 ed. Managua: Imprimatur, p. 187.

⁵. CJI/doc.181/05 rev.4.

Our times are obliged to give eloquent testimony to the irrevocable transformation of the classic International Law. The new emerging law must combine and wisely balance the spheres of action of the many players that coexist on the world international scene, each with its own legitimate sphere of activity, but closely interdependent, complementary and jointly responsible.

The changes are clear signs of a new world under construction. This is a moment of transition to an era whose formation is still in progress. At this point in time, it is difficult to recognize the new political and ideological fixtures in a century that began apocalyptically with terrorist acts in the USA, Spain, UK and other parts of the world.

This is why the most significant human values must be firmly secured, precisely to avoid the dangers of being drawn into a century of terrorism and dehumanization, absolute myths or blind faith that rest solely on the procedures of constructing regulations.

International Law is in the middle of a battle that foresees the definitive consolidation of a *ius gentium* with new social dimensions; major political achievements that go as far as the democratic forms of State organization; ingenious forms of environmental protection; integration processes on the increase; more direct access of people to the courts; innovative mechanisms of prevention, cooperation before a multidimensional security and the transnational effect of crime, protection of populations in situations of risk and sanction in the hands of international organizations and courts; in short, a more humane, humanizing and humanized *ius gentium* that takes its proper place before the reason of State that has prevailed so far.

We must encourage the entry into this new era of a *ratio summa* built around the equilibrium between the collective interests of humanity as a whole; the rights and dignity of the individual and the necessary regulatory activity of the State and sovereignty that is inherent in conditions of equality with their peers. We can proudly say that the IAJC has worked in all these spheres.

To be precise, one of the most recent studies assigned to the Inter-American Juridical Committee addresses the juridical aspects of the interdependence between democracy and economic and social development, two main concerns in the inter-American system seeking a new synthesis.

In my opinion, the solidarity of the American States is the principle that unites and legally binds the essential intents to further and consolidate representative democracy, and to promote economic and social development by cooperative action.

In order to achieve the noble objectives of the desirable integral development this principle of solidarity requires as an indispensable condition, political organization of the American States based on the effective exercise of representative democracy.

This supportive jural relation fully expresses the interdependence between democracy and economic and social development and the inherent legal aspects.

Juridical solidarity is the emerging principle that, going beyond mere cooperation between States, signifies the capacity of States that are not directly damaged to act in defense of values, principles and regulations that form essential and collective interest inherent in the meaning that gave rise to the Organization. Collective action before the serious alterations to the constitutional order or mass and systematic violations of human rights in any American country is a direct expression of the renewed American solidarity, as an active legal commitment to defend democracy and human dignity, where it may be considered violated, thereby laying the foundations of a new American public order between the member States of the Organization.

Madam Chairwoman,

When mentioning this outstanding work of humanity that is International Law to which America with its universal vocation, through the IAJC, gave such a valuable contribution, it must be borne in mind that it is the result of a mature, responsible, wise and noble exercise of the uncontested and incomparable sovereignty of all nations.

Madam Chairwoman and Representatives:

If the principles of International law are the conduct code between States;

If the States ban war and peacefully settle their differences;

If respect for human dignity and the rights inherent to a person are accepted as very valuable rules;

If cooperation for integral development can be translated in protection of fundamental social guarantees;

If the States can legally confront the new transnational threats to their security and

If there is a collective commitment to joint and several action against the attacks on representative democracy and human rights,

Then the Inter-American Juridical Committee will have contributed something to creating a new world in the Americas and we can say that this OAS organ is fulfilling the sacred mission assigned by our Organization and those who came before a century ago.

Thank you very much.

CJI/doc.235/06

**ADDRESS BY DR. MAURICIO HERDOCIA SACASA
CHAIRMAN OF THE INTER-AMERICAN JURIDICAL COMMITTEE AT THE
ACTOS SOLEMNES CELEBRATION OF THE CENTENNIAL OF THE
INTER-AMERICAN JURIDICAL COMMITTEE
Rio de Janeiro, August 16, 2006**

Her Excellency Ambassador Maria Luiza Ribeiro Viotti, General Director of the Department of International Organizations, representing His Excellency Ambassador Celso Amorim, Minister of Foreign Affairs of Brazil, and I thank her for her kind words;

His Excellency Mr. Dante Caputo, Assistant Secretary for Political Affairs of the Organization of American States, representing His Excellency Mr. José Miguel Insulza, Secretary General of the Organization of American States, and I thank him for his comments;

His Excellency Ambassador Osmar Chohfi, Permanent Representative of Brazil to the Organization of American States and Chairman of the Committee on Juridical and Political Affairs of the Organization of American States;

His Excellency Mr. Norman Caldera Cardenal, Minister of Foreign Affairs of the Republic of Nicaragua;

His Excellency Mr. Eduardo Mora Anda, representing the Minister of Foreign Affairs of the Republic of Ecuador, Mr. Francisco Carrión Mena;

His Excellency Ambassador Manuel Morales Lama, representing the Secretary of State for Foreign Affairs of the Dominican Republic, Mr. Carlos Morales Troncoso;

His Excellency Ambassador Victor Manuel Lozano Urbina, representing the Secretary of State for Foreign Affairs of the Republic of Honduras, Mr. Milton Danilo Jiménez Puerto;

His Excellency Ambassador João Clemente Baena Soares, former Secretary General of the Organization of American States;

The Honorable Professor Jorge da Silva, Secretary of State for Human Rights, representing the Governor of the State of Rio de Janeiro, Rosinha Garotinho B. A. Matheus of Oliveira;

The Honorable Mr. Abdul Koroma, Judge of the International Court of Justice;

Monsignor Sérgio Costa Couto, representing Don Eusébio Scheid, Archbishop of Rio de Janeiro;

Members of the Inter-American Juridical Committee of the Organization of American States, present at this act, Drs.:

Jean-Paul Hubert, Vice-Chairman of the Committee, who brought to the Committee his diplomatic expertise and scrupulous multilateral background;

Eduardo Vio Grossi, constant inspiration in our work and an example of integrity, capacity and devotion to the cause of democracy;

João Grandino Rodas, always ready to fully collaborate, and whose contribution to Private International Law has been outstanding;

Ana Elizabeth Villalta Vizcarra, the only woman in the hundred years of the Committee to be a member of the Inter-American Juridical Committee, and whose contribution is permanent;

Galo Leoro Franco, whose experience and expertise are a constant guide for the Committee;

Antonio Fidel Pérez, whose team spirit and academic experience are always so appreciated in our work;

Jaime Aparicio, skilled diplomatic and a masterly jurist who contributes with his balanced spirit to the good progress of the Committee;

Members of the Committee who were unable to be with us;

Former members of the Inter-American Juridical Committee:

Dr. Jorge Reinaldo A. Vanossi, former Chairman of the IAJC;

His Excellency Ambassador Ramiro Saraiva Guerreiro, former Chairman of the IAJC;

Dr. Brynmor Pollard, former Chairman of the IAJC;

His Excellency Ambassador Sergio González Gálvez;

His Excellency Ambassador Cuthbert Joseph;

Dr. Ricardo Seitenfus and His Excellency Ambassador Jorge Palacios Treviño, members of the Inter-American Juridical Committee who will begin their office in January 2007;

Their Excellencies Ambassadors accredited with the Brazilian Government;

Members of the Consular Corps;

Members of International Organizations;

Members of the Executive, Legislative and Judiciary powers;

Legal Advisors to the Ministries of Foreign Affairs of the OAS Member Countries;

Directors of the General Secretariat of the Organization of the American States:

Dr. Jean-Michel Arrighi, Director of the Department for International Legal Affairs;

Dr. Dante Negro, Director of the Office of International Law;

Dr. Enrique Lagos, Chief Legal Officer of the Department of International Law;

Dr. Manoel Tolomei Moletta, Secretary of the Inter-American Juridical Committee;

Secretariats of the State and City of Rio de Janeiro;

The Bar Association of Brazil;

The Brazilian Academy of Literature;

Lecturers and participants in the XXXIII Course on International Law, dedicated this year to the 100 years of the IAJC,

I would like to acknowledge the presence of the staff who work directly in support of the Committee: Maria C. de Souza Gomes, Maria Lucia Iecker Vieira, Maria Helena Lopes, Paulo Ferreira, and Armando de Jesus;

Also staff hired for the regular sessions with us, some working more than 20 years with us: Cristina Otálora, Elvyn Marshall, James Mulholland, Daniela Vargas, Dina Laver, Mônica Pantoja Leite, Amalia Ruiz and Poliana Nicolau;

I would also like to highlight the presence of Mrs. Celina Kastrup Decourt, who was one of the first employees of the Inter-American Committee of Neutrality.

Ladies and Gentlemen,

On behalf of the Inter-American Juridical Committee I would like to proffer my heartfelt thanks for the presence of all of you at this historic act in commemoration of the Committee's Centenary, whose headquarters has remained in this extraordinary country since its precursor was created in 1906. We wish to thank the centennial hospitality of the Federative Republic of Brazil.

I am pleased to mention, first, that the General Assembly of the Organization of the American States, in resolution AG/DEC.49 (XXXVI-O/06) declared the year of 2006 to be the commemorative year of the Centennial and expressed its recognition of the 100 years of the Committee's work by stressing its efforts and contributions in the sphere of codification of Public and Private International Law.

The Permanent Council of the OAS, in turn, on March 29, 2006, celebrated a historic special commemorative session in the Organization's headquarters. I would like to share with you the fact that, in that same week, we published a book on the contributions of the Inter-American Juridical Committee to International Law, based on articles drafted by both current and former members of the Committee, united in one sole purpose.

Permit me then that my first words pay a sincere tribute to each and every person who has been part of the Inter-American Juridical Committee during its hundred years of existence, since the time when the distinguished jurist Epitacio Pessoa assumed its chair at the proposal of the also distinguished master, Alejandro Álvarez, two strong branches of this robust tree planted in the Americas, which has given lasting fruit and shade to our continent. Our gratitude also goes to the Secretaries of the Committee and the Secretariat staff in both Rio de Janeiro and in the Organization's headquarters in Washington, which has contributed generously to achieving the Committee's goals.

I would also like to thank all personalities and organizations who have sent warm messages of congratulations to the IAJC on this memorable occasion. And the Committee conveys its gratitude to everyone. Their expressions of best wishes will be transcribed in the Gold Registration Book of this occasion.

The Centennial Commemoration is an extraordinary opportunity to proclaim the sacred convention in the OAS Charter that juridical organization is a necessary condition for security and peace – and I would like to add development.

It is also the time to take stock so that we not only can look back but also rise above our best achievements to glimpse new forthcoming challenges and trials and plan solutions and feasible ways for the future.

I cannot speak about the Inter-American Juridical Committee, or its outstanding work during the century since its creation, without also mentioning, albeit very briefly, the major contribution of both Latin America and the Inter-American System together to International Law, making their contribution visible in so many sectors, such as the idea of "codification" of International Law and identifying the sources of the *ius gentium*, since that Panama Congress in 1826.

BACKGROUND OF THE INTER-AMERICAN JURIDICAL COMMITTEE

This was precisely the original mandate on August 23, 1906, to the International Board of Jurists, which was set up "... to be encumbered with the preparation of the Draft Code on Private International Law and another on Public International Law, to regulate the relations between the Nations of America..."

It is worth mentioning that the International Board of Jurists precedes the Committee of Experts for Progressive Codification of International Law of the Society of the United Nations created in 1924, and which drafted the first group of topics on International Law with a view to its universal codification.

It also precedes the United Nations of International Law Commission, which was only to be created more than 40 years later, thanks to a powerful drive by Latin America consisting then of almost 40 percent of the original members signing the San Francisco Charter.

Another mark of the originality of this Board is the emphasis placed on its work of codification – now inseparable – both of Public International Law and Private International Law. It could have been no other way, to the extent that the groundbreaking work in this last field began inspired in the aforementioned Panama Congress, in 1874, 1861 and 1867 at the Lima Conferences; continuing with the 1877-1878 Congress of American Jurists, until the Montevideo Congress in 1889 which, in turn, inspired in Central America the Central American Juridical Congress in 1897 and 1901.

The International Board of Jurists was inaugurated at a ceremony on June 26, 1912. At that time, it was thought that the code drafted by the Board of Jurists, according to Alejandro Álvarez, would be a code of American international law. Today we know that there always was in the region a universal taste and vocation.

In 1927 this was possibly one of the most significant periods of the Board – if not the most important one – during which they drafted 12 draft conventions on Public International Law and the *Bustamante Code* in the area of Private International Law, which was approved during the VI Conference held in Havana in 1928. Many of the Chapters of the *OAS Charter* since then began to take shape in those instruments.

That was when the Board changed its name to International Commission of American Jurists and soon became known as the International Conference of American Jurists.

Some years earlier, the first steps had been taken toward building the system for pacific settlement of disputes, with the *Gondra Pact* in 1923, followed by the *General Convention of Inter-American Conciliation*, *General Treaty of Inter-American Arbitration* in 1929 and the *Antiwar Treaty of Non-Aggression and Conciliation* signed in the same city of Rio de Janeiro in 1933.

INTER-AMERICAN PEACE SYSTEM

In 1938, the Eighth American International Conference in Lima, Peru, adopted Resolution No. XV, which states that: “the rules of law to prevent war in America are distributed over a large number of treaties, conventions, pacts and declarations which it is necessary to systematize in an organized and harmonic manner”.

THE BOGOTA PACT

On May 6, 1943, the Steering Council of the Pan-American Union stated that it would be convenient for the Inter-American Juridical Committee to prepare a coordinated draft.

In March 1944, the Juridical Committee adopted two preliminary drafts; the first was restricted to coordinating the existing inter-American agreements, with no amendments or proposed amendments. The second, called the Alternative Draft, was an attempt to take into consideration drafts and comments received from governments.

Resolution No. XXXIX of the Inter-American Conference on the Problems of War and Peace, meeting in Mexico in 1945, issued a recommendation for the Inter-American Juridical Committee to prepare a preliminary draft on an “Inter-American System of Peace”. The draft was sent to governments for their comments, and the Juridical Committee included them in preparing a new final draft to be considered during the IX American International Conference in Bogotá.

This was the start of the famous *American Treaty on Pacific Settlement*, the *Bogotá Pact* of 1948, together with the actual *Charter of the Organization* that celebrated the idea of “... not

permitting any dispute between the American States without final settlement within a reasonable period”.

NON-INTERVENTION

We must recall that, at that time, also as a result of the Juridical Committee's contributions, it now approved, at a highpoint in International Law, the creation of the principle of non-intervention in the framework of the 1933 *Convention on the Rights and Duties of States*, after the first efforts in 1928 vigorously conducted by Dr. José Gustavo Guerrero, a universal Central-American personality, who presided both world Courts.

The principle of legal equality among the States was also adopted, which would find its place of honor among the fundamental principles of the *ius gentium*. On this matter, we cannot forget that the Inter-American System, unlike the world system, has always excluded the veto of its procedures.

HUMAN DIGNITY

Shortly afterwards, the world received another contribution, this time in the sphere of human dignity. According to Resolution XL of the Conference on the Problems of War and Peace, the Inter-American Juridical Committee prepared a draft *Declaration of International Rights and Duties of Man*, which was then examined by the American governments.

On December 8, 1947, the Inter-American Juridical Committee submitted for the consideration of the Ninth American International Conference of Bogotá the *Draft Declaration on the International Rights and Duties of Man*, which later was to become the *American Declaration of the Rights and Duties of Man*, which preceded the *Universal Declaration of Human Rights*.

In the Statement of Reasons, the Inter-American Juridical Committee indicated that “...if, as expected, the Declaration contained in this draft is approved by the Conference of Bogotá, it is in America that an initiative of this kind will take place for the first time”.

SOCIAL DIMENSION

Ladies and Gentlemen,

Right from its start, the Organization has never ignored social problems.

Resolution LVIII of the Inter-American Conference on Problems of War and Peace held in Mexico, commissioned the Juridical Committee “...in collaboration with the International Office of Labor and considering the agreements and recommendations of this Office, and the legislation of the American countries, to draft an “Inter-American Charter of Social Guarantees”, to be submitted for the appreciation and approval of the Ninth American International Conference to be held in Bogotá.”

The draft Charter was drawn up on October 21, 1947.

The mission assigned to the Juridical Committee was “...to establish the fundamental principles that must protect workers of all kinds in our Republics”.

These pioneer efforts very possibly influenced the evolution of the Economic, Social and Cultural Rights that are inseparable from the Civil and Political Rights.

As expressed in the Statement of Reasons of the Inter-American Juridical Committee on the aforementioned Charter: “Thus the enhancement of the Inter-American System of Peace, the Declaration of the International Rights and Duties of Man, and the Charter of Social Guarantees are the tripod designed to support the American international organization”.

1948 CHARTER

In 1948 the Ninth American International Conference meeting in Bogotá adopted the *Charter of the Organization of American States*, under which the Inter-American Council of Jurists was created. Its Permanent Committee would be the actual Inter-American Juridical Committee responsible, with full technical autonomy, for undertaking the preparatory studies and work commissioned by certain agencies of the Organization. I would also like to stress its

consultative character, so essential to its role, in contrast to other organs such as the United Nations Commission of International Law.

SAN JOSE PACT

The Conference requested the Inter-American Juridical Committee to prepare a draft statute of an Inter-American Court to protect the rights of man.

In 1949 the Juridical Committee considered that the lack of a substantive law on the matter was a major obstacle to preparing the *Statute of the Court* and it was advisable to prepare a convention beforehand, the draft of which was submitted for the appreciation of the Second Special Inter-American Conference held in Rio de Janeiro, Brazil, in 1965. It was decided to convene an Inter-American Specialized Conference in San Jose, Costa Rica, which adopted an instrument that is a similar support in the Americas as the *American Convention on Human Rights* or the *San Jose Pact*.

ASYLUM

I must also mention that the Council of Jurists, at its 2nd meeting in Buenos Aires in 1953, approved drafts on Diplomatic Asylum and Territorial Asylum, which was the basis at the 10th Conference (Caracas, 1954) for approval of the relevant Conventions.

CONTINENTAL SHELF

The Specialized Conference in Santo Domingo in March 1956 reached a unanimous agreement regarding the description of the Continental Shelf or subsea areas belonging to coastal States, whose text was included by the United Nations Commission of International Law, to its draft on Continental Shelf, the same being done later at the First Conference on the Law of the Sea (Geneva, 1958).

INTEGRATION

It is important to point out that, as García Amador reports, in 1965 the Council echoed the concerns, which had already been expressed on the legal and institutional problem of the Processes of Regional and Sub-Regional Economic Integration.

PROTOCOL OF BUENOS AIRES

Later, in 1967, the Third Special Inter-American Conference held in Buenos Aires, Argentina, adopted the *Protocol of Amendments to the Charter of the Organization of American States*, or the *Buenos Aires Protocol*, under which the Inter-American Council of Jurists was extinguished, whose functions were transferred to the present Inter-American Juridical Committee, thereby raising it to the level of principal organ of the OAS.

Since then, the contribution of the Inter-American Juridical Committee has been invaluable in spheres such as: extradition; the *Convention to prevent and punish the acts of terrorism taking the form of crimes against persons and related extortion that are of international significance*; *Inter-American Convention against corruption*; *Inter-American Convention on the elimination of all forms of discrimination against persons with disabilities*; the *Inter-American Democratic Charter*; the *Inter-American Convention against terrorism*; the *rights of indigenous peoples*; and *competition law in the Americas*. Since 1975, in the institutional framework of the Inter-American Specialized Conferences on Private International Law (CIDIPs), which, in six conferences, adopted 26 international instruments, being 21 conventions, 2 additional protocols, 2 uniform instruments and one model law, opening up room for codification and modernization in this field and even the formal sources of American Law.

Other major contributions by the Juridical Committee are:

CONTRIBUTIONS TO THE CONCEPT OF A SINGLE ECONOMIC ZONE

Since July 1952 a draft was prepared on "Territorial Waters and Like Questions", in which reference was made to a "Zone of Protection, Control and Economic Exploration within a limit of 200 nautical miles". A 1965 Opinion, on recognizing the right to set a limit of 12 nautical miles

for the distance of territorial waters, kept intact the distance to be established in the seaboard zone in order to assure the productivity and conservation of marine life.

In March 1971, the rapporteur of the topic of the Law of the Sea proposed the idea of patrimonial waters, an offshore area in which the coastal State is entitled to exploit, explore and conserve the natural resources to promote economic development.

The initiative was contained in the report entitled "Territorial Waters and Patrimonial Waters: Grounds for a Latin American position on the Law of the Sea". In 1973 the Juridical Committee adopted a report for a unified American position on a new maritime regime. It indicated that the limit would not exceed 200 nautical miles.

This contribution by the Juridical Committee influenced national legislations and the discussions that took place in the United Nations on the Single Economic Zone at the Third United Nations Conference on the Law of the Sea.

Likewise, emphasis should also be given to the contribution of its work on territorial waters and, in particular, with regard to the continental shelf, as already mentioned in the background of the Inter-American Juridical Committee.

CONTRIBUTIONS ON THE TOPIC OF REPRESENTATIVE DEMOCRACY

As a starting point, since 1995 the Juridical Committee has indicated that:

"All States in the Inter-American System are obliged to effectively exercise Representative Democracy in their systems and political organizations."

This means that Representative Democracy in America, in its essential and untouchable elements, left the area of matters relating to domestic jurisdiction and moved to the area of matters governed by international regulations.

The Inter-American Juridical Committee also expressed that:

"... the principle of non-intervention and the right of each State in the Inter-American System to elect its political, economic and social system without external intervention and to organize its structure in the manner most convenient thereto, may not cover a violation of the obligation to effectively exercise Representative Democracy in such system and organization."

Finally, it is worth recalling what the Committee expressed on the matter:

"... the international legal regulations with regard to the effective exercise of Representative Democracy in the States of the Inter-American System form a specific and special order..."

It highlights the contribution made by this organ of the OAS to enhance the *Inter-American Democratic Charter* through observations and comments on the draft instrument¹ in 2001.

Democracy is actually the major contribution of the inter-American system to the 21st century. It is a right that is becoming universally consolidated. The idea that it contains elements that cannot be altered (separation of powers, free elections and basic rights and freedom, for example), as well as the subsequent responsibility that creates the tort of changing the democratic order and the legitimate exercise of power, tends to transform its original political nature into the jural relation as the Juridical Committee already anticipated, which sooner or later will have to reach the *Charter of the United Nations* itself, currently without a single mention of democracy.

We wait for the day when the Universal Charter, as I have already proposed, includes among its proposals "promoting the values and principles of democracy within International Law". This pace has already begun in multiple resolutions, declarations and plans of action of groups for democracy within the framework of the United Nations.

¹ CJI/doc.76/01 - *Observations and comments of the Inter-American Juridical Committee on the draft Inter-American Democratic Charter*. 16 August 2001.

SPECIAL OPINIONS

It will never be enough to insist on the contribution of the Juridical Committee's various opinions in special delicate environments such as: extra-territoriality of the laws and limits in exercising jurisdiction (case of the Helms-Burton Act); the question of the Organization's headquarters (Tünnermann case) and the case of a sentence passed by a court of a member State (Álvarez-Machain case).

CONTRIBUTIONS TOWARD THE FIGHT AGAINST CORRUPTION

In its work on diplomatic immunity², the Commission on International Law has established a principle according to which nationality must be acquired "*in a manner that does not contradict International Law*".

Accordingly, a nationality acquired by committing fraud against the law or breach of law clearly contradicts International Law.

During the 66th regular session in Managua, the Inter-American Juridical Committee issued an Opinion³ in which it proposed, as part of the progressive development of International Law, the need for a regulation to combat corruption that states the following:

"In case of a conflict of nationality, the Juridical Committee considers that if the nationality of the requesting State is the dominant or predominant nationality, or the genuine and effective link, extradition should not be refused on the basis of nationality.

When nationality is acquired or invoked through fraud or abuse of the law, extradition should not be refused solely on the basis of nationality."

Accordingly, certain jurisprudential criteria for diplomatic protection are extended to the sphere of extradition in order to prevent countries being occupied as safe havens for people accused of corruption, after having exercised political power.

The Juridical Committee has also contributed to major topics on the international agenda, such as the International Criminal Court.

INTERNATIONAL CRIMINAL COURT

The Juridical Committee has been requested to prepare a questionnaire that fundamentally reflects the way in which American legislations are qualified to cooperate with the Court. This questionnaire received 17 answers in a relatively short time, and we will shortly be presenting specific recommendations on this matter.

COURSE ON INTERNATIONAL LAW

We must not forget to stress the valuable work of the Course on international law, which is now a benchmark in training, updating and projection of the Inter-American system from a universal perspective. The collection of the conferences is a monumental task undertaken by the General Secretariat that testifies to the depth, wealth and range of the course inaugurated in 1974, at the initiative of Dr. Adolfo Molina Orantes, with more than thirty years of productive history.

Dear Friends,

We also regard the Commemoration of the Centennial of the Inter-American Juridical Committee as a great opportunity to celebrate together and evidence our contribution to International Law and our determination to face today's new challenges in a spirit of solidarity, cooperation, responsibility and deep humanity.

². HERDOCIA SACASA, Mauricio. *La obra de la Comisión of Derecho Internacional de las Naciones Unidas en el Quinquenio 1997-2001: el aporte global de América Latina*. 1 ed. Managua: Imprimatur, p. 187.

³. CJI/doc.181/05 rev.4- *Opinion of the Inter-American Juridical Committee on the joint efforts of the Americas in the struggle against corruption and impunity*. 10 March 2005.

We need to return to the more relevant characteristics of today's world that imply attending to these signs of the times, so that the legal order of the inter-American system is an effective response to this international community in transformation:

I stress as the first characteristic one of the fastest and deepest expansions in the spheres of action of International Law, in areas once reserved for internal jurisdiction of the States. Today, unlike the world of the United Nations or the first OAS Charter, International Law has extended the subjects under its jurisdiction. The agenda of international matters has increased inasmuch as the world widens its boundaries and horizons.

A second comment on today's world is that a world has been consolidated that has broken the State monopoly to make room for the new subjects of International Law and other emerging players that will be occupying their place of honor at the larger table of the new international society. Together with the powerful Leviathan, today the former subjects and humanity strives to establish their centrality.

The concept of security has undergone drastic change; today the threats and challenges are interconnected and have a multi-thematic nature that goes beyond national frameworks and demands superior joint efforts.

Such characteristics are accompanied by a prodigious rapprochement between the regulatory worlds of domestic Law of the States and International Law. A "permeability" and interdependence between such legal orders are seen to be increasingly strong and vigorous, which facilitates – literally – the pace of the subjects of International Law in one sphere to another. In this sense, individuals and international organizations demand new forms and modalities of interaction to imprint a renewed dynamism on international relations.

Lastly, the rise, together with a classic law based on the will of the States, of a new common law expressed in imperative regulations reflected in the so-called obligations of *ius cogens*; the standards of universal coverage, reflected in the so-called regulations *erga omnes* and, especially, I point to the regulations recognized in the regional systems, which reflect obligations established for the protection of a collective interest essential for the same life of the group of organized States. This is the case of the inter-American regulations relating to representative democracy and human rights that shape an inter-party American regional public order.

A corollary to this statement is the fact that this law not only is collective in the obligations that it generates, but it also projects a joint and supportive responsibility of acting and cooperating reciprocally to face the serious violations against these obligations.

All this is occurring in a world that is undergoing transition and the shake-up that precedes a new forthcoming era. This is a new world under construction. This is a moment of transition to an era whose formation is still in progress. At this point in time, it is difficult to recognize the new political and ideological fixtures in a century that began apocalyptically with terrorist acts in the USA, Spain, UK and other parts of the world.

This is why, as the Permanent Council states, we must drop the anchors of transcendent human values, precisely to prevent the risk of being dragged into a century of terrorism, dehumanization and absolute myths and rescue human dimensions, separating them from the prevailing chaos and confusion.

International Law is in the middle of a battle that foresees the definitive consolidation of a *ius gentium* with new social dimensions; major political achievements that go as far as the democratic forms of State organization; ingenious forms of environmental protection; integration processes on the increase; more direct access of people to the courts; innovative mechanisms of prevention, cooperation before a multidimensional security and the transnational effect of crime, protection of populations in situations of risk and sanction in the hands of international organizations and courts; in short, a more humane, humanizing and humanized *ius gentium* that takes its proper place before the reason of State that has prevailed so far.

We must encourage the entry into this new era of a *ratio summa* built around the equilibrium between the collective interests of humanity as a whole; the rights and dignity of the

individual and the necessary regulatory activity of the State and sovereignty that is inherent in conditions of equality with their peers.

We can proudly say that the IAJC has worked in all these spheres.

To be precise, one of the most recent studies assigned to the Inter-American Juridical Committee addresses the juridical aspects of the interdependence between democracy and economic and social development, two main concerns in the inter-American system seeking a new synthesis. This synthesis that is possible, without going to extremes, that freedom is not sacrificed in the name of development, or that civil and political rights do not know about the existence of the cultural, economic and social rights.

In my opinion, the solidarity of the American States is the principle that unites and legally binds the essential intents to further and consolidate representative democracy, and to promote economic and social development by cooperative action.

In order to achieve the noble objectives of the desirable integral development this principle of solidarity requires as an indispensable condition, political organization of the American States based on the effective exercise of representative democracy.

This supportive jural relation fully expresses the interdependence between democracy and economic and social development and the inherent legal aspects.

Juridical solidarity is the emerging principle that, going beyond mere cooperation between States, signifies the capacity to act by the States that are not directly damaged to act in defense of values, principles and regulations that form essential and collective interest inherent in the meaning that gave rise to the Organization.

Collective action before the serious alterations to the constitutional order or mass and systematic violations of human rights in any American country is a direct expression of the renewed American solidarity, as an active legal commitment to defend democracy and human dignity, where it may be considered violated, thereby laying the foundations of a new American public order.

In other spheres, it will be like putting further emphasis in the OAS on its central character for cooperation, so that the result of legal discussions results not only in legal instruments but also in efficient and working institutional mechanisms of cooperation and monitoring, as occurred earlier in the field of Human Rights, and now in the field of security where responsibility of the States in exercising their sovereignty embraces renewed validity before offences that, given their interdependence and transnational character, require cooperative efforts of a new generation in further areas of security.

The OAS also faces the challenge of harmoniously combining the various systems of common law or Anglo Saxon law and the Roman-Germanic civil law system to coexist within it to structure a genuine integrated and unitary inter-American system.

There can be no other way, whenever there is no real comparison between the respective methods and techniques of codification and progressive development. Quite the contrary, since it deals with model laws or treaties, both systems can and have been showing creative and innovative signs of reciprocal enrichment, added value and complementariness. CIDIP is the major groundbreaking force of harmonious integration, thereby enriching even the formal sources of International Law.

Dear Friends,

If the Organization's Charter has the wisdom and virtue to welcome conceptual renewal, there must be a plan for opening to a renewed view of security that transcends the traditional focuses of war and peace to instate the view of a multi-dimensional security that includes concern for human development.

Our proposal to take stock in this Centennial reflects the contribution of the Inter-American Juridical Committee toward creating regulations and institutions in response to the ideal of solidarity established since the beginning in the *OAS Charter* and also since the first American talks about a democracy of solidarity.

We may say then that this key organ of the OAS is fulfilling the sacred mission ordered by our Organization and by those who preceded us a century ago, and that it is ready to work in function of the current challenges and opportunities to increase the collective legal heritage of the Americas and legal security of all nations.

When mention is made of this outstanding work of humankind that is International Law, to which so much of universal vocation America has contributed through the IAJC and generally in the Inter-American System, it must be recalled that it is the result of responsible, wise and noble mature practice of every nation's uncontested and incomparable sovereignty.

Thank you very much.

4. Seventh Inter-American Specialized Conference on Private International Law - CIDIP-VII

Resolutions

CJI/RES.104 (LXVIII-O/96) *Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII)*

Annex:

CJI/doc.209/06 - *Seventh Inter-American Specialized Conference on Private International Law*
(presented by Dr. Ana Elizabeth Villalta Vizcarra)

CJI/RES.115 (LXIX-O/96) *Seventh Inter-American Specialized Conference on Private International Law – (CIDIP-VII)*

Annexes:

CJI/doc.226/06 - *Seventh Inter-American Specialized Conference on Private International Law*
(presented by Dr. Ana Elizabeth Villalta Vizcarra)

CJI/doc.227/06 - *Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII): consumer protection*
(presented by Dr. Antonio Fidel Pérez)

CJI/doc.230/06 corr.1 - *Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII): consumer's protection: questions on applicable law*
(presented by Dr. Antonio Fidel Pérez)

At the 68th regular session of the Inter-American Juridical Committee (Washington, D.C., March 2006), Dr. Ana Elizabeth Villalta Vizcarra, the rapporteuse for this topic, presented report CJI/doc.209/06, "Seventh Specialized Conference on International Private Law (CIDIP-VII)" with a summary of the background to the subject and with particular emphasis on the conclusions reached at the 67th regular session of the Inter-American Juridical Committee. She also recalled the General Assembly mandates contained in resolutions AG/RES. 2069 (XXXV-O/05) and AG/RES. 2065 (XXXV-O/05), in which the Juridical Committee was asked to comment on the final agenda items of CIDIP-VII and to assist with the preparatory studies on those subjects.

The rapporteuse responsible for this area described the two topics approved for the CIDIP-VII agenda, namely: Consumer Protection and Electronic Registries Implementation of the Model Inter-American Law on Secured Transactions.

Dr. Villalta also mentioned that it was important to remember that the CIDIPs are not isolated events but a process that starts with their convocation and culminates in the adoption of inter-American instruments in areas selected by the OAS member States. At the same time, she congratulated the Office of International law on its performance in connection with the preparations for CIDIP-VII, and with development of the methodology and design of the virtual forum for the meetings of experts prior to the Conference.

On the subject of consumer protection, the rapporteurs mentioned that there are three proposals: one by Brazil regarding an Applicable Law Convention, one by the United States regarding a Model Law on Monetary Restitution, and one by Canada regarding a Convention on Jurisdiction. With respect to the Brazilian proposal, Dr. Villalta mentioned that the draft Convention attempts to overcome the lack of sufficient protection for consumers under current private international law in the Americas and she reminded the Committee that the idea was to determine what law best serves consumer interests. As for Canada's proposal on jurisdiction, Dr. Villalta mentioned that aimed to establish rules governing electronic commerce and ways to protect consumers engaging in transborder transactions via the Internet, by determining the competent court and applicable law. Finally, as regards the United States proposal, the rapporteurs explained

that the aim of the Model Law on Monetary Restitution is to find novel and practical ways of redressing economic damage to consumers.

On the second topic of CIDIP-VII, Dr. Villalta said the idea was to establish a new registry system for implementation of the Model Inter-American Law on Secured Transactions. The three components in this proposal are: the creation of standard registration forms; the drafting of guidelines for secured transaction registries; and the drafting of guidelines for electronic interconnection between registries in different jurisdictions.

Dr. Antonio Pérez, co-rapporteur for this topic, added that the United States proposal is still only at the principles stage. However, he emphasized that a draft model law is currently being prepared, which will be forwarded officially as a working document to serve as a basis for negotiations on the subject. Dr. Pérez also mentioned that the success of CIDIP will to a large extent depend on the working process and methodology.

Regarding that aspect, Dr. John Wilson, Legal Officer at the Office of International Law, gave a brief description of the methodology to be followed in the preparatory work for the Conference, which consists, first, of appointing the government experts and independent experts who will put the finishing touches to the conventions and draft laws drawn up in this process. Second, Dr. Wilson mentioned the virtual forum designed by the Office of International Law to facilitate preparatory work on the various documents submitted with regard to both subject matters. Dr. Wilson also referred to the various ways in which the Inter-American Juridical Committee could take part as experts in the preparatory work for the Conference.

The Chairman of the Juridical Committee summarized the four conclusions on which a consensus existed regarding the participation of the Juridical Committee in the discussion forum for CIDIP-VII:

First, the Chairman stated that it was important for all members to have ample access to the forum and all its documents.

Second, he determined that a Juridical Committee web page should be included in the Forum's Internet website to accommodate the Committee's reports on the subject.

Third, it was decided that the rapporteurs for private international law would participate in the discussion forum to represent the Juridical Committee.

Fourth, it was decided that the final contribution, that is to say, the collective institutional participation of the Juridical Committee would continue up to the point when the proposed conventions and model laws are defined. At that point, the Juridical Committee would pronounce on those final texts, as it has done with respect to other similar instruments.

During this regular session, the Inter-American Juridical Committee adopted resolution CJI/RES.104 (LXVIII-O/06), "Seventh Inter-American Specialized Conference on Private International Law," which approved document CJI/doc.209/06 presented by the co-rapporteur; requests the rapporteurs for this area to take part, in a coordinated manner and as representatives of the Inter-American Juridical Committee, in any consultation mechanisms that may be established with a view to discussing topics put forward for CIDIP-VII; requests the rapporteurs to keep the Juridical Committee informed of progress made in the discussion of the topics; and requests that they present a new report to the Committee with observations and comments on the CIDIP-VII agenda at the next regular session. Both documents appear at the end of the present sub-chapter.

At its thirty-sixth regular session (Santo Domingo, June 2006), the OAS General Assembly adopted resolution AG/RES.2218 (XXXVI-O/06) in which it asked the Inter-American Juridical Committee to cooperate in the preparations for CIDIP-VII and encouraged the rapporteurs for this topic to participate in the consultation mechanisms to be established for work on the topics proposed for that Conference.

During the 69th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2006), Dr. Antonio Pérez said that perhaps it was not the best time for the Juridical Committee to be offering specific comments, since there were three proposals from member States dealing with the topic of consumer protection, of which only one had been discussed at length. The second proposal had only been discussed briefly, and the third had not yet been presented.

On this same topic, Dr. Villalta reported that the virtual forum on CIDIP-VII had so far been conducted successfully and said that the Juridical Committee could play an active role on the topic. She said that the Juridical Committee, as such, could already give specific recommendations on the proposals that the experts had already discussed, particularly as regards the proposed Convention on the Law Applicable to Consumer Contracts submitted by the Delegation of Brazil.

Again, Dr. Pérez pointed out that giving an opinion on a single document would mean considering only a part of the discussion, and that a comprehensive view was necessary in order for the Committee to report successfully on the process. In this regard, Dr. Pérez presented several recommendations about the CIDIP-VII process, including the need to tighten the focus of the preparatory work and the need to explore the commonalities of private international law with other branches of law; he recommended a more conceptual analysis be conducted prior to an article-by-article study of the working documents submitted by the member States. He also recommended the creation of a chapter within the general comments virtual forum, covering more than the specific clauses of the proposals.

The Chairman of the Inter-American Juridical Committee concluded that there were sufficient elements to draw up a Juridical Committee resolution regarding CIDIP-VII following the guidelines and conclusions addressed by this regular session.

Consequently, the Inter-American Juridical Committee adopted resolution CJI/RES.115 (LXIX-O/06), "Seventh Specialized Inter-American Conference on Private International Law (CIDIP-VII)," in which it reiterated its support for the CIDIP process as the best possible forum for codifying and harmonizing private international law in the hemisphere and, specifically, the need to draft, under the aegis of CIDIP-VII, inter-American instruments governing consumer protection and electronic registries for secured transactions. It also reiterated its support for the rapporteurs' participation in the preparations for CIDIP-VII and asked them to continue to participate, representing the Inter-American Juridical Committee, in the mechanisms that existed for the drafting of inter-American instruments on consumer protection and electronic registries for secured transactions, emphasizing the reports of the Juridical Committee on those two topics. It finally resolved to draw up new texts, comments, and questions for the CIDIP-VII Internet discussion forum, in order to encourage dialogue toward the production of instruments for implementation in all the Organization's member States.

CJI/RES.104 (LXVIII-O/06)

**SEVENTH INTER-AMERICAN SPECIALIZED CONFERENCE
ON PRIVATE INTERNATIONAL LAW
(CIDIP-VII)**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that the General Assembly of the Organization of American States in its resolution AG/RES.2069 (XXXV-O/05), *Observations and recommendations on the Annual Report of the Inter-American Juridical Committee*, dated June 7, 2005, requested the Inter-American Juridical Committee to continue with its review of the situation of private international law in the Americas and cooperate with the preparation of the forthcoming Inter-American Specialized Conference on Private International Law (CIDIP-VII);

CONSIDERING that the General Assembly also approved resolution AG/RES.2065 (XXXV-O/05), *Seventh Inter-American Specialized Conference on Private International Law*, in which the Inter-American Juridical Committee was asked to submit its comments and observations on the topics in the final agenda for CIDIP-VII;

RECALLING its resolution CJI/RES.100 (LXVIII-O/05) *Seventh Inter-American Specialized Conference on Private International Law* adopted during its 67th regular session in August 2005;

CONSIDERING the report CJI/doc.209/06, *Seventh Inter-American Specialized Conference on Private International Law, CIDIP-VII*, presented by Dr. Ana Elizabeth Villalta Vizcarra, co-rapporteur of the topic, during the 68th regular session of the Inter-American Juridical Committee,

RESOLVES:

1. To approve document CJI/doc.209/06, *Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII)*, presented by the co-rapporteur of the topic Dr. Ana Elizabeth Villalta Vizcarra, and which is the latest contribution to the comments and observations requested for the agenda of the forthcoming CIDIP-VII.

2. To thank the co-rapporteur of the topic Dr. Ana Elizabeth Villalta Vizcarra, for her presentation of this document.

3. To request the rapporteurs of the topic, Drs. Ana Elizabeth Villalta Vizcarra, João Grandino Rodas and Antonio Fidel Pérez to participate on a coordinated basis and as representatives of the Inter-American Juridical Committee in the consulting mechanisms established in order to develop the topics proposed for CIDIP-VII.

4. To ask the rapporteurs to keep the Inter-American Juridical Committee informed, through its Chairman, about the progress in the discussion of the topics.

5. To ask the rapporteurs of the topic to submit another report to the Inter-American Juridical Committee at its next regular session with comments and observations on the CIDIP-VII agenda.

This resolution was adopted unanimously at the regular session held on March 28, 2006 by the following members: Drs. Mauricio Herdocia Sacasa, Jean-Paul Hubert, Luis Marchand Stens, Galo Leoro Franco, Ana Elizabeth Villalta Vizcarra, Antonio Fidel Pérez, Jaime Aparicio and José Manuel Delgado.

CJI/doc.209/06

**SEVENTH INTER-AMERICAN SPECIALIZED CONFERENCE
ON PRIVATE INTERNATIONAL LAW - CIDIP-VII**

(presented by Dr. Ana Elizabeth Villalta Vizcarra)

**1. RESOLUTIONS OF THE INTER-AMERICAN JURIDICAL COMMITTEE,
CJI/RES.99 (LXVII-O/05) AND CJI/RES.100 (LXVII-O/05)**

The Inter-American Juridical Committee, at its 67th regular session (August 1-19, 2005) in Rio de Janeiro, Brazil, approved resolution CJI/RES.99 (LXVII-O/05) on "Agenda for the 68th regular session of the Inter-American Juridical Committee" (Washington, D.C. March 20-31, 2006), adopting the topics under consideration and in progress for the aforementioned regular session of the Inter-American Juridical Committee.

Accordingly, in the text A. Topics under Consideration, number 3, the topic of "Seventh Inter-American Specialized Conference on Private International Law" was approved and its rapporteurs are Drs. João Grandino Rodas, Antonio Fidel Pérez and Ana Elizabeth Villalta Vizcarra

The same regular session of the Inter-American Juridical Committee approved resolution CJI/RES.100 (LXVII-O/05) under the name of the "Seventh Inter-American Specialized

Conference on Private International Law”, in which mention is made of resolution AG/RES. 2069 (XXXV-O/05) “Observations and Recommendations to the Inter-American Juridical Committee Annual Report”, in which the Inter-American Juridical Committee is asked to continue its examination of the status of international private law in the Americas and contribute to the preparation of the next Inter-American Specialized Conference on Private International Law (CIDIP-VII). Also, in this resolution reference is made to resolution AG/RES.2065 (XXXV-O/05) “Seventh Inter-American Specialized Conference on Private International Law”, in which the Inter-American Juridical Committee is requested to give its comments and observations regarding the topics in the final agenda for CIDIP-VII.

In this resolution the topic’s rapporteurs Drs. João Grandino Rodas, Antonio Fidel Pérez and Ana Elizabeth Villalta Vizcarra are also requested to prepare a report on the subject for presentation during the 68th regular session of the Committee, or even earlier should the occasion arise.

Pursuant to both resolutions, the undersigned as one of the rapporteurs of the topic presents the following report at this 68th regular session of IAJC:

a) Background

Under resolutions AG/RES. 1923 (XXXIII-O/03) and AG/RES. 2033 (XXXIV-O/04), the General Assembly of the Organization of American States called the Seventh Inter-American Specialized Conference on Private International Law and requested the Permanent Council to ask the member States to state possible topics for the agenda.

In order to accomplish this order the Organization’s Permanent Council, through its Committee on Juridical and Political Affairs, asked the member States to present proposals for topics for the agenda, and suggestions were received only from member States Brazil, Canada, El Salvador, Mexico, Peru, Uruguay and the USA. Although the member States submitted a total of eight topics (Electronic Commerce, Consumer Protection, Migratory Flows of People, Extracontractual Civil Liability, Transportation, Trans-border Insolvency, International Jurisdiction, Minor Protection and University Degrees and Professions), they agreed that CIDIP-VII would be restricted to two topics at the most.

Under resolution AG/RES. 2065 (XXXV-O/05), the OAS General Assembly approved the following agenda: Topic one, Consumer Protection: Applicable Law, Jurisdiction and Monetary Redress (conventions and model laws) and topic two, Secured Transactions: Electronic registries implementation of the model inter-American law on secured transactions.

In the same resolution AG/RES.2065 (XXXV-O/05), the OAS General Assembly asked the Permanent Council to establish the methodology for preparatory work necessary to draft the inter-American instruments to be considered by CIDIP-VII.

On the first topic “**Consumer Protection**”, the Brazilian delegation presented a proposal of an inter-American convention about the law applicable to some contracts and consumer relations; the US delegation presented a scheme for a model law about monetary redress mechanisms for consumers, and the Canadian delegation submitted a report on consumer protection and jurisdiction in electronic commerce.

There were, however, no specific proposals on the States about the topic of “Electronic registries for implementing the inter-American model law on secured transactions”.

b) Comments on the topic of Consumer Protection

Proposal of “Inter-American Convention of Private International Law on the Law Applicable to some Contracts and Consumer Relations”, presented by the Brazilian Delegation.

Practically on general grounds to structure a convention on the applicable law which must be finally structured in CIDIP-VII, in order to understand the pressing need for a convention on this subject it is necessary to analyze the report by Dr. Claudia Lima Marques called “*Insufficient consumer protection in the regulations of private international law; the need for an inter-American convention on the law applicable to some contracts and consumer relations*”.

In this report the author very specifically refers to the protection of the tourist consumer and the remote consumer who contracts using the growing electronic commerce, since globalization has caused the processes of integration, regionalization of commerce, transportation facilities, mass tourism, the increase in telecommunications, electronic commerce, computer networking, and consumer relations, in practice, to go beyond national boundaries. It is no longer necessary to travel to become a tourist consumer. In other words, in an active consumer; in practice the concepts of an active consumer and an international passive consumer are now in vogue on the American continent, and therefore, their interests should be protected, which implies that the legal system of the Organization's member States has to be prepared for the internationalization of consumer relations.

This draft convention addresses the protection of the weakest economic agent (individual consumer who acts outside his professional activity, as final addressee of services and products for personal or family purposes) in these consumer relations in international situations, consequently going beyond the traditional connections to protect the weakest contracting party.

It should be mentioned that in the instruments produced in the inter-American system, the topic of consumer protection was not given special attention, so that the consumer became a "forgotten player", and it is necessary to change this situation and defend the need and opportunity to prepare a convention on the applicable law in consumer transactions.

On this matter it is essential that there is an inter-American convention to protect consumer interests with regulations of private international law that determine as an applicable law the law of the country of the consumer's residence and principally the law most favorable to the consumer.

With regard to the draft text it begins directly with the **General Rules**, under which the experts should prepare the introductory or consideration part; in these general rules in article 1, the general definition of a consumer is established as an application field, providing in number 1 the actual consumer when it states:

1. for the purposes of this convention a consumer is understood to be any individual who, before a professional and in transactions, contracts and situations understood hereby, acts for ends that do not belong to the sphere of his or her professional activity.

Consequently referring to the lay consumer.

In number 2. It refers to third party consumers when it states:

2. Also considered consumers are third parties belonging to the family of the main consumer or others accompanying the latter, who directly enjoy the services and products in the contracts understood hereby as final addressees.

In number 3 the consumers are those in travel and timesharing agreements, which are some of the contracts to which Dr. Lima Marques refers in her report, since they are contracts relating more to international situations in which the lay consumer becomes the weakest economic agent.

Consumers in these contracts are understood to be as follows:

- a. the main contracting party or individual that buys or agrees to contract a trip that is combined or not, or timesharing for his or her own use;
- b. beneficiaries or third parties on behalf of which the main contracting party hires or agrees to contract the trip or tourist package and those who enjoy the journey of timesharing for a certain period, although they are not main contracting parties;
- c. the assignee or individual or company to which the main contracting party or beneficiary assigns the trip or tourist package or rights of use;

Since the purpose of this draft convention is to do the best for the consumer interests, number 4 of article 1 herein it states:

4. If the law indicated as applicable by this convention is defined in a more general or beneficial way, whoever must be considered consumer or be compared to other agents as consumers, or the competent judge may bear in mind this extension of the field of application of the convention, then it be more beneficial to the consumer's interests."

Article 2 of the draft provides for a general contractual protection when consumers analyze transactions by contracts made remotely by electronic means or telephone, since the consumer is in the country of (number 1) or outside (number 2) his domicile, choosing in one case or another the applicable law that most benefits the consumer.

Article 3 of the draft regulates "Imperative Rules", which are the rules of the country of the forum imperative for consumer protection.

Article 4 of the draft convention states the "Clause of exception" by which the law indicated as applicable will not be applied should it be more closely bound to another law that is more favorable to the consumer.

Article 5 of the draft convention refers to "Excluded topics", as follows: transportation agreements regulated by international conventions; insurance contracts, contractual obligations excluded expressly from the application field of CIDIP-V in international contracts; international trade agreements between traders or professionals; and other contracts and consumer relations regulated by specific conventions.

The topic or chapter II concerns "Protection in Specific Situations", which are practically contracts referring to "Travel and Tourism" and to "Timesharing", so that in article 6 it regulates the applicable law in the different situations of travel and tourism contracts stated in numbers 1, 2 and 3 of the aforementioned article, whose text reads as follows:

1. Individual travel contracts for package deals or with combined services, such as a tourist group or jointly with other hotel and/or tourist services, will be regulated by the law and place of the consumer's domicile, if this coincides with the travel agency's head office or branch where the travel contract was signed or where the offer, publicity or any prior business act was made by the trader, transporter, agent or their autonomous representatives.

2. In other cases, the law of the place where the consumer issues his or her contractual acceptance will be applicable to the individual travel package or combined deals, such as a tourist group or jointly with other hotel and/or tourist services.

3. The law of the place where the consumer states his or her contractual acceptance is applicable to travel agreements not regulated by international conventions, concluded under contracts signed by adhesion or general contractual conditions.

Numbers 1 and 2 of article 7 of the draft convention refer to "Timesharing Contracts", which indicate as applicable the imperative consumer protection rules, as well as the regulations of the country most favorable to the consumers.

In the preparatory work for CIDIP-VII, the experts on this topic shall prepare the final regulations of the convention concerning its coming into effect, ratification and signing, in order to approve such an important convention on protecting the consumer rights.

The draft presented by the USA on a "Proposal for a model law on monetary redress applicable to consumer transactions" addresses protection of economically harmed consumers.

The US proposal is based on the need to provide mechanisms to protect those who have suffered economic losses.

This proposal by the USA states various alternatives of compensation or economic redress for the harmed consumers, some of which are the use of legal mechanisms, such as courts for claims of small sums, administrative award for lesser damages, government or private association collective claims.

With this draft model law claims by individual consumers could be settled through collective lawsuits when a number of consumers are harmed in the same jurisdiction, and also by establishing a system of legal remedies or compensations for small economic losses.

A model law on compensation or restitution for the consumer would complement the draft convention on selecting the law applicable to the consumer.

With regard to the Canadian proposal relating to “drafting a model law or convention on jurisdiction and applicable uniform legal regulations in terms of consumer protection”, it practically lays the foundations for a draft convention or model law on jurisdiction for consumer transactions via Internet, especially establishing uniform regulations of jurisdiction in relation to trans-border contracts between companies and consumers.

It should be borne in mind that with the increase in trans-border transactions it is necessary to have a legal framework that regulates them and protects and above all gives security to consumers beyond their own borders; since it is more usual nowadays to sign every day agreements with the consumer in which the latter and salesperson are situated in different States, which may cause disputes that must be settled; and to determine which is the competent court and applicable law.

Canada’s proposal was to give legislative options for the jurisdiction relating to the consumer use of Internet.

In this Canadian proposal, it provides that when preparing the corresponding instrument, the following elements should be considered:

- Online consumer protection must not be less effective than that which rules the consumer transactions through traditional mass media.
- Consumers must enjoy the benefits of protection that the consumer protection laws in force where they live normally offer them.
- The law must be technologically neutral, so that it must not make discriminations between different forms of technology.
- Certainty must exist regarding the regulations applicable to the participants and their transactions, so that they can anticipate their legal status before signing commercial transactions.
- The legal risk of operating online must not be out of proportion to the connection of a vendor with the law and courts of the pertinent forum.
- Salespersons must be able to choose to operate or not within the legal framework of a certain State.
- The regulations on conflicts of laws must not be an impediment to the ongoing growth of electronic commerce.

c) Comments on the topic “Electronic Registries for Implementation of the Model Inter-American Law on Secured Transactions”

On this topic the experts should discuss about three main aspects: a) preparing an inter-American uniform registration form for the use of all member States; b) drawing up registration lineaments for acceptance, conservation and dissemination of electronic information, and c) drawing up lineaments for interconnecting records of different jurisdictions for those cases wherein goods have contact with more than one jurisdiction or those cases where these goods move from one jurisdiction to another.

Covering these three aspects would provide further certainty in registering secured transactions since the records of the States would be harmonized; registration would be made easier from remote places; it would establish greater efficiency, speed, precision, uniformity and coordination between the records of the member States.

So now the topics on the CIDIP-VII agenda concerning “Consumer Protection” and “Electronic Records” are agreed, which are very important in terms of globalization, processes of integration, regionalization of trade, and increase in the electronic commerce and so on.

Having defined these topics for the CIDIP-VII agenda, it is convenient to work toward drafting preparatory documents by giving comments and observations on them both by the government and non-government experts and by the members of the Inter-American Juridical Committee.

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CJI/RES.115 (LXIX-O/06)

SEVENTH INTER-AMERICAN SPECIALIZED CONFERENCE ON PRIVATE INTERNATIONAL LAW (CIDIP-VII)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that the General Assembly of the Organization of the American States in its resolution AG/RES.2218 (XXXVI-O/06), *Observations and recommendations on the Annual Report of the Inter-American Juridical Committee*, on June 6, 2006, requested the Inter-American Juridical Committee to continue considering the topic on codification and standardization of private international law in the Americas and contribute toward the preparation of the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII);

CONSIDERING that the General Assembly, in that same resolution, requested the rapporteurs of the Juridical Committee to participate in the consultation mechanisms that were established to develop the instruments on the topics for the CIDIP-VII;

REMEMBERING that the General Assembly of the Organization of American States in its resolution AG/RES.2069 (XXXV-O/05), *Observations and recommendations on the Annual Report of the Inter-American Juridical Committee*, on June 7, 2005, asked the Inter-American Juridical Committee to continue examining the status of private international law in the Americas and contribute toward the preparation of the forthcoming Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII);

RECALLING that the General Assembly in its resolutions AG/RES. 2069 (XXXV-O/05) and AG/RES.2065 (XXXV-O/05) requested the Inter-American Juridical Committee to submit its comments and observations on the topics of the CIDIP-VII;

REMEMBERING its resolutions CJI/RES.104 (LXVIII-O/06) and CJI/RES.100 (LXVII-O/05) on the Seventh Inter-American Specialized Conference on Private International Law;

CONSIDERING its reports on the Seventh Inter-American Specialized Conference on Private International Law presented during the 69th regular session of the Inter-American Juridical Committee, contained in documents CJI/doc.226/06 presented by Dr. Ana Elizabeth Villalta Vizcarra, CJI/doc. 227/06 presented by Dr. Antonio Fidel Pérez, and CJI/doc. 230/06 corr. 1 presented by Drs. Antonio Fidel Pérez and João Grandino Rodas, co-rapporteurs of the topic,

RESOLVES:

1. To thank the co-rapporteurs of the topic, Drs. Ana Elizabeth Villalta Vizcarra, Antonio Fidel Pérez and João Grandino Rodas for their presentation of documents, respectively, CJI/doc.226/06, CJI/doc.227/06 and CJI/doc.230/06 corr. 1 attached to the resolution herein, and to continue to consider these documents in the light of the discussions during the present regular session.

2. Without detriment to the continued examination of the documents listed in the preceding item 1, to request the General Secretariat to circulate them among the OAS member States.

3. To reiterate its support for the CIDIP process as the forum of excellence for codification and harmonization of private international law in the hemisphere, and specifically on the need to prepare inter-American instruments within the CIDIP-VII in terms of consumer protection and electronic records of secured transactions.

4. To reassert its support for participation of the rapporteurs in the preparatory work for the CIDIP-VII, asking them to continue to represent the Inter-American Juridical Committee in the mechanisms for preparing inter-American instruments on consumer protection and electronic records for secured transactions, and placing emphasis in the reports of the Juridical Committee on both topics.

5. To draft new texts, comments and questions for the discussion meeting by internet of the CIDIP-VII to encourage dialogue for preparing instruments that can be implemented in all member States of the Organization.

This resolution was adopted unanimously at the session held on August 18th 2006 in the presence of the following members: Drs. Jean-Paul Hubert, Eduardo Vio Grossi, João Grandino Rodas, Jaime Aparicio, Ana Elizabeth Villalta Vizcarra, Galo Leoro Franco, Mauricio Herdocia Sacasa and Antonio Fidel Pérez.

CJI/doc.226/06**SEVENTH INTER-AMERICAN SPECIALIZED CONFERENCE ON PRIVATE INTERNATIONAL LAW**

(presented by Dr. Ana Elizabeth Villalta Vizcarra)

I. RESOLUTIONS

The Inter-American Juridical Committee, at its 68th regular session held in Washington, D.C., on March 20-31, 2006, adopted resolution CJI/RES.104 (LXVII-O/06), called *Seventh Specialized Inter-American Conference on Private International Law*, in which it was resolved, among other matters, to request the rapporteurs of the topic to participate in the consultation mechanisms that come to be established with a view to developing the topics proposed for the CIDIP-VII; to present a new report to the Inter-American Juridical Committee with comments and observations on the agenda of the CIDIP-VII, at its next regular session.

The General Assembly of the Organization of the American States (OAS), at its Thirty-Sixth Regular Session held in Santo Domingo, the Dominican Republic, in June 2006, through resolution AG/RES.2218 (XXXVI-O/06), requested the Inter-American Juridical Committee to collaborate with the preparation of the next CIDIP-VII and encouraged the rapporteurs to participate in the consultation mechanisms that come to be established with a view to developing the topics proposed for that CIDIP.

In light of the above, this report is presented containing a list of the most important aspects of the virtual forum of discussion outlined in the Office of International Law of the Department of International Legal Affairs of the OAS.

II. WORKING METHODOLOGY AND DEVELOPMENT OF THE VIRTUAL FORUM

The topics approved for the Agenda of the CIDIP-VII are Consumer Protection and Electronic Registries for Implementation of the Model Inter-American on Secured Transactions.

a) Topic I: Consumer Protection

With regard to topic I of “Consumer Protection”, there are three proposals, one from Brazil relating to a convention on applicable law, called *Draft inter-American convention of private international law on the law applicable to some consumer contracts*, presented by Dr. Cláudia Lima Marques; one from the United States regarding a model law on monetary restitution and one from Canada concerning a convention on jurisdiction.

The main purpose of the Brazilian proposal is to satisfy the insufficient protection afforded to consumers in the system of private international law currently in the Americas, practically converting them into forgotten protagonists, for which reason the text of the proposal considers the “law most favorable to the consumer”; the United States proposal seeks new, pragmatic ways that try to economically settle the demands of jeopardized consumers, while the Canadian proposal on jurisdiction attempts to establish a regime on cases of electronic commerce and how to protect consumers who make transborder transactions via the Internet, through the competent court and applicable law.

As for the topic of creating an Electronic Register to implement the *Inter-American model law on secured transactions*, this is comprised of three parts: creation of uniform register forms, drafting guidelines for transaction registers, and drafting guidelines for electronic interconnection between registers of different jurisdictions.

The methodology that is practically being implemented in the process of the preparatory work on these topics on the Agenda of the CIDIP-VII is to designate government experts and independent experts to make their comments on and give the final form to the conventions and model laws which will be the final product of this process for which the Office of International Law has outlined a virtual forum where the preparatory work on both topics is being carried out.

At the moment, the government experts on topic I of “Consumer Protection” are delegations from: Argentina, Brazil, Canada, Chile, Colombia, Ecuador, El Salvador, Panama, Paraguay, Peru, United States and Uruguay; independent experts represent Argentina, Canada, Nicaragua, Mexico and United States; International Organizations are represented by ALADI; and the Inter-American Juridical Committee by Drs. João Grandino Rodas, Antonio Fidel Pérez and Ana Elizabeth Villalta Vizcarra.

The preparatory work on topic II of “Secured Transactions (Electronic Registers)” includes governmental experts from Argentina, Canada, Chile, Colombia, El Salvador, Panama, Paraguay, Peru, United States and Uruguay; independent experts from Argentina, Canada and United States; International Organizations such as ALADI, UNCITRAL and the World Bank, plus the above-mentioned members of the Inter-American Juridical Committee.

To take part in this virtual Forum, the users must register beforehand and satisfy the established requisites. The Forum is administrated by a moderator who will determine its modalities.

The forum operates in English and Spanish. Whereas the preparatory work on consumer protection began with a preliminary discussion on the *Draft inter-American convention of private international law on the law applicable to some contracts and consumer relations* proposed by Brazil, the aim being that the experts expose their preliminary comments on the objectives of the convention and its contents.

The three instruments that the Group of Experts has the mandate to negotiate and draft on the topic of “Consumer Protection” are: a) the *Inter-American convention of private international law on law applicable to some contracts and consumer relations*; b) the *Model Law on jurisdiction and conflict of laws applicable to the consumer*; and c) the *Law on monetary compensation applicable to the consumer*.

The Office of International Law of the Department of International Legal Affairs of the OAS will be in charge of monitoring the forums, revising and updating the drafts of the conventions and model laws, based on the contributions of the experts.

In the preliminary discussions, one of the experts from the Uruguayan Delegation, Dr. Eduardo Tellechea Bergman, presented the bases for Approaching an inter-American convention on international protection of consumers, applicable law and competent jurisdiction. The first stage also received contributions of general comments from experts from Argentina, El Salvador, Mexico (independent expert), Paraguay and the Permanent Mission of Colombia to the OAS.

Discussions were later held on the *Draft Convention on consumer protection*, beginning with articles 1 to 4 of the Brazilian proposal, which contains contributions from experts from Argentina, Brazil, El Salvador, Paraguay and Uruguay.

At present, discussions are being held on articles 5 to 7 of the same *Draft Convention on consumer protection*, with contributions from experts from Argentina, El Salvador and Paraguay. This discussion will conclude the first round of negotiations on this *Draft Convention* proposed by Brazil, which contains precisely seven articles.

Later to be discussed in the Forum are the *Draft model law on jurisdiction* proposed by Canada and then the *Draft model law on monetary redress* proposed by the United States.

b) Topic II: Electronic Registries for Implementation the *Model Inter-American Law on Secured Transactions*

As regards topic II of “Secured Transactions”, at the moment discussions are being held in the virtual Forum of experts on Form 1: Registration Form, initially as part of the general topics, the Registration Form and comments on items 1-3, with active participation by the experts from Argentina, Canada, Paraguay, Peru and Uruguay.

This group of experts will be in charge of preparing for this new virtual Forum of Discussion the new inter-American instruments on electronic registries of secured transactions, consisting of five registration forms to be negotiated in the framework of the *Model Inter-American law on secured transactions*, on which the experts shall make comments as to form and content.

While the *Model Inter-American law on secured transactions* provides the basic guidelines for the States to draw up their own registration formats, it would be very useful for the inter-American system if the CIDIP-VII considered preparing a uniform registration form to be used by all the OAS member States, thereby ensuring homologation of the registers of the States with greater clarity and juridical security on this topic of Secured Transactions, as well as facilitating registration in transborder situations and access to information.

The uniform registration form should contain primarily the name of the debtor, the name of the creditor and a description of the secured goods.

In both topics (“Consumer Protection” and “Secured Transactions”) there is active participation on the part of experts in the virtual Forum of Discussion, in the different stages set in the calendar to negotiate such topics, making substantive contributions that will allow for preparation of inter-American instruments that contain high levels of consensus.

III. CONCLUSION

This process of holding the CIDIP-VII is being achieved with the active participation of all the member States that so wish, represented through their experts (whether governmental or independent), so participants include all the International Organizations interested in the topic of this CIDIP, as well as the Inter-American Juridical Committee, represented by the members of the Committee who are rapporteurs of the topic, thereby complying with the very resolutions of the Inter-American Juridical Committee as well as those of the General Assembly of the OAS.

It should be borne in mind that the CIDIPs must not be seen as specific events but rather as part of a process that begins with their being announced and ends with the approval of the

inter-American instruments relating to the topics chosen by the members of the OAS for the corresponding CIDIP.

It is precisely the preparatory work for the current CIDIP-VII that show that the CIDIPs really constitute a process in which all the actors involved in it should play a part, that is, the member States of the OAS (through its experts); the experts on matters of private international law; international organizations; the Inter-American Juridical Committee, which as a consultative body of the OAS is assigned to promoting the codification and progressive development of both public and private international law, with the General Secretariat of the OAS participating from the beginning in the development of this preparatory work, elaborating the methodology and design of the virtual Forum for the meetings of experts through the Office of International Law of the Department of International Legal Affairs.

The virtual Forum of Discussion of the topics “Consumer Protection” and “Secured Transactions” is developing successfully, as testified by the experts participating in it and in the consultation mechanisms, where substantial progress has been made in the calendar of discussion of both topics.

In the preliminary discussions on the topic of “Consumer Protection”, the experts have together demonstrated that there is sufficient consensus among the American countries concerning the need for a norm of consumer protection in international contracts, especially in the growing electronic market, a consensus that may serve as a basis for drafting a convention with special rules on “conflicts of laws”, for the purpose of filling the vacuum that exists in the inter-American sphere of regulations on the topic of “Consumer Protection”.

Likewise, on the topic of “Consumer Protection”, a consensus is being fashioned among the experts that an Inter-American Convention on this topic should include in the perspective of private international law aspects of international jurisdiction and applicable law, and in the material perspective, consumer contracts in general (with some exclusions) and consumer contracts made through electronic means.¹

Accordingly, most of the experts have agreed that in the *Draft Inter-American convention of private international law on the law applicable to some consumer contracts*, the term “consumer” should be understood in a broad sense, in other words, as “a person (physical or juridical) who acts with objectives that do not belong to the scope of his/her professional activity”, so that “consumer” should be understood as a physical or juridical person.²

Similarly, most of the experts have requested that the *Draft convention* include norms of public order, which could be part of the final norms to be written in the *Draft*.³

Some of the experts have indicated that article 5 of the *Draft convention* is not quite clear as to what is included and excluded, so this should be analyzed in light of the specific objectives pursued in the text. Similarly, it should be understood that articles 6 and 7 of the *Draft convention* regulate contracts made via the Internet.⁴

Many of the experts have agreed that from the point of view of legislative technique, it is convenient to include in the *Draft convention* presented by Brazil the expositive part of the convention, as well as the final provisions of same.

As regards the topic of “Secured Transactions”, most of the experts are considering the convenience of drawing up a “Uniform Register Form” to be used by all member States of the OAS in order to harmonize the Registers of the States, which would lend more certainty and security to registrations of secured transactions.

Setting up this virtual Forum of Discussion has been received with great satisfaction by all the experts who participate both in the topic of “Consumer Protection” and that of “Secured

¹. Comment in the debates of the virtual forum made by Professors Diego Fernández Arroyo and María Paula All.

². Comment of independent experts from Argentina and governmental experts from El Salvador.

³. Comment of independent experts from Argentina.

⁴. Comment of the governmental expert from Paraguay and the governmental experts from El Salvador.

Transactions”, since it is generating an exchange of opinions of great depth and relevance, which will certainly prove to be an enriching experience.

In the same way, all the Experts have coincided in congratulating effusively the creators of this initiative and those who have made the Forum of Discussion possible so that the preparatory work for the CIDIP-VII can be carried out successfully.

In the months to come, the Forum of Discussion will continue with the pending proposals. On the topic of “Consumer Protection”, the discussion of the *Draft Inter-American convention of private international law on the law applicable to some consumer contracts*, presented by Brazil and prepared by Dr. Cláudia Lima Marques, has been terminated; pending discussion are the *Draft model Law* proposed by Canada and the *Draft model law of monetary redress* presented by the United States.

With regard to the topic of “Secured Transactions”, the debate on the items of the rest of the Registration Forms remains pending.

The virtual Forum of Discussion is on a good path and it is hoped that the debates will be attended by the governmental experts of the States who have not yet participated, and that all the independent experts who have registered will participate, as well as the international organizations.

In this regular session of the Inter-American Juridical Committee it will be appropriate convenient to define the moment for the member rapporteurs on private international law to participate, since, said above, the first round of debates has been concluded on some of the proposals both on the topic of “Consumer Protection” and on that of “Secured Transactions”, which is why one should define the most convenient and coordinated way for the Inter-American Juridical Committee to participate, thereby complying with its own resolutions as well as those emanating from the various General Assemblies of the OAS on the topic.

During the 68th regular session of the Inter-American Juridical Committee, it was determined that the final contribution of the Committee as a collective institutional participation would be made at the moment when the proposed conventions and model laws come to be defined, the objective being to make comments on the final texts as was done with other similar instruments, and that in this 69th regular session the Inter-American Juridical Committee will be informed by the rapporteurs on the progress made on the discussion of the topics, as well as their observations and comments on the Agenda of the CIDIP-VII.

As shown earlier, the process of the CIDIP-VII is developing successfully, with substantive contributions to the topics of its Agenda, which will allow us new inter-American instruments on these topics to lead to a consensus.

CJI/doc. 227/06

**SEVENTH INTER-AMERICAN SPECIALIZED CONFERENCE ON
PRIVATE INTERNATIONAL LAW (CIDIP-VII):
CONSUMER PROTECTION**

(presented by doctor Antonio Fidel Pérez)

The Inter-American Juridical Committee (IAJC) of the Organization of American States (OAS) has played a central and supporting role in the process of private international law codification and harmonization in the Americas, as demonstrated most recently in its suggestion the topic of consumer protection was ripe for consideration in the context of the Inter-American Specialized Conference on Private International Law (CIDIP). The IAJC reporters for private international law stated that

Harmonization of consumer protection rules can be expected to increase transnational commerce in consumer goods. Wide discrepancies in national consumer protection laws can be expected to produce a lack of consumer

confidence to participate in cross-border transactions, which in turn deters small and medium-sized businesses from offering their products abroad.⁵

Together with the moral necessity of assuring that exporters provide adequate and effective remedies in international sales of goods to consumers and that consumer victims of fraud or defective products receive appropriate remedies, this is an important criterion in assessing the proposals that have been made and discussed this concern thus far under the agenda item concerning consumer protection in the CIDIP-VII discussion forum established by the OAS Department of International Legal Affairs for CIDIP-VII.

This report will address the proposal relating to consumer protection that been discussed in detail thus far –the Brazilian proposal for a treaty on applicable law for consumer transactions– in light of the fundamental policies previously articulated by the IAJC. It identifies certain substantive concerns relating to the possible unintended trade impacts of the proposal, which may even raise questions of compliance with international trade law obligations. It then raises the question whether unintended consequences of this kind can be avoided by a modification of the current procedure in the discussion forum to assure a more integrated approach to achieving substantive law harmonization.

Substantive issues

Traditionally, private international law treaties address the problem of international transactions by developing choice of law mechanisms that employ well-established and largely commonly-understood concepts, such as the place of making, or the place of characteristic performance, or the domicile or nationality of a party to the transaction. By contrast, the central thrust of the current Brazilian proposal is in a transnational case to make the choice of law question depend on a substantive inquiry into the quality of the potentially applicable laws. It would apply the law that is most favorable to the consumer, and it would permit the court to employ the broadest definition of consumer available among the potentially competing laws, irrespective of whether that definition was found in the applicable law that was deemed by the court to be most favorable to the consumer. In short, the chosen law under the Brazilian proposal may well be a combination of the law of two different States.

From the perspective of furthering trade, the first potential concern about this proposal is that exporters will be left in considerable doubt as to the applicable law. The criterion proposed for selecting a substantively better law for the consumer is not articulated. The value of a consumer claim, and the value of a law creating that claim for a consumer, may depend on two variables: first, the level of compensation the consumer will receive (for example, the availability of punitive damages, consequential damages, compensation or indemnification for harm to third parties), and, second, the probability of success, including enforceability of judicial judgment, arbitral award, or administrative recovery mechanism. Hypothetically, the best law may well, in such a case, be the enemy of a good law, in the sense that a better or richer claim may, in the final analysis, not be better for the consumer than a less valuable but more certain claim. The legal uncertainty created by injecting such an analysis in the choice of law process could have a severely chilling effect on international trade.

The second potential trade issue suggested by the Brazilian proposal relates to the possibility of it operating as a disguised restriction on international trade or a violation of the national treatment principle found in international trade law, regional trade agreements, and certain bilateral trade agreements. Take the hypothetical case of a Brazilian export of goods to Uruguay (this example is merely illustrative of the general principle and does not refer to the actual laws in operation in the two countries). Suppose also that the Brazilian consumer protection law is in every respect more favorable to the consumer than Uruguayan consumer protection law. Under the Brazilian proposal, a Brazilian producer will be subject to Brazilian law in a case involving a consumer in Uruguay; meanwhile, a competing Uruguayan producer will be subject only to Uruguayan law. By assumption, the price that each seller will have to charge must reflect the total cost of the sale, including the additional warranties, consequential damage provisions and the like, which make Brazilian law more favorable than Uruguayan law. The

⁵. See VÁZQUEZ, Carlos Manuel, RODAS, João Grandino. *CIDIP-VII and beyond*. OAS/Ser.Q, CJI/doc.74/01 rev.1, 14 Aug. 2001.

conditions of sale and competitive opportunities available to the Brazilian firm selling in Uruguay will then be undermined by operation of the choice of law provision. Similarly situated Brazilian and Uruguayan firms will not be treated equally, thus violating the national treatment principle.

Procedural issues

These substantive questions also suggest that greater attention in the CIDIP discussion forum could usefully be given to a more global consideration of the relationships between the three proposals. In effect and by design, the discussion is proceeding thus far on the basis of a sequential analysis of the individual clauses of each proposed text. This report questions whether it might be useful to consider the central goals of each proposal simultaneously, with the objective of achieving substantive harmonization to the maximum extent possible or, at least, avoiding in each instrument unintended interference with the policy objectives of the other instruments. In particular, there is a need to coordinate discussion of the Brazilian proposal with a discussion, which has only now begun, of the Canadian proposal for a treaty or model law concerning jurisdiction and applicable law. The two proposals clearly overlap, and any discussion of how the choice of law issue is conceptualized in the Brazilian text is arguably incomplete and premature. Both of these proposals, moreover, may well need to be coordinated with the anticipated U.S. proposal for the establishment of national mechanisms to assure more effective vindication of consumer claims for small sums, which often do not warrant the expenditure of the resources necessary for transnational litigation. One concrete example of a potential conflict is that the Brazilian proposal dramatically reduces the capacity of consumers to enter into choice of law agreements or to opt-out of the so-called the mandatory provisions of the applicable law. Because it is possible that such rules might be interpreted to prevent consumers from agreeing in advance to arbitration of their claims in transnational sales cases, the impact of such rules on the viability of the small-claims settlement proposal of the United States may well need to be considered. In short, this report suggests that discussion of the three proposals may well proceed more effectively if it begins with a more global discussion of the possibilities for substantive harmonization rather than a clause-by-clause discussion of proposed texts.

This report has merely raised a set of illustrative questions, because the unintended consequences of any one CIDIP proposal are at least as important as its foreseeable benefits. These questions should not be interpreted as opposition to Brazilian proposal, which thus far is the only one that has been discussed. It may be that, on reflection, the Member States of the OAS judge that the proposal's benefits exceed the risks identified in this report, which after further study could even prove lacking in merit. However, given the importance of the emerging connection between private law harmonization and regional and sub-regional free trade as well as consumer sovereignty, it would be imprudent for the CIDIP-VII not to explore these questions fully.

CJ/doc.230/06 corr.1

SEVENTH INTER-AMERICAN SPECIALIZED CONFERENCE ON PRIVATE INTERNATIONAL LAW: CONSUMER PROTECTION: QUESTIONS ON APPLICABLE LAW

(presented by Drs. Antonio Fidel Pérez and João Grandino Rodas)

1. In terms of legal certainty (that is to say, certainty about the law that will be applied in the minds of buyers and sellers of goods and/or services governed by the proposed instruments), what would be the advantages and disadvantages of employing a choice of law system that, as the Brazilian proposal suggests, looks to the content of the applicable law rather than, as the Canadian proposal suggests, formal criteria, such as those employed in traditional private international treaties?
2. In connection with furthering legal certainty, what criteria would be employed to determine whether one State's definition of consumer was broader than another State's definition? In terms of legal certainty, how could or should States interpret the Brazilian proposal's grant of discretion to the competent court to choose the broader consumer definition

among the potentially applicable definitions of consumer found in the various potentially applicable consumer laws?

3. In terms of legal certainty, how would one identify the body of laws in a jurisdiction that count as consumer protection law for purposes of the proposed instrument?
4. Also in connection with legal certainty, what criteria would be employed to determine which state's law would be more favorable to the consumer? For example, would the criterion be the amount of recovery or the probability of obtaining a recover (even if smaller than the maximum potentially available)? Some combination of the two?
5. Again in terms of legal certainty, are there any other legal principles, such as the national treatment requirement in international and regional trade law, which might call into doubt a substantive criterion as a choice of law rule? For example, would applying the law most favorable to consumers only in transnational cases discriminate in favor of domestic producers, which might not be subject to the same burden, then, as foreign producers?
6. To what extent do mandatory local rules, such as those that might preclude consumer agreement to non-judicial dispute resolution, conflict with the search for mechanisms to increase the availability of monetary restitution? Would, for example, limits on party freedom to agree in advance to non-judicial dispute resolution, such as arbitration, reduce the probability that foreign producers are willing to agree to enforcement of money judgments arising out of their sale of consumer goods and/or services? Do any of the proposed instruments conflict on this issue, and if so, how could this conflict be resolved?
7. If any of the proposals would result in harm to legal certainty (or an increase in the likelihood of obtaining relief for consumers), what would be the potential countervailing benefits of those proposals and how would it be determined over time that they are being achieved?
8. Addendum: These questions are formulated on the basis of a preliminary review of the existing Internet discussion, which has thus far addressed only the Brazilian proposal in any detail. When actually presented by the rapporteurs at the end of the first round of Internet discussion of all three proposals, they will be expanded to provide equivalent coverage of the Canadian and U.S. proposals. This will ensure balanced Juridical Committee attention to all three proposals. To the extent the issues are already addressed in the Internet discussion of the Canadian and U.S. proposals, the rapporteurs will revise this set of questions so as not to duplicate the work already done by the Internet participants.

5. Considerations on the task of codifying and harmonizing International Law in the Americas

Resolutions

- CJI/RES.103 (LXVIII-O/06) *Considerations on the codification and standardization of international law in the Americas*
- CJI/RES.116 (LXIX-O/06) *Considerations of the task of codifying and harmonizing international law in the Americas*

Document

- CJI/doc.208/06 *Consideration the codification and standardization of international law in the Americas*
(presented by Dr. Ana Elizabeth Villalta Vizcarra)

During the 68th regular session of the Inter-American Juridical Committee (Washington, D.C., March 2006), Dr. Ana Elizabeth Villalta Vizcarra, co-rapporteuse for the topic, presented document CJI/doc.208/06, "Considerations on the codification and harmonization of international law in the Americas."

Dr. Villalta mentioned that in this area the Inter-American Juridical Committee aims to study the process of codifying private international law, make an inventory of what already exists in this field and of the Juridical Committee's contributions to the codification of international law in the Americas, and put forward conclusions as to the best way to codify and harmonize international provisions.

During this session, the Inter-American Juridical Committee adopted resolution CJI/RES.103 (LXVIII-O/06), "Considerations on the codification and standardization of international law in the Americas," which requests that the rapporteurs submit an updated report on the topic to the Juridical Committee. As regards the title of the topic, it was agreed to keep "Considerations on the task of codifying and harmonizing international law in the Americas." The document presented by the rapporteuse and the resolution appear at the end of the present sub-chapter.

At its thirty-sixth regular session (Santo Domingo, June 2006), the OAS General Assembly adopted resolution AG/RES.2218 (XXXVI-O/06), which requests that the Inter-American Juridical Committee continue considering the topic.

During the 69th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2006), its members said that although the topic was complex, it would be possible for the Committee to adopt a decision on the way in which a general system of private law could be established in the hemisphere. It was also suggested, however, that at the current juncture it was more important to consider the specific topics of CIDIP-VII, since they represented the most direct and effective way in which the Juridical Committee could help codify private international law in the Americas.

In this regard, it was said that basic documents existed and had made useful contributions to the CIDIP process, but that they needed updating. In addition, the Committee's work is supported by the States, and so the contributions existing to date should continue to be used in order to continue building on the important work carried out to date by the Juridical Committee.

In connection with this, Dr. Ana Elizabeth Villalta Vizcarra spoke of the importance of preserving the CIDIP process as the prime forum for codifying and harmonizing private international law in the hemisphere. She also spoke of the differences between universal forums (such as The Hague Conference on Private International Law) and regional forums like CIDIP, and she underscored the need to preserve the latter, since they facilitated greater participation by the region's States and responded more accurately to the needs and realities of the hemisphere. She also mentioned a proposal, made by the recent Meeting of Ministers of Justice and Attorneys

General of the Americas, for launching a study into legal cooperation on civil matters in the Americas. In light of the importance of the subject, she recommended that the Juridical Committee address this point at its following sessions, with contributions from all the private international law rapporteurs. In addition, as an indication of the importance of the CIDIP process, she spoke of a forum that had been organized for implementing the CIDIP-VI Model Law on Secured Transactions and the preparatory work for CIDIP-VII in Managua, Nicaragua. She also said that this would not be the only discussion on CIDIP in the member States, since the implementation of the instruments adopted by the CIDIPs was of great importance and a current topic of dialogue in several countries that were studying the possibility of implementing or ratifying those instruments.

The other members of the Inter-American Juridical Committee said it would be recommendable to take up the general efforts and work carried out in codifying and harmonizing international law and to channel them into specific recommendations for CIDIP-VII. One suggestion offered was that the title of the topic could be changed to reflect the need to find a subject matter capable of filling the vacuums that exist in private international law.

The Chairman said that perhaps it was important to decide whether the goal of the topic was to improve the conventions that already existed or to seek out new topics and improve the CIDIP process in the direction of creating new private international law instruments in the region.

Finally, this session of the Inter-American Juridical Committee adopted resolution CJI/RES.116 (LXIX-O/06) "Considerations on the task of codifying and harmonizing international law in the Americas," in which, *inter alia*, it recognized the valuable contribution made by the CIDIP process in modernizing, harmonizing, and standardizing the applicable law in the Americas; emphasized the renewed interest and new dimensions acquired by this important topic in light of the progress made with subregional integration efforts and the agreements struck in the areas of free trade, investments, and services; underscored the importance of increasing the number of ratifications of and adherences to the CIDIP conventions and the incorporation of model laws into domestic law; and noted that the CIDIPs have helped demonstrate the complementary benefits of common law and civil law, thereby generating a new dynamic of integration and enriching that strengthens the basic unity of the inter-American system.

CJI/RES.103 (LXVIII-O/06)

CONSIDERATIONS ON THE CODIFICATION AND STANDARDIZATION OF INTERNATIONAL LAW IN THE AMERICAS

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that the General Assembly of the Organization of American States in its resolution AG/RES.2069 (XXXV-O/05), *Observations and Recommendations on the Annual Report of the Inter-American Juridical Committee*, dated June 7, 2005, requested the Inter-American Juridical Committee to continue with its review of the situation of private international law in the Americas;

BEARING IN MIND the report CJI/doc.208/06, *Considerations on the Codification and Standardization of Private International Law in the Americas*, presented by the co-rapporteur of the topic, Dr. Ana Elizabeth Villalta Vizcarra during the 68th regular session of the Inter-American Juridical Committee, and report CJI/doc.193/05, *The Inter-American Juridical Committee on the Codification of Private International Law and Preparation of the Seventh Inter-American Specialized Conference on Private International Law*, presented by Dr. Ana Elizabeth Villalta Vizcarra during the previous regular session of the Committee,

RESOLVES:

1. To thank the co-rapporteur of the topic, Dr. Ana Elizabeth Villalta Vizcarra, for her presentation of documents CJI/doc.208/06, *Considerations on the Codification and Standardization of Private International Law in the Americas*, and CJI/doc.193/05, *The Inter-*

American Juridical Committee on the Codification of Private International Law and Preparation of the Seventh Inter-American Specialized Conference on Private International Law.

2. To request the rapporteurs of the topic, Drs. Ana Elizabeth Villalta Vizcarra, João Grandino Rodas and Antonio Fidel Pérez, to present an updated report to the Inter-American Juridical Committee on the subject.

This resolution was adopted unanimously at the regular session held on March 28, 2006 by the following members: Drs. Mauricio Herdocia Sacasa, Jean-Paul Hubert, Luis Marchand Stens, Galo Leoro Franco, Ana Elizabeth Villalta Vizcarra, Antonio Fidel Pérez, Jaime Aparicio and José Manuel Delgado Ocando.

CJI/doc.208/06

**CONSIDERATIONS ON THE CODIFICATION AND STANDARDIZATION OF
PRIVATE INTERNATIONAL LAW IN THE AMERICAS**

(presented by Dr. Ana Elizabeth Villalta Vizcarra)

**I. RESOLUTION OF THE INTER-AMERICAN JURIDICAL COMMITTEE,
CJI/RES.99 (LXVII-O/05)**

The Inter-American Juridical Committee, during its 67th regular session (August 1-19, 2005) in the city of Rio de Janeiro, Brazil, approved resolution CJI/RES.99 (LXVII-O/05) under the name of *Agenda for the 68th regular session of the Inter-American Juridical Committee* (Washington, D.C., March 20-31, 2006), in which the topics under consideration and in progress were adopted for the said regular session of the Inter-American Juridical Committee.

On this matter, in the text, A. Topics under Consideration, number 3, the topic was approved on “Consideration on Codification and Standardization of Private International Law in the Americas”, and its rapporteurs are Drs. João Grandino Rodas, Antonio Fidel Pérez and Ana Elizabeth Villalta Vizcarra.

In compliance with this resolution herein, the undersigned as one of the rapporteurs of the topic presents at this 68th regular session of the IAJC the following report:

A. Background

In the work of codifying and unifying private international law in the Americas the Organization of American States (OAS) and the Inter-American Juridical Committee (IAJC) gave a valuable contribution toward adopting regulations on conflicts of laws and uniform rules to bring the systems of Civil Law and Common Law closer for unifying private international law.

The progress of this codification work in America is due first and foremost to the international treaties on the matter; first when the Panama Congress was convened by Simon Bolivar in 1824, then the 1878 *Lima Treaty*, which was the first treaty on private international law both on the American continent and in the world, as an outcome of the Lima Congress of 1877-1878 known as “Congress of American Legal Advisors”, and then the *Montevideo Treaties* of 1889-1890, produced by the First Montevideo Congress 1888-1889.

The second stage included the “American International Conferences”, which not only addressed topics on private international law but also topics on political and economic unions, the latter being discussed between 1889 and 1954 in ten American International Conferences. One of the most important on this matter was the “Sixth American International Conference”, in Havana, Cuba, in 1928, which approved the *Bustamante Code* in a joint effort of America to codify private international law, between the guidelines given in the 1878 *Lima Treaty* and those provided in the *Montevideo Treaties* of 1889-1890.

Later, and with the idea of commemorating the *Montevideo Treaties* of 1889-1890, a second “Montevideo Congress of 1939-1940” was convened, which produced the *Montevideo Treaties* of 1939-1940, updating those of 1889-1890.

In the first stages of developing the codification of private international law of the Americas, the conflictual method for harmonization was predominant. It was also thought

convenient to prepare a single code to reconcile the principles established in the *Bustamante Code*, *Montevideo Treaties* and *Restatement of the Law of Conflict of Laws of the United States of America*. This gave rise to the idea of holding a “Specialized Conference on Private International Law”, which would also be responsible for updating the law of conflicts of the Americas in order to adapt it to the modern requirements of private international law in general.

On April 23, 1971, the OAS General Assembly met in San José, Costa Rica, at the recommendation of the Inter-American Juridical Committee (IAJC), and called a Specialized Conference on Private International Law later to be known as CIDIP. The preliminary to this meeting was the “Inter-American Conference on problems of War and Peace” held in Mexico in 1945, when it agreed to reorganize, consolidate and strengthen the inter-American system.

Accordingly, the Organization of American States (OAS) in conjunction with the Inter-American Juridical Committee (IAJC), called Sixth Inter-American Specialized Conferences on Private International Law (CIDIP) in Panama (1975), Montevideo (1979), La Paz (1984), Montevideo (1989), Mexico (1994) and Washington, D.C. (2002); it is now in the process of preparing for the Seventh Specialized Conference on Private International Law.

B. The CIDIP Process in the Inter-American System

Since 1975 the inter-American institutional framework of private international law has been the Inter-American Specialized Conferences on Private International Law, which are convened by the Organization of American States (OAS) every four or six years and known as CIDIPs (Inter-American Specialized Conferences on Private International Law). To date they have produced 26 international instruments, as follows: 21 conventions, 2 additional protocols, 2 standard instruments and a model law that contributed substantially to the codification and standardization of the private international law rules in America, as well as their upgrade.¹

It is necessary for the Organization’s Member States to be more involved in the CIDIP process, particularly in codification and progressive development of the private international law regulations, in which America did pioneering work in many of its institutions. It also produced the *Single Code of Private International Law*, the *Bustamante Code*, approved at the Sixth American International Conference in 1928, and it is necessary to preserve these historic archives of American international law.

We must join forces to make the CIDIP codification an ongoing job with a promising future. It must be borne in mind that the CIDIP work contributed towards upgrading the Private International Law regulations in the different American States.

The influence of the CIDIP codification process on the state systems of various OAS member States is remarkable, as follows: the 1989 *Uruguayan Societies Act*, 1998 *Venezuelan Private International Law Act*, for example; as well as reforms in a number of *Civil Codes of the American States*.

On this matter, the CIDIP process should continue to be reinforced as the right road to codification and progressive development of private international law in the inter-American system, promoting and consolidating both its traditional focus on harmonizing a body of regulations (conventions) and the modern focus on harmonizing the *Substantive Act* (Model Act). There should be flexibility in any concrete case and a more traditional focus should be adopted in any particular case.

This significant change was noticed precisely at the Sixth CIDIP (Washington, D.C. 2002). Two texts were approved that did not respond to the traditional mechanism of the inter-American conventions. One was the *Model Law on Secured Transactions* and the other was a standard document on land transport. Neither of these instruments required ratification by the OAS member States in order to be implemented.

It seemed that the reason for this change was the difficulty of some member States in not being able to ratify some of the conventions produced within the CIDIP because, when they are

¹ MAEKELT, Tatiana B. de. *El futuro de la codificación del derecho internacional privado in América: la codificación interamericana desde la perspectiva de la codificación estatal de derecho internacional privado*, 2003.

negotiated in the desire to achieve consensus and conclude the text, they failed to produce a document that met every Party's expectations.

With regard to model laws, many issues of interest to the parties were not discussed since they did not address a concluded product and when not being ratified the States adopted the model law that most suited them for their respective internal legal systems.

The choice of one or other methodology should depend on the subject to be regulated and the situation at the time. In some cases a model law will be used and in others the international convention will be more useful. Nevertheless, the chosen method should be assessed to include that which relates to the jurisdiction regulations, applicable law, cooperation, and so on.

With regard to the focus on adopting model laws, it is necessary to disseminate their benefits in harmonizing the private international law regulations in the Americas, and the way to adopt and implement them in the internal legislation of the States, since not all OAS member States have a model law culture.

Prof. Diego P. Fernandez Arroyo is one of the authors of the *Inter-American Conventions of Private International Law* who has been using it as model laws, even though this was not its purpose, since many of its regulations have been incorporated in the national systems through reforms in civil and procedural codes.²

Today the CIDIP contributes toward modernizing the state systems of private international law in America, and toward harmonizing and unifying its regulations, and the South American professors of private international law highlighted it in their *Declaration of Cordoba* dated December 18, 2003, on the future of the CIDIP process, held in the Law and Social Sciences Faculty of the National University of Cordoba, Argentina, and on which they stated the following, for example:

Persuaded by the significant modernizing impact that inter-American conventions and other documents adopted by CIDIP have had on national and subregional private international law systems; Wishing to pursue and improve a codification process which has produced clearly positive results, so that it may continue to generate common solutions to current legal problems; Pleased with the past and present efforts pursued by the OAS, through its Department of Legal Affairs (and the entities which preceded it as such) and the Inter-American Juridical Committee, despite budget restrictions; Concerned that the work that needs to be continued in the area of inter-American codification not be affected by these restrictions; Guided by an integrationist spirit, that encompasses all the interests of the OAS member States regarding determination of the topics requiring hemispheric regulation, and the appropriate methodology in each case; Aware of the situation of the member States and subregional integration groups in the hemisphere, within a much more highly inter-related world.³

On this matter, some of the most relevant statements are:

That the international codification of private international law on a regional level continues to be necessary from a legal and political standpoint; That the Americas, a pioneering continent in international efforts to harmonize and standardize private international law, has the historic duty to maintain this tradition, by cultivating a constructive dialogue with other codification forums in the world; That the OAS continues to be the appropriate forum to continue developing the process of codification of private international law in the Americas; That, in this regard, a certain permanence and specialization of work on private international law within this regional Organization would be ideal; That, in order for this work to continue exercising its positive influence on national and subregional legal systems in our Hemisphere, it is essential to update its content and its methodology, so that

² FERNÁNDEZ ARROYO, Diego P. *Derecho internacional privado interamericano: evolución y perspectivas*, 2003.

³ *Declaration of Cordoba*. December 18, 2003

they are adapted to today's circumstances and needs; That to this end, it is important that the thematic agenda for codification reflect the interests of the different countries and integration plans in the Americas in a balanced manner; That, while there are issues of great importance in the area of trade, related to the different trade agreements being developed by countries of the Hemisphere, the exponential increase in international legal relations of private law in the hemisphere also calls for a need to take up issues more closely related to matters of civil and procedural law; That among civil matters, there are various aspects of the protection of persons with insufficient faculties, the economic system of matrimony, and extracontractual liability, among others, that appear prima facie as lending themselves to inter-American regulations; That, with regard to procedural matters, the problem of international jurisdiction in matters of private international law and the review of regulations related to the extraterritorial validity of judicial decisions should be given priority on the regional agenda; That, with reference to regulations on international contracting, special attention should be paid to aspects of private international law pertaining to contracts concluded by workers and by consumers; That whatever matters are taken up by the regional entity, the solutions determined should be guided by criteria of reasonability and justice, attention should be paid to their relationship with already existing conventional texts, and, above all, they should be directed to solving the problems currently arising in our countries; That it is vitally important that our governments establish national and multinational working groups in charge of maximizing efforts in relation to future CIDIP processes...⁴

The South American professors agreed as far as possible to persuade the authorities of their own countries about the importance of the CIDIP work and how it was of the utmost importance for the Latin American States to play an active and decisive role in the inter-American forum.

This demonstrates the revitalizing boost that the CIDIP process has today, which is confirmed by the considerable increase in ratifications by the American States for the instruments arising from all editions of the CIDIP since 1995, by which the inter-American conventions continue to be a valid benchmark.⁵

There are more than fifty ratification instruments deposited since that date, which confirms yet again that for the OAS member States the inter-American conventions on private international law continue to be a current source in the codification of law in the hemisphere and that the States are increasingly committed to belong and be bound to the CIDIP.

CIDIP is the natural and valid forum for harmonizing, standardizing and codifying private international law in the Americas, since all OAS member States are the CIDIP, equally participating with a right to speak and vote on all topics, such as: topic, preparatory documents, preparing international instruments in specialized conferences. On the other hand, the American States do not all have a relevant participation in the universal forums of codification of the uniform rules of private international law and on some occasions participated as ad-hoc members.

So much so that other codification forums must not be regarded merely as a duplication of efforts but, on the contrary, must be considered from the contributions that they can bring to inter-American codification, as well as preparing standards more suited to the needs of the region.

Although it is certain that the CIDIP in its early stages was a predominantly Latin American forum, Canada participates since 1990 as an OAS member State, and the CARICOM States also, so that Belize has been included in almost all conventions relating to minors.

⁴ *Ibid.*

⁵ FERNÁNDEZ ARROYO, Diego P. *Razones y condiciones para la continuidad de la CIDIP: reflexiones de cara a la CIDIP*. 2005.

The integration processes in America led to the need to harmonize and standardize the laws in the corresponding areas, which gave rise to several international instruments in different matters relating to private international law.

In the different integration processes on the American continent, one of them most concerned with legislating about private international law is MERCOSUR, which has become practically an example of subregional codification of private international law, especially in the sphere of international civil procedural law, international jurisdiction, recognition and execution of immigration decisions, as well as relating to procedural immigration and international legal aid, concerning both general and private international law.

The CIDIP process grew more interesting after CIDIP-V, in which the USA also played an important role, hosting a meeting of experts in Tucson, Arizona (November 11-14, 1993) on international hiring. This demonstrates that CIDIP continues to be committed to drafting modern standards of private international law adaptable to the requirements of the OAS member States.

In modernizing the current CIDIP codification process there is a clear tendency on its agenda toward marketing as a product of the peak of the free trade in the region, since most American States have in their databases "Free Trade Treaties". This trend can be confirmed after CIDIP-V and reaffirmed in the topics proposed for CIDIP-VII.

Nevertheless, the commercial topic has been addressed right from the start of the CIDIP, since at the First Inter-American Specialized Conference on Private International Law, CIDIP-I (Panama 1975) the *Inter-American Convention on International Trade Arbitration*, for example, was approved, which currently has 18 ratifying States.

An effective participation of the Latin American countries - "first players" – in the CIDIP process, of Canada in 1990 with CIDIP-V, Belize included in the inter-American conventions relating to minors and with the USA's strong interest in CIDIP VI, to achieve a balanced agenda of topics that reflects the priorities of all States in the inter-American system, but in turn it must not be a loaded agenda that is unable to carry out its mission; the task of effectively including all CARICOM member States in the CIDIP process is also still pending.

Currently there is a change in methodology in this modernization with regard to drafting international instruments in the CIDIP process, since there is favoritism in using model laws and not the conventional system. Given this situation it is convenient to maintain adequate flexibility in each concrete case and adopt the most appropriate focus in each particular context to harmonize Civil Law with Common Law.

It is necessary for this work of codification in the CIDIP process to become an ongoing activity with suitable infrastructure in order to be able to have a permanent office in the Organization of American States (OAS), which permits continued harmony in the work of the different groups participating in the CIDIP process.

II. CONCLUSIONS

On the American continent since the beginning there has been a distinct trend towards international codification of private international law, especially based on regional solidarity, in the need to assure its independence and own development.

This codifying drive has been developing since the *Lima Treaty* in 1878, *Montevideo Treaties* of 1889-1890 and 1939-1940, and the 1928 *Bustamante Code*, to the current codifying process of CIDIP, which began in 1975 in Panama, with a new consistent methodology in formulating conventions on specific previously identified topics, namely, partial and progressive codification.

In the early stages, the process of codification of private international law in the Americas is eminently conflictual through the preparation of merely attributive regulations that determined the applicable law. Later, closer inter-American relations and socioeconomic changes made it necessary to update the conflicts of law on the American continent and renew the same private international law, to be in accordance with both regional and universal realities and advances. The Inter-American Specialized Conferences of Private International Law (CIDIP) originated in this framework to form the new stage in codification and progressive development of private

international law in the inter-American system, which has been in existence for more than thirty years.

It is necessary for CIDIP to continue to contribute toward the progressive development and codification of private international law, with a relative redefinition of its objectives, so that the Organization's member States make good use of the CIDIP work and must actively participate in drafting its texts.

Accordingly, the leading role of CIDIP is undeniable in developing, harmonizing and codifying private international law in the inter-American system.

It is exactly at this new stage of codification of private international law in the inter-American system where there is the need for all those involved to do their utmost together to make the work at this stage of codification ongoing and therefore lead the codifying process to a promising future. One main reason is because with globalization and integration processes, the solutions are now required for international problems, because we must have international instruments to meet the current requirements.

This integration process in the different subregions of the organization caused marked interest in trade on the agenda of the latest CIDIPs, since trade requires greater legal security in its transactions.

This new stage in the codifying process made the experts seriously reflect on the matter. This is why the Inter-American Juridical Committee addressed the situation with the document *CIDIP-VII and beyond*, which in turn gave the results of a survey to the experts on private international law who gave their opinion on the matter. Likewise, the South American professors of private international law consider this situation in their 2003 *Cordoba Declaration*, in which they discuss the future of the CIDIP process.

Progress in the integration process, and free trade treaties coming into effect, force us to be ready with the proper legal framework in which the private international law regulations will play a leading role, which is why further emphasis should be given to the current efforts to obtain closer unification with more harmonious solutions in an increasingly interdependent and globalized world.

The CIDIP continues firm in its mission to draft modern private international law regulations suitable for the requirements of the member States in the inter-American system, since the American legal unification corresponds to common interests that require a certain historic social conjuncture.

This future in the development of the CIDIP, as mentioned, can be successful and promising if it has the decisive and unconditional support of all sectors involved in codification of private international law in the Americas, participating actively and seriously in the preparatory work for the forthcoming CIDIP-VII. This is the only way in which those involved in the private international law of the continent will succeed in surmounting and overcoming those setbacks and challenges to classify and standardize the regulations of private international law in the Americas.

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CJI/RES.116 (LXIX-O/06)

**CONSIDERATIONS ON THE TASK OF CODIFYING AND
HARMONIZING INTERNATIONAL LAW IN THE AMERICAS**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

BEARING IN MIND its resolution CJI/RES.103 (LXVIII-O/06) *Considerations on codification and standardization of international law in the Americas*;

CONSIDERING the hundred years and groundbreaking contribution of the first American Congresses and Conferences for the codification and progressive development of Private International Law,

RESOLVES:

1. To emphasize that the codification process of Private International Law in the Americas began in the second half of the 19th century and, in the beginning, was concentrated on harmonization of the applicable regulations by means of codes and treaties, currently continuing through the Inter-American Specialized Conferences on Private International Law (CIDIPs).

2. To acknowledge the valuable contribution that is the process developed within the framework of the Inter-American Specialized Conferences on Private International Law (CIDIPs) to modernize, harmonize and uniformize the law applicable in the Americas.

3. To emphasize the renewed interest and new dimensions that this important topic has acquired in the light of the progress of the sub-regional processes of integration and the agreements being drafted in terms of free trade, investments and services.

4. To highlight the positive changes that have taken place in the operating and methodological field of the CIDIPs, which transmit a renewed dynamism to its work, reinforcing the participation of experts and an increasingly comprehensive and productive inter-American dialogue.

5. To stress the importance of increasing the ratification and commitment process of the conventions adopted within the framework of the CIDIPs and the incorporation of model laws in national legislations.

6. To point out that the CIDIPs, in the general evolutionary process of the Private International Law in the Americas, contributed to show the complementary benefits of common law and civil law, generating new integrating and enriching dynamics to strengthen the basic unity of the Inter-American System.

This resolution was adopted unanimously at the session held on August 23, 2005, by the following members: Drs. Jean-Paul Hubert, João Grandino Rodas, Jaime Aparicio, Ana Elizabeth Villalta Vizcarra, Galo Leoro Franco, and Mauricio Herdocia Sacasa.

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

Document

CJI/doc.232/06 rev.1 *Questionnaire for OAS Member States concerning legislation on access to information and protection of personal data in view of the possible drafting of a legal instrument*
(presented by Drs. Antonio Fidel Pérez and Jaime Aparicio)

At its 68th regular session (Washington, D.C., March 2006), the Inter-American Juridical Committee appointed Drs. Antonio Fidel Pérez and Jaime Aparicio as rapporteurs on the subject.

The Inter-American Juridical Committee also acknowledged receipt of a report presented by the rapporteurs on the topic, Dr. Alonso Gómez Robledo, entitled "Protection of Personal Data in Mexico: the Case of the Federal Executive Branch," CJI/doc.217/06, and decided that the Chairman of the Committee would write a letter saying that the Committee had received the report but that, *prima facie*, it appeared not to fulfill the mandate requested at the previous session.

At its thirty-sixth regular session (Santo Domingo, June 2006), the OAS General Assembly adopted resolutions AG/RES. 2218 (XXXVI-O/06) and AG/RES. 2252 (XXXVI-O/06), in which it asked the Inter-American Juridical Committee to include in its next annual report an updated report on the protection of personal data based on comparative law. It also asked the Committee to update the 2000 study entitled "Right to information: Access to and protection of information and personal data," taking into account the differing views on the subject, to which end, with due support from the Secretariat, it was to prepare a new questionnaire on the subject and distribute it among the member States.

During the 69th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2006), the topic's rapporteurs presented document CJI/doc.232/06, *Questionnaire for the OAS Member States Concerning Legislation on Access to Information and Protection of Personal Data in View of the Possible Drafting of a Legal Instrument*, in compliance with the General Assembly's mandate.

Dr. Aparicio gave a report on the contents of the questionnaire the rapporteurs had drawn up, part one of which addressed the topic of information access and part two that of protecting personal data. The questionnaire's basic structure, explained Dr. Aparicio, focused on the national laws of the member States, the basic rules governing information access and data protection, and the ways in which those provisions were implemented and enforced. He also explained that the questionnaire dealt with the national laws applicable to those areas in electronic format, and it asked for the identification of other sources of law that could be of use in drawing up a comparative study of legislation applicable to information access and personal data protection. Finally, the questionnaire asked the member States for their opinion on the possible adoption of an inter-American instrument on access to information and the protection of personal data.

At the end of Dr. Aparicio's report, the members of the Juridical Committee conducted an extensive dialogue on the timetable and methodology of a study into information access and data protection, as well as on the questionnaire itself. In the latter regard, they made several important contributions to both the questionnaire's text and its translation. The members then said it was important to emphasize that the ultimate goal of this undertaking was the possible drafting of an inter-American instrument on those two topics. They also offered suggestions on the note or letter of introduction with which the questionnaire was to be sent to the member States and proposed a number of changes to the text of the questionnaire with a view to emphasizing the possible future drafting of an inter-American instrument on access to information and the protection of personal data.

Following these considerations, the Juridical Committee approved the document and asked the General Secretariat to convey it to the Organization's member States so that the Juridical

Committee could proceed to study this question. The referred document is included at the end of the present sub-chapter.

The Chairman then reminded the Juridical Committee of the report on personal data protection prepared by Dr. Jonathan Fried and he asked the General Secretariat to update that study as it related to comparative legislation by November 15, 2006, for its subsequent conveyance to the rapporteurs.

CJI/doc.232/06 rev.1

**QUESTIONNAIRE FOR OAS MEMBER STATES CONCERNING
LEGISLATION ON ACCESS TO INFORMATION AND
PROTECTION OF PERSONAL DATA IN VIEW OF THE
POSSIBLE DRAFTING OF A LEGAL INSTRUMENT**

(presented by Drs. Antonio Fidel Pérez and Jaime Aparicio)

I. PART ONE: ACCESS TO INFORMATION

1-a. How does your national legislation currently address the question of access to information?

b. Should the matter be covered by national legislation, what are the basic rules governing access to information?

c. How are those rules implemented or enforced? For example, what remedies are given for specific violations of these applicable rules?

d. In your answers to the foregoing questions, can you distinguish between remedies for violations by private and public entities?

2. How does your national legislation currently address the question of access to information in electronic format?

3. Is there any other source, such as case law (only significant cases), or any other legal stuff, that could be relevant when preparing a comparative law study on how OAS member States address the question of local access to information internally?

4. Do you have any further comments to make?

II. PART TWO: DATA PROTECTION

1-a. How does your national legislation currently address the question of personal data protection?

b. Should the matter be covered by national legislation, what are the basic rules governing the protection of personal data?

c. How are those rules implemented or enforced? For example, what remedies are given for specific violations of those applicable rules?

d. In your answers to the foregoing questions, can you distinguish between remedies for violations by private and public entities?

2. How does your national legislation currently address the question of protecting electronic personal data?

3. Is there any other source, such as case law (only significant cases) or other legal stuff that could be relevant when preparing a comparative law study on how OAS member States address such issues internally?

4. Do you have any further comments to make?

III. PART THREE: GENERAL QUESTIONS

1. How does your national law address the relationship between access to information and protection of personal data?

2. What is your government's view about the possibility of adopting an inter-American instrument addressing the topics raised in the foregoing questions?

7. Principles of Judicial Ethics

Document

CJI/doc.221/06 *Preliminary notes on principles of judicial ethics*
(presented by Dr. José Manuel Delgado Ocando)

At its 68th regular session (Washington, D.C., March 2006), the Inter-American Juridical Committee appointed Dr. José Manuel Delgado Ocando rapporteur on the topic. During the recess, the rapporteur presented document CJI/doc.221/06, "Preliminary Notes on Principles of Judicial Ethics," which was distributed in good time to the other members of the Committee. This document appears at the end of the present sub-chapter.

During the 69th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2006), the Chairman announced that because of the rapporteur's resignation from the Committee, a new rapporteur had to be appointed. Dr. Ana Elizabeth Villalta Vizcarra was selected for the position.

The Chairman then gave a verbal summary of the report prepared by the previous rapporteur. As a starting point, the Chairman gave an overview of the Juridical Committee's past dealings with the topic and emphasized the efforts expended in gathering together international instruments on judicial ethics. He also spoke of various issues that affect the independence of the judiciary, particularly the situation in which court magistrates in some countries of the Americas are subject to influences from the political system. He explained the rapporteur's position about the concepts of ethics and morality, and about the principles and rules that govern them. He also explained the way in which internationally accepted judicial ethical principles are addressed, and he described the results of the VI Ibero-American Summit of Supreme Court Chief Justices of 2001. The Chairman then explained the analysis of the principles of judicial ethics and of the applicable codes that exist in various countries of the Americas.

At the end of his address, he read out the conclusions reached by Dr. Delgado Ocando in his report, with particular emphasis on analyzing the impact that enacting a code of judicial ethics might or might not have on the independence of the judiciary. He also said that, in some cases, doubts could arise about the relative effectiveness of such codes in the absence of social, political, and economic conditions requiring the ethical responsibility of members of the judicial branch.

The Chairman also explained that a debate existed regarding relations between the agencies responsible for enforcing and overseeing compliance with codes of judicial ethics and discipline, and he spoke about the efficiency of those codes.

The members of the Inter-American Juridical Committee thanked him for presenting the report and offered a number of comments. Specifically, they noted the importance of judicial independence but said that a balance had to be struck between the independence of the judiciary and the handling of cases by the courts: in other words, that independence must not be used to impede access to justice.

In addition, the Chairman said that one very important task would be to gather together all the Juridical Committee's work on this topic and compile it in a Code of Judicial Ethics for the hemisphere. Another comment said that if the drafting of such a code was decided on, consideration would have to be given to that fact that it would have to apply not only to judges, but to all participants with direct ties to the judiciary and to the administration of justice. The meeting was also told about the existence of a report and proposal drafted by Dr. Jonathan Fried (a former member of the Inter-American Juridical Committee) that could be used as a starting point for this exploration of judicial ethics.

CJI/doc.221/06

**PRELIMINARY NOTES ON
PRINCIPLES OF JUDICIAL ETHICS**

(presented by Dr. José Manuel Delgado Ocando)

SUMMARY

I. ANTECEDENTS. II. ETHICS AND MORALS: a) Purpose of ethics; b) Morals as a fact of reason; c) Irreducibility of the moral fact; d) Moral conscience; e) Morals and knowledge; f) The moral choice. III. ETHICAL PRINCIPLES AND RULES: a) Legitimacy of the codes of judicial ethics; b) Is judicial independence put in jeopardy?; c) Efficacy of the codes of judicial ethics; d) Competence to sanction a code of judicial ethics; e) The objective scope of applying the codes of judicial ethics; f) Putting in practice the codes of judicial ethics and supervising compliance. IV. INTERNATIONALLY VALID PRINCIPLES OF JUDICIAL ETHICS: a) The *Bangalore principles of judicial conduct*; b) Independence; c) Impartiality; d) Integrity; e) Propriety; f) Equality; g) Competence and diligence. V. THE STATUTE OF THE (IBERO-AMERICAN) JUDGES. VI. CODES OF JUDICIAL ETHICS OF SOME AMERICAN COUNTRIES: a) *Code of conduct for the Federal Judges* of the United States; b) *Ethical norms of the Judicial Branch* of Guatemala; c) *Principles of Judicial Ethics* of Chile; d) *Code of ethics and discipline of Venezuelan judges*; e) The code of judicial ethics of Argentinean Provinces and the *Law of ethics in the exercise of public service*; f) *Code of ethics of the Judicial Power* in Peru; g) *Code of ethics of the Judicial Power of the Federation* (Mexico). VII. CONCLUSIONS: a) Codes of judicial ethics and independence of the Judicial Power; b) Limited efficacy of the codes of judicial ethics; c) Content of the codes of judicial ethics; d) Subjective scope of application; e) Execution and supervision of compliance; f) Final comments.

I. ANTECEDENTS

During the 66th regular session of the Inter-American Juridical Committee (Managua, February 28th–March 11th, 2005), the Chairman submitted for the approval of the other members the inclusion of the topic “Writing a Draft Judicial Ethics Code or General Principles of Judicial Ethics”.

The Juridical Committee approved the inclusion of the topic under the title “Principles of Judicial Ethics” and decided to postpone electing a rapporteur for the period corresponding to the month of August 2005.

The General Assembly, during the 35th Regular Session (Fort Lauderdale, June 2005), through resolution AG/RES.2069 (XXXV-O/05), *Observations and recommendations to the Annual Report of the Inter-American Juridical Committee*, resolved to applaud the initiatives that the Committee comes to adopt in order to carry out studies with other organizations of the Inter-American system and in particular with the Justice Studies Center of the Americas–CEJA, in various aspects concerning the strengthening of the administration of justice and judicial ethics.

During the 67th regular session (Rio de Janeiro, August 1st to 19th, 2005), the Juridical Committee received Drs. Juan Enrique Vargas Viancos (Secretary of the CEJA) and Rodolfo Vigo (Minister of the Supreme Court of the Province of Santa Fe, Argentina), representatives of the CEJA, with whom they exchanged ideas on this topic. It was pointed out that there existed a crisis of legitimacy of the judicial powers and that judicial ethics is one of the means to face the situation. Reference was made to the *Statute of Ibero-American Judges* of 2001, to the *Charter of the right of persons before Justice in the Ibero-American scope* of 2002, and to the *Declaration of Copan* of 2004, as antecedents of the topic.

The Juridical Committee opted to set forth general principles of law on the matter of judicial ethics for the States, a field in which the Committee could act.

The Inter-American Juridical Committee ratified its cooperation with the CEJA and it was decided to wait until the latter presents a more concrete document on principles of judicial ethics for the Committee to consider.

During the 68th regular session of the Inter-American Juridical Committee (Washington, March 20-31, 2006), Dr José Manuel Delgado Ocando was appointed rapporteur of the topic "Principles of Judicial Ethics"; he is to present his report to the 69th regular session of the IJC to be held in Rio de Janeiro from 7 to 25 August 2006.

II. ETHICS AND MORALS

a) Purpose of ethics

There is a difference between morals and ethics. The former refers to the type of conduct by rules or by norms that belong to the subject (BILBENY. *Aproximación a la ética*. Barcelona, April 2000, p. 15). Ethics is the discipline concerned with uses and customs or, according to Kant, with the metaphysics of customs. As can easily be seen, it is a question of two different linguistic levels, since ethics appears as a second-level reflection of the common-law norms that regulate internal human conduct. This second-level reflection is a rational exercise for the purpose of formulating this conduct according to universally valid principles.

b) Morals as a fact of reason

The ethical fact is neither an ideal object nor a physical fact. It is an axiological fact that imposes the use of practical reason. Kant speaks of practical reason and ever since the Greeks it has been concluded that moral life belongs to practical knowledge (*phronesis*), which implies free will, that is, will governed by principles and precepts autonomously obeyed by the agent subject.

c) Irreducibility of the moral fact

Understood in this way, the moral fact is a fact of reason, and is therefore irreducible in respect to the private object of psychology, etology or neurobiology. Despite its cultural nature, it is also irreducible in relation to anthropology. Ethics therefore does not describe human acts explicatively but rather understands them in their rationality determined by principles and concepts that presuppose their legality and not their factuality. Freedom is the axis of the ethical consideration of conduct.

d) Moral conscience

But rationality does not suffice to embrace the moral fact, for the supreme instance of its determination is moral conscience. Moral conscience or *synderesis* is the experience that responsibility attributes to us for doing or failing to do duty. The feeling of guilt or peace of mind conform the moral fact in its subjective dimension, which is certainly an experience of freedom. We assume moral responsibility for what we do, although action can be explained in causal terms. Moral conscience is the instance that determines and subjectively verifies free conduct. It is a responsible and autonomous fact.

e) Morals and knowledge

Moral experience requires us to be rational in the sense that the precepts and principles that constitute it call for knowledge of the agent subject. Moral subjectivity does not impede this knowledge, because, as Patzig says (*Ética sin metafísica*. Trad. by E. Garzón Valdés. Buenos Aires: Alfa, 1975, p. 34), morality is obvious. But the moral obvious demands universality and convenience. That is why the ethics of intentions is not enough, and a good dose of ethics of success is indispensable so that we do not fall into the rigors of the categorical imperative and absence of a moral conscience meant to promote human satisfaction and happiness.

f) The moral choice

But moral knowledge demands another rational aspect, namely deliberation. Moral conscience itself and its complementary effects (remorse or peace of mind) require deliberative use of reason, which can only become effective in dialogue that proves that the judgment is correct. Here morals are a deliberative exercise of conscience seeking the universal truth of the fact constituted in this exercise. According to K. O. Apel, moral truth is established in dialogue under general conditions that enable it to be clarified. Moral truth is confirmed in deliberation and in the discourse that controls its universality.

III. ETHICAL PRINCIPLES AND RULES

a) Legitimacy of the codes of judicial ethics

The moral principles of judicial conduct are different from the rules that conform the code of said conduct. Like juridical principles in relation to norms, moral principles are abstract and require prescriptive development. Between principles and norms there is a basic tie that makes the former more abstract values and the latter an explanation of the principles in order to guide, at the risk of moral sanction, the conduct of judges. Judicial independence is thus a prior requisite of the principle of legality as well as a guarantee of due process; but the rules that relate to the circumstances that compromise judicial independence must connect with the powers of the State, connections with the parties and types of comportment that strengthen public trust in the judiciary system, without which independence would be seriously compromised. As we shall see further ahead, the option for the code of ethics or the idea of establishing general standards not expressly sanctioned with moral censure depends on the respective culture and the degrees of public recognition that judicial power enjoys in each country. There seems to be important differences between common law and civil law due to political traditions and the idiosyncratic functioning of the judicial power *vis-à-vis* other public powers.

b) Is judicial independence put in jeopardy?

Aside from the possible inefficacy of the codes of judicial ethics, these are usually criticized for placing in jeopardy the independence of the Judicial Power. This is so because the principle of independence of judges demands non-interference by the other public powers in conducting the judicial power. In order to safeguard this independence, the codes of judicial ethics must be elaborated, sanctioned and administrated by the judicial system itself.

c) Efficacy of the codes of judicial ethics

The independence of the judicial power and the development of a functional *ethos* of the judicial system seem to be decisive for judicial ethics and this is closely related to self-regulation of the jurisdictional power, in the form of an authentic structured validity of the moral relevance of jurisdiction. The control of the morality of judges is a matter that concerns the Judiciary, although judicial ethics is relevant to the juridical security of all.

d) Competence to sanction a code of judicial ethics

As indicated in c), “the codes should be drafted by the members of the Judicial Power by an association of judges, with important contributions of ideas and principles from lawyers, academics, leaders of civil society and other persons with experience in judicial activities”. ((BRENNA, R.G. *apud*. ROSS, S.R.; WOISCHNIK. *Códigos of ética judicial*. Trad. by Gabriel Pérez Barbera. Montevideo: Fundación Konrad-Adenauer, [s.d.], p. 49). The fact that the same judges assume the responsibility of imposing on themselves a code that guarantees better service of justice and projects to the community the image of a body that is conscious of the function that it performs is the key point for the efficacy of optimum functioning of justice.

e) The objective scope of applying the codes of judicial ethics

There is some discussion as to who would be involved in the subjective sphere of application of a code of judicial ethics. There is no one single criterion to resolve this question and comparative law includes three variants, namely: a) those that apply only to judges; b) those that include the Public Prosecutor’s Office; and c) those that apply to all the members of justice, including judicial employees.

f) Putting in practice the codes of judicial ethics and supervising compliance

Despite strengthening a functional *ethos* of justice based on the validity of principles assumed by judges as part of their own function, experience shows that the code of judicial ethics is necessary for the control of moral deviations of the judicial system. Nonetheless, the sanctions should not be made “from the outside” so as not to jeopardize the judges’ independence. The competence for sanctioning a code of judicial ethics and putting it into practice must respect self-regulation, in keeping with the principle of judicial independence.

IV. INTERNATIONALLY VALID PRINCIPLES OF JUDICIAL ETHICS

The Seventh Congress of the United Nations on Crime Prevention and Treatment of Offenders, held in Milan on 26 August-6 September 1985, and confirmed by the General Assembly in resolutions 40/32 of 29 November 1985 and 40/146 of December the same year, established the *Basic Principles on the Independence of the Judiciary*, as follows:

a) The *Bangalore Principles of Judicial Conduct*

The independence of the judicial system will be guaranteed by the State and proclaimed by the Constitution or legislation of the country. No undue or unjustified intrusions will be made in the judicial process, nor will the judicial decisions of the courts be submitted to revision.

b) Independence

The members of the judicial system will enjoy the freedom of expression, creed, association and meeting, as long as the dignity of their functions and the impartiality and independence of same are preserved.

c) Impartiality

The persons chosen to occupy judicial positions will be integral and honorable and will have the appropriate juridical training or qualifications.

d) Integrity

The law will guarantee permanence in the positions for the periods established, their independence and security, as well as adequate remuneration, pensions, working and retirement conditions.

e) Propriety

Judges are sworn to professional secrecy and will enjoy personal immunity as regards civil actions for damage and loss as a result of undue actions committed while in the exercise of their judicial functions.

f) Equality

Judges can only be suspended or removed from their positions for incapacity or behavior that disqualifies them from continuing to perform their functions.

g) Competence and diligence

These principles were ratified and specified by the *Bangalore Draft Code of Judicial Conduct* of 2001, adopted by the Judicial Group to Strengthen Judicial Integrity, and was revised as such at the Round Table Meeting of Presidents of Superior Courts held in the Palace of Peace at The Hague, The Netherlands, on 25-26 November 2002.

The *Bangalore Principles* stressed the importance of independence, impartiality, integrity, propriety and equality in treating all individuals before the courts, and competence and diligence as prior requisites for the performance of jurisdictional functions.

V. THE STATUTE OF THE (IBEROAMERICAN) JUDGE

The VI Ibero-American Summit Meeting of Presidents of Upper Courts and Supreme Courts of Justice, held in Santa Cruz of Tenerife, the Canary Isles, Spain, on 23, 24 and 25 May 2001, adopted and promulgated the *Statute of the Ibero-American Judge*, the principles of which are in keeping with the norms outlined above and which may be summed up as follows:

- a) General principle of independence vis-à-vis the other Powers of the State with regard to activities, national and international institutions and organizations, as well as the various social, economic and political groups and organizations, which should respect and insist on respect for the independence of the judicial system.
- b) The use of the means of social communication for the purpose of supplanting jurisdictional functions, imposing or influencing the content of judicial resolutions, in

conditions that go beyond the legitimate right to freedom of expression and information, is considered harmful to judicial independence.

- c) The State will guarantee the economic independence of the Judicial Power by assigning an adequate budget to cover its needs and through opportune disbursement of the budgetary portions.
- d) Impartiality of the judge is an indispensable condition for the exercise of the jurisdictional function.
- e) Judges have the obligation of separating themselves from the processing and knowledge of matters in which they have some prior relation with the object of the process or parties interested in same, in the terms set forth in the law.
- f) The exercise of the jurisdictional function is incompatible with other activities, except those admitted by the law.
- g) The processes and selecting and appointing judges should be the responsibility of bodies predetermined by the Law that apply likewise predetermined and public procedures and value objectively the knowledge and professional merits of the candidates.
- h) As a guarantee of their independence, judges should have their positions guaranteed in the terms that the Constitution and laws establish.
- i) The guarantee of the judge's position also ensures as a general principle, except for those cases expressly provided for in the law, that they cannot be deprived of the knowledge of matters entrusted to them.
- j) The principle of legality is established in the responsibility of the judge, so that this will be the competence of the legally established bodies of the Judicial Power, who shall evaluate his performance and establish the procedure that can lead to the corrective or disciplinary measures made necessary by confused or deficient performance.
- k) The continued qualification of judges is guaranteed through judicial schools, which may resort to the collaboration of other public and private institutions whenever necessary.
- l) Guarantee is given of retribution, social security and material means in keeping with the importance of the judicial function and the pertinent requirements and responsibilities.
- m) Judges have the right of professional association, save for the exceptions established by the Constitution and the laws of each country.
- n) Judges must see their function as a public service and should therefore respect the parties. They should guarantee the principle of legality and due process and their decisions should be made within a reasonable time period in accordance with the principle of justice and legality. They must respect professional secrecy and not disclose consultations or give advice on cases of active or possible contention.

VI. CODES OF JUDICIAL ETHICS OF SOME AMERICAN COUNTRIES

a) Code of Conduct for the Federal Judges of the United States

In the United States there exist several codes of conduct, both in the federal sphere and in the different States of the Union. The *Code of conduct for federal judges* was promulgated in 1973 by the judicial conference as *Code of Conduct for the Federal Judges of the United States*; in 1987 the name changed to *Code of Conduct for United States Judges*, and since then it has been revised several times (ROOS; WOISCHNIK, *op. cit.*, p. 22).

This *Code* is made up of seven rules or canons: a principle on the subjective scope of application of the *Code* and a *Checklist for Financial and Other Conflicts of Interest*, sanctioned in 2000. (*ibidem*).

The seven canons of conduct are as follows:

1. Judges shall maintain the integrity and independence of the Judicial Power.
2. Judges shall avoid impropriety and the appearance of impropriety in all activities.
3. Judges shall carry out the duties of their positions in an impartial and diligent fashion.
4. Judges may participate in extra-judicial activities to improve the law, the legal system and the administration of justice.
5. Judges shall regulate their extra-judicial activities to reduce as far as possible the risk of conflict in their judicial duties.
6. Judges shall present regular reports on compensation received for activities related to the law and of an extra-judicial nature.
7. Judges shall abstain from politics.

The Code of Conduct does not provide for any control mechanism, and disciplinary action will depend on the seriousness of the infraction, the intention of the judge, whether there exists a pattern of inappropriate activity in others or in the judicial system (*ibidem*, p. 23).

b) *Ethical Norms of the Judicial Branch of Guatemala*

The *Ethical Norms of the Judicial Branch of the Republic of Guatemala* were sanctioned by the Supreme Court of Guatemala in 2001 as part of a judicial report and plan to modernize the Judicial Branch meant to combat corruption and strengthen public trust in Justice. Its subjective scope is not just the judges, but all members of the Judicial Power.

Compliance with the ethical precepts is supervised and non-compliance is sanctioned by the competent disciplinary bodies, as prescribed in the law. There is no specific control mechanism for ethical norms.

c) *Principles of Judicial Ethics of Chile*

In August 2003 the full court of Chile's Supreme Court of Justice approved the so-called *Principles of Judicial Ethics* as an instrument for self-regulating justice in that country.

As in the code of Guatemala, its sphere of application concerns all the members of the judicial system. The principles enumerated in this instrument reflect the criterion indicated above in this regard, that is, exercise of the position with dignity, honorability, rectitude, propriety and common sense, maintaining respect for all people with whom contact is made, judicial independence, and confidentiality of all judicial affairs.

d) *Code of Ethics and Discipline of Venezuelan Judges*

The National Assembly of the Bolivarian Republic of Venezuela promulgated a code of ethics for magistrates, called the *Code of Ethics and Discipline of Venezuelan Judges*, based on the Constitution in effect, whose article 267, paragraph 3 provided for the "disciplinary regime of the Magistrates by means of a code of ethics to be sanctioned by the National Assembly".

Highlights in this regime are: 1, that it is based on the Constitution, and 2, that the subjective scope of the *Code of Ethics* rules only "Magistrates, Judges, ordinary or special", unlike the *Principles of Judicial Ethics* of Chile.

Apart from the principles of independence, impartiality, respect and collaboration, guarantees and due process, clarity of language, legitimacy of the decisions, dignity, decorum, conciliation and personal promotion, the *Code* prescribes norms on the transparency of patrimony and the prohibition of all sorts of political activity.

The *Code* also establishes "judicial disciplinary jurisdiction", which is attributed to administrative bodies connected to the Supreme Court of Justice, called judicial disciplinary tribunals.

The *Code* seeks to preserve the ethics and discipline of Venezuelan judges in order offer the public greater transparency in the personal, moral and professional trajectory and capacity of those encharged with the administration of justice.

e) The code of judicial ethics of Argentinean provinces and the *Law of Ethics in the Exercise of Public Service*

In Argentina there are only specific codes of judicial ethics in the provincial sphere (Córdoba, Corrientes, Formosa, Santa Fe and Santiago del Estero).

The subjective scope of application varies according to the province. So, the code in Corrientes rules “magistrates, functionaries and employees of the Judicial Power”; those of Córdoba, Formosa and Santiago del Estero rule magistrates and functionaries; and that of Santa Fe only rules judicial magistrates.

The standards of conduct common to all the provincial codes reproduce the criteria mentioned above on impartiality of the Judicial Power, independence, full-time dedication to the function and duties relating to the extra-professional activity of judges and members of the Judicial Power.

The control mechanisms established in the codes of ethics of the Provinces of Santa Fe and Corrientes provide for sanction mechanisms that can culminate in decisions of the Supreme Court on admonition, opening an administrative summary case or indictment of the defendant. The rest of the codes either lack sanction (Santiago del Estero) or provide for a Court of Judicial Ethics with a purely consultative function (Córdoba and Formosa).

f) *Code of Ethics of the Judicial Power in Peru*

The *Code of Ethics of the Judicial Power* of Peru, approved in a Plenary session on 9, 11 and 12 March 2004, deals with the internationally valid principles analyzed above, which can be summarized as follows: Judicial autonomy and independence, impartiality, in particular political, judicial diligence, transparency, opening to society and correct use of the means of communication, decorum and propriety of behavior, and statement of assets and revenue.

The subjective scope of application extends, as pertinent, to the jurisdictional auxiliaries and other employees of the Judicial Power.

The Judicial Ethics Committee, comprised of five members who have exercised their functions for a period of two years, is in charge of diffusing and promoting knowledge of the *Decalogue of the Judge and the Code of Judicial Ethics*. It gathers comments on a judge’s behavior, which can culminate in their being accepted or rejected. In the latter case, the Committee may recommend in private standards of conduct to follow or private or public admonition, wt affecting the pertinent recommendations.

The answers to the consultations and decisions of the Judicial Ethics Committee are not binding and are independent of the application of disciplinary measures or any other legal sanction.

g) *The Code of Ethics of the Judicial Power of the Federation (Mexico)*

The Code of Ethics of the Judicial Power of the Federation (Mexico), approved by the Plenary Assemblies of the Supreme Court of Justice of the Nation and the Council of Federal Judiciary, and by the Superior Chamber of the Electoral Court of the Judicial Power of the Federation in August 2004, ratifies the above-mentioned antecedents on the principles that serve as a basis for the *Code of Ethics of the Judicial Power of the Federation*. It consecrates the independence, impartiality, objectivity, professionalism and excellence f the judicial function. It bears emphasizing the judicial virtues that according to the *Code* conform excellence in the exercise of the functions entrusted to judges. These virtues are humanism, justice, prudence, responsibility, fortitude, patriotism, social commitment, loyalty, order, respect, decorum, laboriousness, perseverance, humility, simplicity, sobriety and honesty.

The judicial principles, rules and virtues contained in the *Code of Judicial Ethics* are addressed to the officers of the bodies of the Judicial Power of the Federation, as well as to the

other members of said bodies inasmuch as these judicial principles, rules and virtues are applicable to the function that each one of them performs.

VII. CONCLUSIONS

a) Codes of judicial ethics and independence of the Judicial Power: The discussion involves whether promulgating codes of judicial ethics affects the independence of the Judicial Power.

b) Limited efficacy of the codes of judicial ethics: Doubt is cast on the relative efficacy of such codes if they fail to provide social, political, economic and cultural conditions that determine the ethical responsibility of the members of the Judicial Power.

c) Content of the codes of judicial ethics: In the case of rejecting the objections contained in a) and b), the discussion involves the normative content of these codes, both in respect to specific judicial functions and to the extra-judicial conduct of judges, in the sense of guaranteeing a dignified image of those who comprise the Judicial Power.

d) Subjective scope of application: Discussion is held on the subjective scope of the codes and comments made on the greater or lesser range of validity in respect to the universe of the judicial professional as a whole (judges, inspectors, and administrative employees).

e) Execution and supervision of compliance: In respect to a), discussion is held on the bodies responsible for executing and supervising compliance with the codes of judicial ethics and discipline.

f) Final comments: The efficiency of the codes, besides their legality and legitimacy, calls for acceptance of their addressees and the proper functioning of own self-regulatory mechanisms to guarantee their legitimacy.

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8. Legal aspects of Inter-American security

The Inter-American Juridical Committee did not consider this topic at its 68th regular session (Washington, D.C., March 2006).

At its 69th regular session (Rio de Janeiro, August 2006), the Chairman of the Inter-American Juridical Committee remarked that there was no specific mandate regarding this topic. However, he suggested waiting until the new members of the Juridical Committee arrived in March 2007 to explore the direction to be taken by its treatment.

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

The Inter-American Juridical Committee did not consider this topic at its 68th regular session (Washington, D.C., March 2006).

At its 69th regular session (Rio de Janeiro, August 2006), the Chairman noted that the Inter-American Juridical Committee had already complied with the General Assembly's mandate. Since the resolution also requires no new action in this regard, he said that the Committee should consider the possibility of removing it from its agenda.

10. Follow-up to the Implementation of the Inter-American Democratic Charter

At its 68th regular session (Washington, D.C., March 2006), the Inter-American Juridical Committee did not consider the topic.

At its 69th regular session (Rio de Janeiro, August 2006), the Inter-American Juridical Committee did not consider the topic either.

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

During the 68th regular session of the Inter-American Juridical Committee (Washington, D.C., March 2006), the Committee elected Dr. Jaime Aparicio as rapporteur for this topic. Dr. Jaime Aparicio said that, in his capacity as rapporteur, he would first gather information on the subject so that the Committee could assist the political organs of the OAS in the preparation and adoption of a convention on racism.

Dr. Dante Negro, Director of the Office of International Law, said that the Office, in its capacity as the Working Group's technical secretariat, was keeping track of each stage of this effort and would keep the Juridical Committee informed. Dr. Negro also said that the members of the Juridical Committee could keep abreast of the subject by means of the web site of the Department of International Legal Affairs, which has a page specifically devoted to the subject of racism (<http://www.oas.org/dil/esp/discriminacion.htm>), which may be a useful source of background information and for updating work.

The Chairman thanked the Office of International Law for its role regarding this matter and said it would enhance the activities of the Juridical Committee.

At its thirty-sixth regular session (Santo Domingo, June 2006), the General Assembly adopted resolution AG/RES.2168 (XXXVI-O/06), "Combating Racism and All Forms of Discrimination and Intolerance and Consideration of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance." That resolution instructed the Working Group to begin negotiations on the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, taking into account the preliminary draft presented by the Chair. It also reiterated the invitation to the organs, agencies, and entities of the Organization, including the Inter-American Commission of Women (CIM) and the Inter-American Council for Integral Development (CIDI), to prepare inputs on the prevention of racism and all forms of discrimination and intolerance, for consideration by the Working Group.

At its 69th regular session (Rio de Janeiro, August 2006), the Chairman asked the Secretariat to report on progress with the draft convention.

In response to that request, Dr. Dante Negro, Director of the Office of International Law, gave a verbal report on developments with the topic within the Organization. Among other information, he revealed that during part of 2005 and part of 2006, the Working Group of the Committee on Juridical and Political Affairs entrusted with studying the question had received contributions from several players and that, before the General Assembly, the chairman of the Group had presented a draft convention, the text of which was distributed among the members of the Committee. Dr. Negro suggested that the topic's rapporteur could study the possibility of offering comments on the draft convention, identifying where its added value was.

The members of the Inter-American Juridical Committee agreed that it would be better to offer comments on the draft convention when it was at a more advanced stage.

12. Thoughts on the Challenges of the Inter-American Juridical Committee

During the 69th Session of the Inter-American Juridical Committee (Rio de Janeiro, August 2006), Dr. Eduardo Vio presented the document *Some Considerations on the Challenges of the Inter-American Juridical Committee at its Centenary*, CJI/doc.231/06.

Dr. Vio Grossi underscored the Juridical Committee's nature as the inter-American system's leading organ for consultation on legal matters in the hemisphere; he showcased its achievements over the past hundred years of existence, but also stressed the challenges that still remain for the future work of the Committee. Among other comments, he noted that over its first century of existence, the Juridical Committee's consultative function had been enhanced. In particular, however, he drew attention to the fact that the resolutions and opinions of the Juridical Committee were not binding on the other organs of the OAS or on its member States. He therefore proposed a number of alternatives for modernizing the structure and functions of the Committee. He also described a road map whereby the Juridical Committee could serve as a venue for resolving disputes among the OAS member States and for playing a more important role in international peace and security efforts. Finally, he proposed studying the establishment of an Inter-American Court of Justice to resolve economic and political disputes that cannot be taken before other jurisdictional venues.

At the end of this report, the Chairman thanked Dr. Vio Grossi for his presentation and said that, due to the celebrations for the Committee's centenary, now was the time to embark on a discussion of the characteristics to be considered by the evolution of the Juridical Committee over its next hundred years, a process that would doubtless take on board the proposals offered by Dr. Vio. In addition, he noted that the General Assembly had declared 2006 the Year of the Inter-American Juridical Committee, thereby opening up another forum for discussing the vitally important topics to which Dr. Vio had alluded.

The Inter-American Juridical Committee asked Dr. Vio to present, to the following regular session of the Committee, an additional document setting out specific guidelines for the Juridical Committee's continued study of the topic, and it decided to include it on its agenda.

CHAPTER III

OTHER ACTIVITIES

ACTIVITIES CARRIED OUT BY THE INTER-AMERICAN JURIDICAL COMMITTEE IN 2006

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

During the 69th regular session of the Inter-American Juridical Committee (in Rio de Janeiro, in August 2006), the Committee Chair, Dr. Mauricio Herdocia Sacasa, referred to his presentation of the Annual Report of the Inter-American Juridical Committee on its activities in 2005 during the regular session of the General Assembly in Santo Domingo, the Dominican Republic, in June 2006. Dr. Herdocia stated that the main suggestions made by the various delegations were taken up in the corresponding resolution, which includes a number of mandates for the Committee. That presentation is reproduced in document CJI/doc.234/06, *Report of the Chairman of the Inter-American Juridical Committee, Dr. Mauricio Herdocia Sacasa, to the Thirty-Sixth Regular Session of the General Assembly of the OAS on its activities in 2005*, which is transcribed in Part C of this chapter.

B. Course on International Law

The Inter-American Juridical Committee and the Office of International Law of the OAS Department of International Legal Affairs held the XXXIII Course on International Law from July 31 to August 25, 2006. It was attended by 24 teachers from different countries in the Americas and Europe, 28 OAS scholars chosen from over 70 candidates, and 14 students who paid to participate. The central topic was “International Law in the Americas: One Hundred Years of the Inter-American Juridical Committee.”

The XXXIII Course on International Law opened on July 31, 2006, at the Centro Empresarial Rio, with assistance from the Director of the Department of International Legal Affairs and a number of invited officials, among others.

The course program was as follows:

XXXIII COURSE ON INTERNATIONAL LAW International Law in the Americas: One Hundred Years of the Inter-American Juridical Committee

(Rio de Janeiro, July 31st-August 25th, 2006)

Week One

Monday, July 31

10:00 – 12 :00 Opening

Tuesday, August 1

9:00 – 10:50 BREAK

11:10 – 1:00

Nadia Araújo

Professor of Private International Law, Pontifical Catholic University (PUC), Rio de Janeiro

International contracts in Latin America: Progress by CIDIP-V and proposals for CIDIP-VII—part I

2:30 – 4:30

BREAK

Wednesday, August 2

- 9:00 – 10:50 **Jean Michel Arrighi**
Director, OAS Department of International Legal Affairs:
Evolution of the inter-American legal system—part I
- 11:10 – 1:00 **Daniela Trejos Vargas**
Professor of Private International Law, Pontifical Catholic University (PUC),
Rio de Janeiro.
International jurisdiction and access to justice
- 2:30 – 4:30 BREAK

Thursday, August 3

- 9:00 – 10:50 **Jean Michel Arrighi**
Evolution of the inter-American legal system—part II
- 11:10 – 1:00 **Nadia Araújo,**
*International contracts in Latin America: Progress by CIDIP-V and proposals
for CIDIP-VII--part II*
- 2:30 – 4:30 BREAK

Friday, August 4

- 9:00 – 10:50 **Jean Michel Arrighi**
Current issues in the relationship between international law and domestic law
- 11:10 – 1:00 **Lauro da Gama e Souza Jr.**
,Attorney, specializing in international law and commercial arbitration:
*International contracts in Latin America: Progress by CIDIP-V and proposals
for CIDIP-VII--part II*
- 2:30 – 4:30 **Gabriel Valladares**
Legal Adviser, International Committee of the Red Cross
*Progress and challenges in the domestic application of international
humanitarian law in the Americas*

Week Two**Monday, August 7**

- 9:00 – 10:50 **Dante Negro**
Director, OAS Office of International Law.
Recent developments in international law on persons with disabilities—part I
- 11:10 – 1:00 **Claude Emanuelli**
Professor, Faculty of Law, Civil Law section, University of Ottawa
*The contribution of international bodies to the development and the
implementation of international humanitarian law—part I*
- 2:30 – 4:30 **Ronald Herbert**
Professor of Private International Law, University of the Republic, and
University of Montevideo
The CIDIPs: context and choice of agenda

Tuesday, August 8

- 9:00 – 10:50 **John Wilson**
Legal Officer, OAS Office of International Law
Preparatory work for CIDIP-VII
- 11:10 – 1:00 **Claude Emanuelli**
*The contribution of international bodies to the development and the
implementation of international humanitarian law—part II*

2:30 – 4:30 **Ronald Herbert**
The CIDIPs: approaches and techniques employed

Wednesday, August 9

9:00 – 10:50 **Elvira Méndez**
 Chief, Academic Department of Law, Pontifical Catholic University, Peru:
*Sources of international law: relationships, problems, challenges—
 part I*

11:10 – 1:00 **Claude Emanuelli**
*The contribution of international bodies to the development and the
 implementation of international humanitarian law--part III*

2:30 – 4:30 **Ronald Herbert**
 The CIDIPs: Values involved and perspectives”

Thursday, August 10

9:00 – 10:50 **Eduardo Cáliz**
 Vice Minister of Foreign Affairs of El Salvador

11:10 – 1:00 **Elvira Méndez**
*Sources of international law: relationships, problems, challenges—
 part II*

2:30 – 4:30 **Antonio Fidel Pérez**
 Member of the Inter-American Juridical Committee
Means of defending democracy in the inter-American system

Friday, August 11

9:00 – 10:50 **Eduardo Cáliz**

11:10 – 1:00 **Elvira Méndez**
Sources of international law: relationships, problems, challenges-part III

2:30 – 4:30 **Mauricio Herdocia**
 Chair, Inter-American Juridical Committee
*Contributions by the Inter-American Juridical Committee to representative
 democracy: The challenge of building a universal regime*

Week Three

Week of celebration of the centennial of the Inter-American Juridical Committee

Monday, August 14

9:00 – 10:50 **Antonio Remiro Brotóns**
 Professor of International Law, Autonomous University of Madrid:
Extraterritorial judicial prosecution of international crimes

11:10 – 1:00 **Julio Barboza**
 Professor, School of Law and Social Science, Catholic University of Argentina.
*General issues of international liability and present status of liability for
 hazardous activities—part I*

2:30 – 4:30 **João Clemente Baena Soares**
 Former Secretary General of the OAS
Activities of the United Nations Security Council

Tuesday, August 15

9:00 – 10:50 **Antonio Remiro Brotóns**
*Judicial resolution of conflicts between Latin American countries and the Pact
 of Bogotá*

11:10 – 1:00 **Julio Barboza**
General issues of international liability and present status of liability for hazardous activities—part II

2:30 – 4:30 **João Clemente Baena Soares**
Multilateral diplomacy

Wednesday, August 16

9:00 – 10:50 **Antonio Remiro Brotóns**
Judicial resolution of conflicts between Latin American countries and the Pact of Bogotá—part II

11:10 – 1:00 BREAK

4:00 – 6:00 Ceremony marking the centennial of the Inter-American Juridical Committee, followed by cocktail reception

Thursday, August 17

9:00 – 10:50 **Dante Caputo,**
Assistant Secretary for Political Affairs of the OAS.

11:10 – 1:00 **Enrique Lagos**
Modernization of justice systems and legal and judicial cooperation in the inter-American arena—part I

2:30 – 4:30 **Juan Carlos Murillo**
International protection of refugees in the Americas

Friday, August 18

9:00 – 10:50 **Enrique Lagos**
Modernization of justice systems and legal and judicial cooperation in the inter-American arena—part II

11:10 – 1:00 **Juan Carlos Murillo**
Present-day challenges in the international protection of refugees

2:30 – 4:30 **Antônio Augusto Cançado Trindade,**
Judge and former Chairman of the Inter-American Court of Human Rights.
The human being as a subject of international law: legal personality and capacity of the individual and direct access to international human rights tribunals--part I

Week Four

Monday, August 21

9:00 – 10:50 **Antônio Augusto Cançado Trindade**
The human being as a subject of international law: legal personality and capacity of the individual and direct access to international human rights tribunals—part II

11:10 – 1:00 **Diego Fernández Arroyo**
Professor of law, Universidad Complutense, Madrid
Essential issues of international jurisdiction in private law in the Americas

2:30 – 4:30 **Caroline Kleiner**
Assistant Professor, University of Geneva, Switzerland
Current trends in French private international law

Tuesday, August 22

- 9:00 – 10:50 **Antônio Augusto Cançado Trindade**
The human being as a subject of international law: legal personality and capacity of the individual and direct access to international human rights tribunals—part III
- 11:10 – 1:00 **Diego Fernández Arroyo**
Essential issues of international jurisdiction in private law in the Americas--part II
- 2:30 – 4:30 **Daniel Vignes**
The revision of the Rome treaty establishing the European Union and the draft “Constitutional Treaty” of October 29th, 2004, establishing a Constitution for Europe—part I”

Wednesday, August 23

- 9:00 – 10:50 **Daniel Vignes**
The revision of the Rome treaty establishing the European Union and the draft “Constitutional Treaty” of October 29th, 2004, establishing a Constitution for Europe—part II”
- 11:10 – 1:00 **Caroline Kleiner**
Current trends in French private international law—part II
- 2:30 – 4:30 **Ana Elizabeth Villalta Vizcarra**
Member, Inter-American Juridical Committee
The contribution of the Americas to international law

Thursday, August 24

- 9:00 – 10:50 **Daniel Vignes**
The revision of the Rome treaty establishing the European Union and the draft “Constitutional Treaty” of October 29th, 2004, establishing a Constitution for Europe—part III
- 11:10 – 1:00 **Dante Negro**
Recent developments in international law on persons with disabilities—part II
- 2:30 – 4:30 **John Wilson**
The Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, including Migrant Workers and Their Families

Friday, August 25

- 10:00 – 12:00 Closing session and presentation of certificates

* * *

This year, in connection with the centennial of the Inter-American Juridical Committee (IAJC), on Monday, Tuesday, and Wednesday, August 14, 15, and 16, the members of the Juridical Committee met at the site of the Course to attend lectures given by Drs. Antonio Remiro Brotóns, Julio Barboza, and João Clemente Baena Soares.

At its 69th regular session (Rio de Janeiro, August 2006), the Inter-American Juridical Committee decided that the topic of the Course on International Law for 2007 would be *Free Trade and Regional Integration—Exclusive or Complementary Legal Options for the Americas*.

C. Relations and forms of cooperation with other inter-American organizations and with similar regional or world organizations

Participation of the Inter-American Juridical Committee as an observer or guest of various organizations and conferences

The following members of the Inter-American Juridical Committee acted as observers and participated in various forums and international organizations in 2006, as representatives of the Committee:

- Dr. Mauricio Herdocia Sacasa, Chair of the Inter-American Juridical Committee, along with the other members of the Juridical Committee, presented the Annual Report of the Committee on its 2005 activities to the Committee on Juridical and Political Affairs of the Permanent Council, on March 29, 2005, and to the OAS General Assembly, at its thirty-sixth regular session, in Santo Domingo, Dominican Republic, in June 2006.

- Dr. Jean-Paul Hubert represented the Juridical Committee before the United Nations International Law Commission (ILC/UN).

Transcribed below are the presentations given by members of the Inter-American Juridical Committee in their capacity as observers, representatives, or participants in a series of meetings during 2006.

CJI/doc.234/06

REPORT BY THE CHAIRMAN OF THE INTER-AMERICAN JURIDICAL COMMITTEE TO THE THIRTY-SIXTH REGULAR SESSION OF THE GENERAL ASSEMBLY OF THE OAS (Santo Domingo, June 6th, 2006)

(presented by Dr. Mauricio Herdocia Sacasa)

1. Joint efforts of the Americas in the struggle against corruption and impunity; 2. Legal aspects of compliance within the States with the decisions of international courts or tribunals or other international organs with jurisdictional functions; 3. Legal aspects of the interdependence between democracy and economic and social development; 4. Seventh Inter-American Specialized Conference on Private International Law; 5. International Criminal Court; 6. Preparations for the commemorations of the Inter-American Juridical Committee centennial; 7. Principles of judicial ethics; 8. Right to information: access and protection of information and personal data; 9. Legal aspects of inter-American security; 10. Application of the Inter-American Democratic Charter; 11. XXXII Course on International Law.

Mr. Chairman of the General Assembly,
Ministers and Delegates,
Mr. Secretary General,
Mr. Assistant Secretary General,
Members and Personnel of the General Secretariat,
Permanent Observers,
Ladies and Gentlemen,

During 2005, the Inter-American Juridical Committee held the regular sessions in Managua and Rio de Janeiro. One of them honored Central America with the historic fact of having hosted the Juridical Committee in its 66th regular session.

In the course of both meetings, the Juridical Committee had on its agenda extraordinarily important topics as follows:

1. JOINT EFFORTS OF THE AMERICAS IN THE STRUGGLE AGAINST CORRUPTION AND IMPUNITY

The General Assembly requested the Inter-American Juridical Committee for a study on the legal effects of granting safe haven to public servants and people accused of offenses of corruption after having held political power and cases where fraud against the law or abuse of law figures in relation to the principle of dual nationality.

In conclusion of its discussions, the Inter-American Juridical Committee adopted an *Opinion*, accompanied by a detailed report in which it is concluded that:

1. In case of a conflict of nationality, the Juridical Committee considers that if the nationality of the requesting State is the dominant or predominant nationality, or the genuine and effective link, extradition should not be refused on the basis of nationality.
2. When nationality is acquired or invoked through fraud or abuse of the law, extradition should not be refused solely on the basis of nationality.

The Juridical Committee endorsed its conclusions as convenient for the continuous development of international law and for achieving the goals and strengthening international justice.

A second topic refers to the:

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

The General Assembly asked the Juridical Committee for a final study on this matter, on the basis of the questionnaires carefully prepared by the Committee and duly sent to the member States.

I am pleased to inform that answers have been received from 20 countries.

The answers received do not seem to indicate that, at least at the level of Legal Advisors of the Ministries of Foreign Affairs, the topic of compliance with decisions of international jurisdictional organs is deemed a serious problem.

One topic that has special interest refers to the:

3. LEGAL ASPECTS OF THE INTERDEPENDENCE BETWEEN DEMOCRACY AND ECONOMIC AND SOCIAL DEVELOPMENT

The General Assembly requested the Inter-American Juridical Committee to analyze the legal aspects of interdependence between democracy and economic and social development, in the presence of various instruments.

On analyzing this topic, it should be borne in mind that the origin of the Inter-American Democratic Charter lies mainly in the OAS Charter and was conceived as a fundamental instrument for interpreting, reaffirming and updating it, and that such interdependence exists, and is widely and repeatedly expressed. Although development consolidates democracy, the absence of a certain level of progress cannot sustain an excuse in detriment to democracy.

Moreover it was recalled that the obligation toward democracy and the obligation to cooperate with development have different regulations and consequences, notwithstanding their interdependence and close ties.

It was mentioned that development has a component of cultural, economic and social rights that are established in international and inter-American declarations and legal instruments in the sphere of human rights, an essential part of democracy, and that its increasing execution reinforces the legal bond and interdependence between

democracy, integral development and the struggle against poverty, as stated in the Inter-American Democratic Charter.

I am pleased to add that in our regular session in Washington, the Juridical Committee issued a resolution accompanied by a substantial broad and comprehensive report that reflects these considerations of the Committee.

Another topic of special importance for the Committee refers to the:

4. THE SEVENTH INTER-AMERICAN SPECIALIZED CONFERENCE ON PRIVATE INTERNATIONAL LAW

The Inter-American Juridical Committee, on the presentation of several reports relating to the specific agenda of CIDIP-VII, adopted a resolution by which the rapporteurs of the topic are asked to participate, in a coordinated manner, in the consulting mechanisms to be established with a view to developing the topics proposed for the CIDIP-VII, and meetings of experts convened for this purpose.

A topic to be especially considered by the Committee was the:

5. INTERNATIONAL CRIMINAL COURT

During its 67th regular session, the Inter-American Juridical Committee agreed to include it in the agenda and prepared a questionnaire to be submitted to the OAS member States, about the way in which its legislation is qualified to cooperate with the International Criminal Court.

Mr. Chairman, the Juridical Committee promptly executed this order when it prepared and distributed both the questionnaire to the member States and the report corresponding to the Permanent Council based on the answers received to the questions for their submission to this General Assembly.

I am pleased to point out the great interest of the member States in the topic of cooperation with the International Criminal Court and the work of the Committee, which is certainly demonstrated by the fact that 17 answers were received in a very short space of time, which allowed certain trends and valuable indicators in the requested report.

A matter of the utmost importance is of course constituted by the:

6. PREPARATION FOR THE COMMEMORATIONS OF THE INTER-AMERICAN JURIDICAL COMMITTEE CENTENNIAL

As the Secretary General of the Organization mentioned in the opening session, the Inter-American Juridical Committee commemorates its 100 years of existence and this General Assembly could not be absent at this Centenary, so that we can recall the many contributions of the Juridical Committee to International Law of the Americas and the world.

The Juridical Committee has been preparing for the various events that are part of the Centennial to be held in Rio de Janeiro this coming August 14, 15 and 16, including the preparation of a commemorative book with the contributions of distinguished members and former members of the Committee at different times.

I must emphasize, Mr. Chairman, the historic and solemn Special Session of the Permanent Council of the Organization of American States held in Washington on March 29, 2006, where tribute of enormous significance was paid to the work of the Committee through its papers, reports and opinions in spheres such as human rights, pacific settlement of dispute, representative democracy and its collective defense mechanisms, the fight against corruption, the Law of the Sea, fundamental principles of International Law, including non-intervention and sovereignty and equality among all States, the rights of the indigenous peoples, and to asylum, social rights and so many other topics influenced and transformed by International Law.

Mr. Chairman, I now very briefly address the following topics:

7. PRINCIPLES OF JUDICIAL ETHICS

I can now say that the Juridical Committee has already appointed a rapporteur for this topic and that, at its next regular session, will be discussing its first report on the matter when it is expected to cooperate with the Justice Studies Center of the Americas (JSCA).

On the topic of the:

8. RIGHT TO INFORMATION: ACCESS AND PROTECTION OF INFORMATION AND PERSONAL DATA

I would like to say that the Juridical Committee has appointed two new rapporteurs on the topic in order to submit an updated report on the protection of personal data based on comparative law.

In relation to the:

9. LEGAL ASPECTS OF INTER-AMERICAN SECURITY

The Juridical Committee analyzes this topic within the framework of the multidimensional scope of security expressed in the *Declaration on Security in the Americas*, adopted in Mexico in 2003, as one of its topics in progress.

Concerning the:

10. APPLICATION OF THE INTER-AMERICAN DEMOCRATIC CHARTER

During the 68th regular session, the Inter-American Juridical Committee decided to continue with this topic under the name of *Follow-up the Application of the Inter-American Democratic Charter*, as an expression of interest by the Committee on this topic.

11. XXXII COURSE ON INTERNATIONAL LAW

Among other activities performed during 2005 the XXXII Course on International Law is worth mentioning, with the participation of 28 professors from different countries in America and Europe and 43 students, on the subject of *The contribution of international organizations to current international law*.

Mr. Chairman, please permit me to make some final comments on some special subjects:

The Inter-American Juridical Committee considers it of the utmost importance to further strengthen the relations of cooperation between the Committee on Juridical and Political Affairs and the Committee, in order to boost the contribution toward legal topics of interest that are discussed in the hemisphere. On this matter, it was considered important for the IAJC rapporteurs to participate in the specialized meetings of the Working Groups that discuss such topics, namely the International Criminal Court, the drafting of an inter-American convention against racism, and topics relating to the preparation of the CIDIP-VII.

In the sphere of the *Inter-American convention against racism and any form of discrimination and intolerance*, the Juridical Committee has appointed a new rapporteur to specifically adopt this topic and we will be very pleased to work closely on this transcendental subject on which the Committee has already issued a report.

The Juridical Committee welcomes its role to prepare the CIDIP-VII and stresses the importance of including in the agenda the topic of "Re-examining inter-American conventions on private international law", taking into account the valuable work done by the rapporteurs of the IAJC on this subject.

I would also like to stress how important it is for the questionnaires sent by the Inter-American Juridical Committee to receive as many answers as possible so that the Committee can work on broader, more complete and duly supported bases. This is particularly important in the case of the Questionnaire on the International Criminal Court.

I finish these words by recalling once again the importance of participating in the Centennial commemorations of the Inter-American Juridical Committee, to be held in Rio de Janeiro this coming August. We have sent out invitations for it to the Ministers of Foreign Affairs of the hemisphere, Permanent Representatives for the Organization and Legal Advisors of the Ministers of Foreign Affairs. This is an opportune moment to renew this cordial invitation, which we, of course, hope is also accepted by the Secretary General.

Moreover, I would like to highlight the importance of the approval of the *Declaration on the Centennial of the Inter-American Juridical Committee* during this General Assembly of the Organization, based on the draft text prepared by the Committee in August 2005.

I would also like to thank the Secretary General for the support given to the work of the IAJC through the secretariat in Washington and Rio de Janeiro.

Mr. Chairman,

The Centennial of the Inter-American Juridical Committee does not intend to relive former glories or resuscitate illustrious ruins or revive historic documents. It is rather a dynamic commitment to that original idea of the system according to which the legal organization is an essential condition for peace, security and also development. The Centennial must allow us to look toward the future.

One century after that International Commission of Jurists created on August 23, 1906, at the dawn of the 20th century, we can say that every so often, the imperative of International Law has been reaffirmed to which former members and my current colleagues of the Juridical Committee have contributed so much – with extraordinary and admirable capacity, responsibility and vocation for service to those who pay a moving tribute. This vast legacy must be protected, extended and enriched as the expression of a renewed experience of American solidarity in the world today.

Thank you very much.

CJI/doc.220/06

**PRESENTATION OF THE 2005 ANNUAL REPORT OF THE
INTER-AMERICAN JURIDICAL COMMITTEE TO THE
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS OF
THE ORGANIZATION OF AMERICAN STATES**

(presented by Dr. Mauricio Herdocia Sacasa)

Summary

1. Joint efforts of the Americas in the struggle against corruption and impunity. 2. Legal aspects on the compliance within the States with decisions of international courts or tribunals or other international organs with jurisdictional functions. 3. Legal aspects of the interdependence between democracy and economic and social development. 4. Seventh Inter-American Specialized Conference on Private International Law. 5. Consideration on the codification and standardization of international law in the Americas. 6. Preparation of the commemoration of the centennial of the Inter-American Juridical Committee. 7. International Criminal Court. 8. Principles of judicial ethics. 9. Right to information: access to and protection of information and personal data. 10. Legal aspects of Inter-American security. 11. Application of the Inter-American Democratic Charter. 12. Preparation of a Draft inter-American convention against racism and all forms of discrimination and intolerance. 13. Other activities carried out during 2005 - Course on International Law. 14. Special aspects.

* * *

TOPICS ADDRESSED BY THE INTER-AMERICAN JURIDICAL COMMITTEE DURING THE 2005 REGULAR SESSIONS

During the year 2005, the Inter-American Juridical Committee held two regular sessions in Managua, Republic of Nicaragua, and in Rio de Janeiro, Federative Republic of Brazil.

Central America is honored by the historical fact of being the venue, on the eve of the commemoration of the Centennial of the Juridical Committee, of its 66th regular session which gathered in a region that gave the world its first tribunal of international justice, the consecration of the principle of *ius standi* of individuals before the international courts and their pioneer process of integration that has incorporated the principles of the *Inter-American Democratic Charter* in the decision regarding their community tribunal.

The agenda of the Committee listed the following topics in both meetings:

1. JOINT EFFORTS OF THE AMERICAS IN THE STRUGGLE AGAINST CORRUPTION AND IMPUNITY

The resolution of the General Assembly AG/RES.2022 (XXXIV-O/04), *Joint efforts of the Americas in the struggle against corruption and impunity*, requested the Inter-American Juridical Committee to prepare a report on the legal effects of giving safe haven in regional or extra-regional countries to public officials and persons accused of crimes of corruption after having exercised political power; and cases in which appealing to the principle of dual nationality may be considered a fraud or abuse of the law.

During their 66th regular session, the Inter-American Juridical Committee was presented with document CJI/doc.177/05, *The joint efforts of the Americas in the struggle against corruption and impunity*, presented by the rapporteur of the topic, Ana Elizabeth Villalta Vizcarra.

As a conclusion of their work, the Inter-American Juridical Committee adopted resolution CJI/RES.84 (LXVI-O/05), *Joint efforts of the Americas in the fight against corruption and impunity*, welcoming with satisfaction the study of the rapporteur and adopting the attached *Opinion* to the resolution (CJI/doc.181/05 rev.4), based on the study of the rapporteur (CJI/doc.177/05). These documents were forwarded to the Permanent Council on March 31, 2005.

Dr. Galo Leoro Franco provided an explanation of vote in writing which is attached to the Minutes.¹

The Committee's conclusions are therefore:

The main precedents concerning dominant nationality and the need for an effective link in determining nationality have taken place in the context of diplomatic protection established in International Law. Nonetheless, the Juridical Committee believes that certain conclusions derived from the context of diplomatic protection could be applied in the field of extradition although these conclusions do not necessarily reflect the current status of international law. These conclusions include:

1. In case of a conflict of nationality, the Juridical Committee considers that if the nationality of the requesting State is the dominant or predominant nationality, or the genuine and effective link, extradition should not be refused on the basis of nationality.
2. When nationality is acquired or invoked through fraud or abuse of the law, extradition should not be refused solely on the basis of nationality.

¹ See. Summary Minutes 10 corresponding to the session held on March 11, 2005, 66th regular session of the Inter-American Juridical Committee.

These conclusions are desirable because they would have the juridical effect of preventing crimes involving corruption remaining unpunished; affecting the general aims of international criminal justice; damaging judicial cooperation between States; undermining the Rule of Law in international relations, and neglecting the interests of the State requesting extradition. The Committee lends its support to these conclusions as they are deemed to be convenient to the progressive development of international law and for strengthening and achieving the goals of international justice.

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

The General Assembly resolved to acknowledge the progress made by the Juridical Committee in the study of the topic during their XXXV Regular session (Fort Lauderdale, June, 2005), through resolution AG/RES.2069 (XXXV-O/05), *Observations and recommendations to the Annual Report of the Inter-American Juridical Committee*. The General Assembly, requested the incorporation of a final study on the topic in the forthcoming 2005 *Annual Report*.

Answers were provided by 20 countries: Argentina,² Belize, Brazil, Canada, Colombia, Costa Rica, Dominica, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay and Venezuela.

Fourteen countries failed to reply: Antigua and Barbuda, Bahamas, Barbados, Bolivia, Chile, Ecuador, Grenada, Guyana, Dominican Republic, Santa Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname and Trinidad and Tobago.

It is convenient to recall that during the evaluation of the results of the questionnaire and the discussion on eventual lines of action for the future, the focus of this study is to determine the strictly juridical difficulties that some member States may have perceived in their respective juridical ranking, in order to enforce the decisions of international organs of justice and to investigate whether other States were able to solve similar difficulties, having as a final goal the usefulness of such information.

The cases where the lack of enforcement of a decision of this kind could be the outcome of political or economic causes or of any other nature not strictly juridical were excluded from this study.

The answers to the questionnaire received so far do not seem to indicate that, at least in legal agencies of the Ministries of Foreign Affairs, the enforcement of the decisions of international jurisdictional organs is seen as a serious problem of legal nature.

Most States replying to the questionnaire do not any provisions in their domestic legislation specifically referring to the enforcement of this kind of international decision. It should be recalled, however, that in States following traditional British principles, where the dual system prevails, international treaties have no legal effects domestically until they are incorporated by the local legislation. For this reason, presumably any legal difficulty in the enforcement of the decisions ruled by an organ of justice should be dealt with when local legislation is drafted.

In any event, it might be interesting for some member States to become aware of the constitutional or legal provisions enforced or proposed by some member States to facilitate or enable the decisions ruled by international courts and other similar organs.

We may cite in this regard:

- Honduras, whose Constitution expressly refers to the enforcement of international sentences;

² The answers to the questionnaire were received after the presentation of the report by its rapporteur, Dr. Luis Herrera Marcano.

- Haiti, considering that the provisions in the Constitution declaring the supremacy of international law with the aim of providing international decisions capable of being enforced locally;
- Peru, which adopted a law on the matter;
- Mexico, where the Congress is currently studying a constitutional amendment to facilitate the enforcement of the sentences dealt with herein.

It is also interesting to know the specific measures adopted by some member States to facilitate their cooperation with international criminal courts.

3. LEGAL ASPECTS OF THE INTERDEPENDENCE BETWEEN DEMOCRACY AND ECONOMIC AND SOCIAL DEVELOPMENT

The General Assembly, during its XXXIV Regular Session (Quito, June, 2004), through resolution AG/RES.2042 (XXXIV-O/04), requested the Inter-American Juridical Committee, as regards this topic, to analyze, in the light of the provisions of Chapter III of the *Inter-American Democratic Charter*, the legal aspects of the interdependence between democracy and economic and social development, bearing in mind, among others, the *Recommendations of the High-Level Meeting on Poverty, Equity and Social Inclusion* of the *Declaration of Margarita*, the *Monterrey Consensus*, the *Declarations and Plans of Action of the Monterrey Consensus*, the *Declarations and Plans of Action of the Summits of the Americas*, and the objectives of the *Declaration of the Millennium* of the United Nations.

The Inter-American Juridical Committee decided to add another topic to its agenda, under the title "Legal aspects of the interdependence between democracy and economic and social development" as a topic under consideration, Dr. Jean-Paul Hubert as its rapporteur, leaving the topic of the "Application of the *Inter-American Democratic Charter*" as a topic under study, with Dr. Eduardo Vio Grossi as rapporteur. The Juridical Committee adopted this decision through resolution CJI/RES.80 (LXV-O/04).

The rapporteur pointed out, in principle, that none of the documents included as a reference in the original mandate has a binding nature. However, and although not expressly mentioned in the mandate, he considered especially important to analyze the *OAS Charter*. The rapporteur expressed that a central item in the mandate is the word "interdependence" and the legal aspects derived therefrom. He also indicated that the mandate presumably means that such interdependence is undeniable.

There was a general agreement among the Chairman, the rapporteur and the other members of the Juridical Committee as regards the viewpoints in question. In particular, they coincided on the special attention that should be paid to the *OAS Charter*. They wondered whether there was an obligation of the States to promote development, within the principle of gradualism, as regards the means and resources available, or whether a more prominent obligation exists. The importance of analyzing the relationship between democracy and human rights was also highlighted, and it was recalled that the *Inter-American Democratic Charter* offers at least one interpretation of the *OAS Charter*. It was also recalled that human rights are an indivisible and interdependent concept and that therefore it was crucial to analyze the issue involving economic, social and cultural rights as an essential part of representative democracy. It is precisely from this concept that we can find a legal bond between democracy and economic and social development, which is closely related to integral development. Finally, emphasis was lent to the importance of avoiding any confusion among the concepts of democracy, human rights and development, notwithstanding the existing interdependence among them. Democracy conceived as a right cannot be subsumed in the sphere of human rights, although they are mutually reinforcing. They are, in fact, different concepts.

The General Assembly, during its XXXV Regular Session (Fort Lauderdale, June, 2005), through resolution AG/RES.2069 (XXXV-O/05), *Observations and recommendations to the Annual Report of the Inter-American Juridical Committee*,

welcomed with satisfaction the inclusion in the agenda of the topic above and requested the inclusion of a section in the next *Annual Report*, based on the *OAS Charter* and the guidelines provided by resolution AG/RES.2042 (XXXIV-O/04).

During the 67th regular session (Rio de Janeiro, August, 2005), the Inter-American Juridical Committee was presented with document CJI/doc.190/05, *Legal aspects of the interdependence between democracy and economic and social development: provisional report*, which had been opportunely forwarded by the rapporteur. The latter explained that it was a preliminary report, and that although it considered in depth the first oral report presented during the previous session, it should not yet be considered as a final report. One of the preliminary conclusions of the rapporteur was that the Inter-American Juridical Committee should examine how the interdependence between democracy and economic and social development, which no one seemed to deny, was expressed therein.

The rapporteur finally indicated that the most serious problem in this topic is that, although some States may be penalized for their lack of democracy or for not fulfilling its obligation to promote democracy, there are no means, obligations or mechanisms in the field of sustainable development, at least in equal terms. Whereas the violation of democracy has mechanisms of response, there does not seem to exist a similar order in the area of infringement of the duty of cooperating towards integral development.

The Inter-American Juridical Committee highlighted the importance of receiving the final report from the rapporteur on the issue, for the forthcoming sessions.

Finally, the Inter-American Juridical Committee approved resolution CJI/RES.95 (LXVII-O/05), *Legal aspects of the interdependence between democracy and economic and social development*, thanking the rapporteur for the presentation of the progress report on the topic, and requesting him to present, during the 68th regular Session of the Inter-American Juridical Committee the final report encompassing the debates within the Committee at the time the recommendations and conclusions were expressed.

4. SEVENTH INTER-AMERICAN SPECIALIZED CONFERENCE ON PRIVATE INTERNATIONAL LAW - CIDIP-VII

The General Assembly, during the XXXV Regular Session (Fort Lauderdale, June, 2005), adopted resolution AG/RES.2065 (XXXV-O/05), *Seventh Inter-American Specialized Conference on Private International Law*, establishing the following agenda for the CIDIP-VII:

- a) Consumer protection: applicable law, jurisdiction and monetary redress (conventions and model laws);
- b) Secured transactions: electronic registries implementation of the Inter-American Model Law on secured transactions.

In the resolution, the Permanent Council is instructed to establish the methodology for the preparation of the inter-American instruments to be considered during the CIDIP-VII, and to establish the date and venue and, also, when considering future topics for the forthcoming CIDIPs, to study, among others, the topic relating to an inter-American convention on international jurisdiction. The Inter-American Juridical Committee was also requested to present its comments and observations on the topics for the final agenda of CIDIP-VII. On the other hand, in resolution AG/RES.2069 (XXXV-O/05), *Observations and recommendations to the Annual Report of the Inter-American Juridical Committee*, this body is requested to cooperate in the preparation of the forthcoming CIDIP-VII.

During the 67th regular session (Rio de Janeiro, August, 2005), the Inter-American Juridical Committee was presented with document CJI/doc.192/05, *Note for the Inter-American Juridical Committee on the CIDIP-VII*, submitted by Dr. Antonio Fidel Pérez.

After discussing the topic, the Inter-American Juridical Committee was presented with document CJI/doc.196/05, *Comments on CIDIP-VII agenda*, presented by Drs. Antonio Fidel Pérez, João Grandino Rodas and Ana Elizabeth Villalta Vizcarra.

The Inter-American Juridical Committee finally adopted resolution CJI/RES.100 (LXVII-O/05), *Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII)*, through which the rapporteurs are requested to participate together in the consultation mechanisms to be established in order to develop the proposed topics for the CIDIP-VII, especially during the meeting of experts convened for that purpose. The rapporteurs were also requested to inform the Inter-American Juridical Committee on the progress in discussion of the topics and to prepare a report on the issue for presentation during the 68th regular session of the Committee, or earlier, should the evolution of the topics so recommend.

5. CONSIDERATION ON THE CODIFICATION AND STANDARDIZATION OF INTERNATIONAL LAW IN THE AMERICAS

The Inter-American Juridical Committee, in its August 2004 session, decided to include in its agenda the item involving the reconsideration of the Inter-American conventions on private international law, in addition to the topic of the CIDIP-VII. The rapporteurs, Drs. Ana Elizabeth Villalta Vizcarra and João Grandino Rodas, were also requested to present a report on the progress of this reconsideration during the following regular session. On December 2004, the General Secretariat provided the two rapporteurs with bibliography and a compilation of the studies of the Inter-American Juridical Committee since 1948 to date on the amendment to the *Bustamante Code* to be used as a basis for their reports.

The Inter-American Juridical Committee was presented with document CJI/doc.178/05 corr.1, *Re-examining the inter-American conventions on private international law and the CIDIP-VII*, presented by the rapporteur of the topic, Dr. Ana Elizabeth Villalta Vizcarra. The rapporteur indicated that the report had not yet been discussed by the co-rapporteur, Dr. João Grandino Rodas. She pointed out that the aim of the report was to study the role of the Inter-American Juridical Committee during the Specialized Conferences on the matter.

In her report, the rapporteur established that the legal framework of the international right in the Inter-American system are the conventions, protocols, model laws, legislative guidelines, standard documents, as well as documents and instruments that regulate the relation between individuals within an international context. She also made a revision of the results of the Specialized Conferences on the topic and referred to the preparation of CIDIP-VII and the topics proposed by different countries. She highlighted that since CIDIP-IV the number of ratifications by member States has diminished, as well as the number of States attending these Conferences, and accordingly proposed to strengthen the CIDIP process as a convenient path for codification and progressive development of international law in the Americas, promoting both its traditional and new perspectives on the process of harmonizing substantive law. She also suggested that during the preparatory activities for the CIDIP-VII, provision of a commission is foreseen in order to analyze the reasons for the decreasing number of ratifications and the non-enforcement of model laws.

In this regular session, the Inter-American Juridical Committee adopted resolution CJI/RES.83 (LXVI-O/05), *Reexamining the Inter-American conventions on private international law*, welcoming the aforementioned document CJI/doc.178/05 and requesting rapporteurs to continue analyzing in depth the document, in order to offer their conclusions and recommendations during the 67th regular session of the Committee. It also recommended that the Permanent Council should include in the agenda of the CIDIP-VII an analysis of the reasons why a large number of OAS member States had not ratified several Inter-American conventions on private international law adopted within the framework of the CIDIPs, as well as the degree of adoption of model laws in the domestic legislation of the member States, taking into consideration the aforementioned report CJI/doc.178/05 corr.1 and the report submitted by the rapporteurs.

During the XXXV Regular Session (Fort Lauderdale, June, 2005), the General Assembly, through resolution AG/RES.2069 (XXXV-O/05), *Observations and recommendations to the Annual Report of the Inter-American Juridical Committee*, requested the Committee to continue examining the situation involving private international law in the Americas.

During the 67th regular session (Rio de Janeiro, August, 2005), the Inter-American Juridical Committee was presented with document CJI/doc.193/05, *The Inter-American Juridical Committee in the codification of private international law and in the preparation of the Seventh Inter-American Specialized Conference on Private International Law*, presented by one of the rapporteurs.

The Chairman of the Inter-American Juridical Committee, taking into account the comments of some of the Committee members, explained that the topic involving the re-examining of conventions within private international law should be carried out, without detriment of the considerations that the Committee makes regarding the agenda of the forthcoming CIDIP-VII. He further recalled that a decision had already been made by the Committee to recommend that the CIDIP-VII include in its agenda the topic regarding re-examining the inter-American conventions on private international law.

6. PREPARATIONS FOR THE COMMEMORATION OF THE CENTENNIAL OF THE INTER-AMERICAN JURIDICAL COMMITTEE

The Inter-American Juridical Committee adopted resolution CJI/RES.102 (LXVII-O/05), *Declaration on the centenary of the Inter-American Juridical Committee*, by means of which it adopts the above-mentioned draft declaration and resolves to present it to the consideration of the General Assembly of the Organization.

A review was made of the preparations for a book on the Centenary of the Inter-American Juridical Committee and the contributions made up to now both by current and former members of the Committee.

A review was made of the various events to commemorate the Centenary to be held in Rio de Janeiro on the occasion of the XXXIII Course on International Law.

The Chairman of the Juridical Committee developed the topic relating to the celebration of the Centenary in the Headquarters of the Organization in Washington D.C., on the occasion of a Special Session of the Permanent Council of the Organization, an initiative presented to and fully acknowledged by the Committee on juridical and political Affairs in 2005.

7. INTERNATIONAL CRIMINAL COURT

During its 67th regular session (Rio de Janeiro, August 2005), the Inter-American Juridical Committee approved including in its agenda the topic "Promotion the International Criminal Court", by mandate of the General Assembly of the OAS, whose resolution AG/RES.2072 (XXXV-O/05) requested the Juridical Committee to draw up a questionnaire to be presented to the member States of the OAS with regard to how their legislation is qualified to cooperate with the International Criminal Court and use the results of this questionnaire to present a report to the Permanent Council, which in turn should have it presented to the Thirty-Sixth Regular Session of the General Assembly of the Organization.

The Chairman of the Inter-American Juridical Committee began consideration of the topic recalling that 25 members of the OAS signed the *Statute of Rome* and 22 ratified it. He pointed out that many States have found difficulties at the level of their internal legislation to incorporate or accept some of the norms contained in the *Statute*, and consequently they have needed or still need to make constitutional reforms to these statutory norms. As examples he quoted the length of sentences, the topic of extradition of nationals, and the immunities of certain officials.

The Inter-American Juridical Committee considered document CJI/doc.198/05, *Questionnaire on the International Criminal Court*, presented by Drs. Mauricio Herdocia Sacasa, Luis Herrera Marcano, Antonio Fidel Pérez, Stephen C. Vasciannie and Ana Elizabeth Villalta Vizcarra.

The Inter-American Juridical Committee also adopted resolution CJI/RES.98 (LXVII-O/05), *Promoting the International Criminal Court*, by means of which it adopts document CJI/doc.198/05 rev.1 containing the *Questionnaire on the International Criminal Court*, in fulfillment of the mandate given by the General Assembly. It was also decided to send this document to the member States of the OAS through the General Secretariat, so that the Juridical Committee can use the results to present a report to the Permanent Council of the OAS prior to the XXXVI Regular Session of the General Assembly. In this sense the deadline date of 30 January 2006 was set for receiving the answers. Finally, Dr. Mauricio Herdocia Sacasa was appointed rapporteur and an advance report was requested during the 68th regular session of the Inter-American Juridical Committee.

8. PRINCIPLES OF JUDICIAL ETHICS

During the 66th regular session of the Inter-American Juridical Committee (Managua, 28 February to 11 March, 2005), its Chairman submitted to the approval of the other members the inclusion in its agenda of the topic "Drawing up a Draft Code of Judicial Ethics or of General Principles of Judicial Ethics".

During its 67th regular session (Rio de Janeiro, August 2005), the Juridical Committee received Drs. Juan Enrique Vargas Viancos (Secretary of the Justice Studies Center of the Americas – JSCA/CEJA), and Rodolfo Vigo (Minister of the Supreme Court of the Province of Santa Fé, Argentina), representatives of CEJA, with whom ideas were exchanged on this topic.

The Chairman of the Inter-American Juridical Committee concluded by approaching the areas of cooperation between the CEJA and the Committee. At the proposal of Dr. Vargas, it was decided that the Inter-American Juridical Committee should wait until the CEJA has a more concrete document on principles of judicial ethics to enable the Committee to make a statement.

9. RIGHT OF INFORMATION: ACCESS TO AND PROTECTION OF INFORMATION AND PERSONAL DATA

During the 66th regular session of the Inter-American Juridical Committee (Managua, 28 February to 11 March, 2005), its Chairman recalled the assignment given to the rapporteur of the topic, Dr. Alonso Gómez-Robledo Verduzco, to update the report presented by former Committee member, Dr. Jonathan Fried, at the request of the political bodies of the Organization.

The General Assembly, held during its XXXV Regular Session (Fort Lauderdale, June, 2005), by means of resolution AG/RES.2069 (XXXV-O/05), *Observations and recommendations to the Annual Report of the Inter-American Juridical Committee*, registered the importance of the topic and asked the Juridical Committee to include in its *Annual Report* an updated report on the protection of personal data based on comparative legislation.

During its 67th regular session (Rio de Janeiro, August 2005), the Inter-American Juridical Committee did not consider this topic.

10. LEGAL ASPECTS OF INTER-AMERICAN SECURITY

During the 66th regular session of the Inter-American Juridical Committee (Managua, 28 February to 11 March 2005), its Chairman indicated that, in the scope of the political bodies of the Organization, there is clear interest in the Committee developing this topic and taking into consideration the multidimensional nature of security as set out in the *Declaration on security in the Americas*, adopted in Mexico in 2003.

The General Assembly, during its XXXV Regular Session (Fort Lauderdale, June 2005), through resolution AG/RES.2069 (XXXV-O/05), *Observations and recommendations to the Annual Report of the Inter-American Juridical Committee*, requested the Committee, in the event it decides to carry out new studies on the topic, without excluding other international instruments, to bear in mind and use as a basis the *Declaration on security in the Americas* adopted by the Special Conference on Security held in Mexico City in October 2003, particularly as regards the multidimensional focus of security, and in this case to keep the Permanent Council informed of such.

The Inter-American Juridical Committee decided to pass this topic from “under consideration” to “follow-up” *status* in its agenda for the following regular session.

11. APPLICATION OF THE INTER-AMERICAN DEMOCRATIC CHARTER

During its 67th regular session (Rio de Janeiro, August 2005) of the Inter-American Juridical Committee, the co-rapporteur of the topic, Dr. Eduardo Vio Grossi, expressed his doubts as to the role of the Committee on this matter, since the Permanent Council was responsible for the application of the *Inter-American Democratic Charter*. It was agreed to wait for some juridical consultation on the part of the Permanent Council before starting to study the matter.

The Director of the Department of International Legal Affairs expressed that in the future the Inter-American Juridical Committee could eventually be consulted on a specific problem, that is, whether this instrument should be extended, modified or updated for those cases in which a situation is produced other than as described in article 20, but, nevertheless, representing an international crisis where the government does not resort or appeal to the application of articles 17 or 18, since the Executive Power itself is the destabilizing element.

During this period, the Inter-American Juridical Committee decided to keep it as a follow-up topic under the name “Follow-up of the application of the *Inter-American Democratic Charter*”, as an expression of the interest of the Committee.

12. PREPARATION OF A DRAFT INTER-AMERICAN CONVENTION AGAINST RACISM AND ALL FORMS OF DISCRIMINATION AND INTOLERANCE

During the 66th regular session of the Inter-American Juridical Committee (Managua, 28 February to 11 March 2005), its Chairman announced that, during the presentation of the *Annual Report* of the Juridical Committee to the Committee on Juridical and Political Affairs of the Permanent Council of the OAS, two delegations underscored the importance of this topic in the sphere of the Organization.

The General Assembly, during its XXXV Regular Session (Fort Lauderdale, June 2005) gave no new assignment to the Juridical Committee on this topic. Through resolution AG/RES.2126 (XXXV-O/05) *Prevention of racism and all forms of discrimination and intolerance and consideration of the preparation of a draft inter-American convention*, the General Assembly commissioned the Permanent Council to set up a working group in charge of receiving contributions, among others, of the Inter-American Juridical Committee with a view to this group’s preparing a draft convention on the matter.

During the 67th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2005), the Chairman of the Committee recalled the report that Dr. Felipe Paolillo, former rapporteur of the topic, had prepared on the matter. He pointed out that the rapporteur’s report is still valid and that it was already in the power of the working group of the Permanent Council to deal with the matter. During this regular session, the Juridical Committee made no further considerations on the subject. The Chairman also pointed out that, as an expression of its interest in the matter, the Inter-American Juridical Committee appointed a rapporteur to follow up on the topic.

13. OTHER ACTIVITIES CARRIED OUT DURING 2005 – COURSE ON INTERNATIONAL LAW

The Inter-American Juridical Committee and the Office of Inter-American Law and Programs organized between 1 and 26 August 2005 the XXXII Course on International Law, with the participation of 28 professors from different countries of America and Europe, 29 OAS scholarship-holders chosen from over 70 candidates, and 14 students who paid their own expenses. The central topic of the Course was *The contribution of international organizations to current international law*.

On 1 August 2005, as part of the 67th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2005), the XXXII Course on International Law was inaugurated in the Centro Empresarial Rio, in the presence of the members of the Inter-American Juridical Committee and several guest authorities, among them the representative of the Brazilian Ministry of Foreign Affairs, Counselor Nelson Antonio Tabajara de Oliveira, Head of the Division of the OAS, representatives of the General Secretariat and the scholarship-holders and students of the Course. At this inaugural session, the Chairman of the Committee, Dr. Mauricio Herdocia Sacasa, rendered homage to the memory of Dr. José Gustavo Guerrero.

14. SPECIAL ASPECTS

The Inter-American Juridical Committee considers it to be of the utmost importance to strengthen more and more the relations of cooperation between the Committee on Juridical and Political Affairs and the Committee in order to make increasingly more dynamic the contribution and juridical topics of interest being debated in the hemisphere. In this sense it was considered important that the rapporteurs should participate in the specialized meetings of the Working Groups dealing with topics such as the International Criminal Court and preparing a draft inter-American convention against racism, as well as the topics related to preparing the CIDIP-VII.

Within the sphere of the Inter-American Convention against Racism, the Juridical Committee appointed a new rapporteur for the specific follow-up on this topic.

The Juridical Committee appreciates the space opened to it, especially as concerns the preparation of the CIDIP-VII, and emphasizes the importance of having on the agenda the topic "Re-examining the inter-American conventions on private international law".

Also, the Chairman of the Committee recalled the importance of a high-level participation in the celebrations of the Centenary of the Inter-American Juridical Committee to be held in Rio de Janeiro in August, and for which invitations will be sent to the Ministers of Foreign Affairs of the hemisphere, Permanent Representatives to the Organization and Legal Advisors to the Ministries of Foreign Affairs.

Likewise, emphasis was lent to the importance of encouraging approval of the declaration on the Centenary of the Inter-American Juridical Committee during the next General Assembly of the Organization, to be held in the Dominican Republic from 4 to 7 June 2006, based on the draft text prepared by the Juridical Committee in August 2005.

Also given emphasis was the importance of the questionnaires sent by the Inter-American Juridical Committee receiving as many answers as possible to enable the Committee to work on broader, complete and properly sustained bases.

Finally, the Chairman expressed thanks for the enormous cooperation received on the part of the Committee on Juridical and Political Affairs of the Permanent Council of the Organization and repeated his disposition to attend the meetings to which he is invited in the spirit of cooperation that characterizes the relations between the CAJP and the IAJC, thereby strengthening the *liaison* with the Chairman of the Committee on Juridical and Political Affairs.

CJ/doc.222/06**PRESENTATION BY THE VICE-CHAIRMAN MADE BEFORE THE UNITED NATIONS
INTERNATIONAL LAW COMMISSION ON THE RECENT ACTIVITIES OF THE
INTER-AMERICAN JURIDICAL COMMITTEE
(AUGUST 3, 2006)**

(presented by Dr. Jean-Paul Hubert, Vice-Chairman)

I. INTRODUCTION

Monsieur le Président:

C'est pour moi un honneur que d'avoir été désigné par mes pairs du Comité juridique interaméricain pour le représenter à cette session de la Commission du droit international de l'ONU. Notre Comité apprécie grandement l'opportunité qui lui est ainsi donnée d'informer la Commission et ses membres de ses travaux. En son nom, je vous remercie de cette invitation.

Nul n'est besoin de souligner l'importance de cette primauté de l'état de droit à laquelle tant la Commission que le Comité demeurent attachés et s'efforcent de promouvoir. Pas plus qu'il n'est besoin d'épiloguer sur les conséquences toujours néfastes, et souvent désastreuses, du non-respect de cet état de droit. Et ce, tant à l'échelle des rapports et interactions entre les nations, régis par le droit international, qu'au plan national, où d'ailleurs les incidences du droit international ne font qu'augmenter in cette ère de globalisation.

Ceci dit, ainsi que le mentionnait l'un de mes prédécesseurs à cette table, les rôles et fonctions de la Commission et du Comité sont à la fois similaires et distincts. La Commission poursuit un mandat de développement progressif et de codification du droit international à l'échelle universelle; le Comité, lui, travaille aux mêmes fins, mais in tenant compte des problèmes spécifiques, de la tradition légale et des intérêts et priorités régionaux des Amériques. Organe consultatif de l'Organisation des Etats Américains in matière juridique, il est aussi mandaté par la Charte de l'OEA pour l'étude et l'analyse des obstacles juridiques à une plus grande intégration des pays in développement de cette région, de même que des possibilités d'une plus grande harmonisation de sa législation. Sans compter la forte incidence de questions relatives au droit international privé à son agenda. Ces différences de compétences et d'approche ne peuvent que contribuer à rehausser l'importance de ce dialogue entre nous.

II. GENERAL HISTORICAL PERSPECTIVE

Mr Chairman, dear Members:

This is a very special year for the Inter-American Juridical Committee. Indeed, 2006 marks the centennial of its origins. Such a historical event, of which both the Juridical Committee and the OAS justly pride themselves, will be marked by appropriate celebrations during the upcoming session of the IAJC, a few days from now, at its headquarters in Rio de Janeiro. Commission members may be interested to note that the Juridical Committee is also about to publish a commemorative book. *Inter alia*, it will feature writings from present and past members, especially with regard to the development of international and inter-American international law.

Since centennials only come every one hundred years, and with the permission of the Commission, I would like to derogate from the past practice of primarily focussing on the topics addressed in the past year by the Juridical Committee. Though I will of course summarize at least some of them later on. Instead, it would indeed seem to me that the occasion warrants briefly sharing with you some of the highlights in the life of the Inter-American Juridical Committee and its contributions to the development of international law. To achieve my purpose, I will largely borrow from an address made by our chairman,

Dr. Mauricio Herdocia Sacasa, at a Special Session of the OAS Permanent Council held in Washington on March 29 of this year, to commemorate the Centennial of the IAJC.

One cannot speak of the Inter-American Juridical Committee and its extraordinary work one century after its foundation without underlining the prominent contribution of the Inter-American System to International Law in so many sectors.

For example, the very idea of “codifying” International Law. This was precisely the original task assigned on 23 August to what was then called the “Inter-American Board of Jurists”³, in other words “... preparing a Draft Code of Private International Law and another of Public International Law to regulate the relations between the Nations of America ...”.

So it is worthy of note that the International Board of Jurists comes before the Committee of Experts for the Progressive Codification of International Law set up by the Society of the United Nations in 1924. This makes it also earlier than the Committee of International Law of the United Nations, which was created only more than 40 years later.

In the late 20s the “Board” wrote no less than 12 draft Conventions of Public International Law, which were converted into important precursor multilateral conventions signed at the Havana Conference in 1928, and all of them ratified and still in effect. This in addition to the famous Bustamante Code in the sphere of Public International Law.

With the passing of the years, the Board became known as the “International Committee of American Jurists”, and then as the “International Conference of American Jurists”. Until the 40s, when there appears an entity called the “Inter-American Juridical Committee” which incorporated the old Committee before being elevated to the status of “principal body” of the OAS (Art. 53 of the Charter).

III. SOME SIGNIFICANT CONTRIBUTIONS BY THE INTER-AMERICAN JURIDICAL COMMITTEE

I would now like to briefly evoke some of those areas in which the Juridical Committee can consider it has made significant contributions to international law throughout its existence. Again, I will make use of Chairman Herdocia’s above-mentioned presentation.

1. Inter-American Peace System

With the Gondra Pact of 1923, the former Inter-American Board of Jurists had taken the first steps towards building an Inter-American system for settling disputes. Twenty years later, in the face of the dispersion of juridical norms to prevent war in America, the Inter-American Juridical Committee was asked to systematize these norms into an organized, harmonious unit. And in 1945 the Inter-American Conference on Problems of War and Peace (Mexico) asked the same Committee to undertake preparing a draft “Inter-American Peace System”. In 1948 this would lead to the celebrated American Treaty of Peaceful Solutions, better known as the “Bogotá Pact”.

2. Non- Intervention and Juridical Equality among States

Among the valuable historical contributions made by the Committee, we must recall that for those days approval had already been given, at a peak moment of International Law in the Americas, to the birth of the principle of Non-Intervention: to be precise, this came in 1933, with the approval of the Convention of Rights and Duties of the States. Likewise consecrated was the principle of Juridical Equality among the States, which would find its place of honor among the fundamental principles of the Right of People.

3. Fundamental Rights

The Inter-American Juridical Committee would not delay in making an important new contribution to the evolution of international law in the field of fundamental rights.

³ International Commission of American Jurists.

Once again at the request of the 1945 Conference of Problems of War and Peace, the Committee drew up a draft Declaration of the International Rights of Man, which was submitted for consideration of the IX American International Conference of Bogotá in 1947; this draft derived from the “American Declaration of the Rights and Duties of Man”, thus anteceding the “Universal Declaration of Human Rights”. It was not without a legitimate feeling of pride that the Committee deposited its text noting that approving it “would make America the first place where such an initiative took place”.

Another pioneer contribution of the Juridical Committee was the preparation in 1947, this time in collaboration with the International Workshop on Labor, of an “Inter-American Charter of Social Guarantees”. This contribution was considered to have notable influence on the subsequent evolution of the Economic, Social and Cultural Rights, a dimension inseparable from Civil and Political Rights.

Shortly afterwards, in 1949, the Inter-American Juridical Committee considered that the lack of a substantive law in respect to human rights was a great obstacle against preparing a Statute of an Inter-American Court to protect the Rights of Man that had been commissioned. And that it was recommendable to draw up previously what was to become in 1969 the American Convention on Human Rights, or the “San José Pact”.

4. Law of the Sea and the Concept of an Exclusive Economic Zone

After having prepared important draft conventions on Diplomatic Asylum and Territorial Asylum, approved in 1954, the Inter-American Juridical Committee began to prepare a new text related to the description of the submarine Platform or Areas that belong to Riverside States. This text was then incorporated by the United Nations Committee of International Law to its draft on the Continental Platform, making this later the First Conference on Sea Law held in Geneva in 1958.

In March 1971, the rapporteur of the topic of the Sea Law within the Inter-American Juridical Committee proposed the idea of a “Patrimonial Sea” as a maritime space where the riverside State has the right to explore, exploit and conserve the natural resources. And in 1973 the Juridical Committee approved a declaration on a unified American position on a new regime for the seas which indicated that the limits of this patrimonial sea would be 200 sea miles. This contribution of the Committee influenced national legislations and the discussions that would then take place in the Third Conference of the United Nations on the Sea Law with regard to the Exclusive Economic Zone.

5. The “democratic architecture” of the Inter-American System

The Inter-American Juridical Committee feels particularly proud of its contribution to what came to be known and recognized as the “democratic architecture” of the Inter-American System. Notably through its numerous studies and declarations related to promoting and defending representative democracy. For example, on showing that “... *the principle of non-intervention and the right of each State of the Inter-American System to elect its political, economic and social system without external interference (...) cannot tolerate violation of the obligation to effectively exercise representative Democracy in this system and organization*” (CJI/RES. I-3/95). In 1995 the Committee stated that: “*Any State of the Inter-American System has the obligation to effectively exercise Representative Democracy in its political system and organization*”. (CJI/RES. I-3/95). Which means that Representative Democracy in America, in its essential and untouchable aspects, left the sphere of affairs of domestic jurisdiction and moved into the scope of questions ruled by international norms.

Special mention is also due to the Inter-American Juridical Committee’s contribution to preparing and perfecting what came to be the extremely important Inter-American Democratic Charter approved in 2001.

Which brings the Inter-American Juridical Committee to consider that, given the rapid evolution in the Charter and other instruments of the OAS, in particular since the approval in 1991 of what at the time was the revolutionary “Resolution 1080” on representative

democracy [AG/RES. 1080 (XXI-O/91)], the Inter-American System has made, and continues to make, a highly significant contribution to what is now in the Americas a “right to democracy”, which constitutes a right to be universally crystallized, sooner or later to reach the very Charter of the United Nations (where, as we all know, there is no mention of the word “democracy”).

6. Various items

In order not to dwell any longer on this review of the contributions made by the Inter-American Juridical Committee across the 100 years of work, I shall just make a brief comment on a few additional spheres where notable contributions have been registered: Extradition; Maritime neutrality; Prevention and Sanction of Acts of Terrorism Configured in Crimes against Persons and Related Extortion; codification and development of Private International Law, in the Specialized Inter-American Conferences on Private International Law (CIDIP), which until the present moment have produced 26 instruments, both in the form of Conventions and model laws; Inter-American Convention against Corruption; Inter-American Convention for the Elimination of all forms of Discrimination against Handicapped Persons; Inter-American Convention against Terrorism; Declaration against the Rights of Indigenous Peoples; Competition Law in the Americas; ...

V. SOME OF THE TOPICS MOST RECENTLY ADDRESSED BY THE IAJC

I would not want to end my presentation without briefly referring to some the topics addressed by the Juridical Committee over the last year.

1. Promotion of the International Criminal Court

(Rapporteur: Dr. Mauricio Herdocia Sacasa)

During its 67th regular session (Rio de Janeiro, August 2005), the Inter-American Juridical Committee approved the inclusion of the topic “Promotion of the International Criminal Court” in its agenda. That followed a request by the OAS General Assembly [AG/RES.2072 (XXXV-O/05)] for the Committee to draw up a questionnaire to be submitted to all OAS member States, on how their laws allow for cooperation with the International Criminal Court. (It can be noted that of the 139 signatories of the Rome Statute, 25 belong to the Inter-American System, and that of those 25, 22 have ratified or adhered to the Statute).

The questionnaire discussed and approved by the Juridical Committee and sent to all member States, parties or not to the Rome Statute, covered such issues as:

- Whether their national legislation established the following crimes provided in the Statute: Genocide, War crimes, and Crimes against humanity; and if so, what were their definitions and their elements.
- Whether they had found particular obligations in the Rome Statute that are inconsistent with the provisions of their constitution, and if so, which ones and in what respect.
- Whether they do or do not have procedures applicable to all forms of cooperation provided for in the Statute on “international cooperation and legal aid” (Part IX), and on “execution of sentences” (Part X). In cases where states parties to the Statute do not have such cooperation procedures, they were asked to indicate whether they are prepared to amend their legislation so as to allow for such cooperation with the International Criminal Court.
- Those that are not parties were asked whether they had taken or intended to take internal legal steps that would allow for ratification of or adherence to the Rome Statute; and whether there were any impediment of a legal nature for them to cooperate with the International Criminal Court in the cases provided for in the Statute for a State that is not party.

By the time the Juridical Committee held its most recent session, in March of this year, the questionnaire had been answered by 17 countries, 11 of which are parties to the Rome Statute.

Some of the conclusions arrived at by the Rapporteur from his analysis of the answers received can be summarized as follows.

There is strong interest by the member States of the OAS with respect to cooperation with the International Criminal Court.

Although the result is clear that not all countries have included the crimes established in the Rome Statute in their national laws, the answers clearly reflect that a majority is working to integrate or broaden these definitions in their national legislation.

A large part of the States Parties to the Statute that answered the questionnaire said that they have regulations to implement the cooperation with the Court. Emphasis then is placed on the fact that for some States Parties to the Statute the lack of specific laws would not seem to necessarily prevent their capacity to attend the Court's requests for cooperation.

To settle the problems of a constitutional clash that the Statute causes for some States, recourse has been made by some to certain mechanisms worth considering for those States that are not yet Party to the Statute (some of which are outlined in the Report).

Finally, as suggested by the Rapporteur, the Juridical Committee adopted a resolution [CJI/RES.105(LXVIII)] which, amongst other things, (a) requested the member States that have not yet done so, to complete the questionnaire, (b) asked to those States Parties to the Statute of Rome that have undertaken law approval processes to (i) implement parts IX and X of the Statute on cooperation with the Court and/or (ii) to include, modify or add the types of crime covered by the Statute, to provide the Inter-Committee with that updated information; and finally (c) asked States Parties to the Statute to inform the Committee of any other reform that enables cooperation with the International Criminal Court.

The Juridical Committee remains seized of that agenda item, and expects an updated Report as additional information is provided by the OAS member States.

2. Legal aspects of the interdependence between democracy and economic and social development

(Rapporteur: Dr. Jean-Paul Hubert).

During its 34th regular session held in 2004, the OAS General Assembly requested the Inter-American Juridical Committee to analyze "*in the light of the provision chapter III of the Inter-American Democratic Charter, legal aspects of the interdependence between democracy and economic and social development*" [Resolution AG/RES.2042 (XXXIV-O/04)]. The General Assembly specified that the Juridical Committee was to conduct such a study within the particular context of the Committee's agenda item "Application of the Inter-American Democratic Charter". It further asked that in so doing the Committee take into account the contents of several other relevant international instruments, both universal and regional.

The Committee discussed the issue during its next four consecutive sessions, finally adopting a resolution on the matter in March of this year [CJI/RES.106 (LXVIII-O/06)], after having considered and accepted the Rapporteur's substantial study on many issues underlying the mandate (CJI/doc.190/05 rev.3).

Amongst those were: the exact legal nature and purview of the Inter-American Democratic Charter, adopted as it was as a "declaration", when looked upon within the angle of the progressive development of international law; whether or not one can speak of the existence of a "right to democracy" and/or a "right to development" in international

law generally, and in the international law of the Americas; and if so, who exactly are the beneficiaries of such rights and what obligations they create; the relationship between democracy and social and economic development on one hand, and human rights on the other; the so-called “priorization debate” between democracy and development, or whether one can be determined to be a pre-condition for the other; ...

The Juridical Committee readily accepted that, as posited by the General Assembly in the wording of its mandate, and as widely proclaimed in the OAS Charter and countless other hemispheric documents, democracy and economic and social development are indeed interdependent. But what, if any, “legal aspects” can be attached to such interdependence was not immediately discernable. The Committee also felt that the question submitted to it was not devoid of any ‘political’ considerations or overtones. But it tried to skirt the hard-to-avoid political issues and challenges that naturally underlie the putting in practice, promotion and defense of democracy, on one hand, and the attainment of higher levels of development under all of its facets, on the other hand, two central – and closely interrelated - aims of the Inter-American System.

In that respect, recognizing that the Inter-American Democratic Charter spells out specific action which member States or the OAS itself are empowered to take and implement in the promotion, defense and restoration of “democracy” in the Americas, the Committee naturally wondered if is not the lack of a more visible or readily identifiable parallel avenue for the achievement of higher levels of “social and economic development’ which had lead to the mandate it had received. Especially if and when such absence of development came to be perceived as putting democracy in danger.

When addressing that particular point in his report, the Rapporteur offered the following ‘conclusions’, amongst others, based on his review and analysis of relevant documents:

- The Inter-American Democratic Charter clearly establishes that there is such a thing as a “right to democracy”, that such a right belongs to “the peoples”, and that the governments of the Americas have an “obligation” to promote and defend that right; such a right is recognized by what can be referred to as the International Law of the Americas;
- the OAS’s ‘mission’ to defend democracy is clearly accompanied by that of preventing and anticipating the ‘causes’ that affect democracy, lack of development being widely acknowledged as one of such causes;
- while the absence or lack of development can and does imperil democracy, they cannot be a justification to suppress or diminish democracy;
- the one obligation which all OAS members undeniably do have with regard to development, is that of collaborating with one another to promote and achieve development, since, as per the OAS Charter, “*Inter-American cooperation for integral development is the common and joint responsibility of the Member States*”;
- when looked upon from the specific angle of the possible ‘legal’ aspects of the universally proclaimed interdependence between “democracy” and “economic and social development”, there would appear to be very fundamental differences, as least as pertains to the Inter-American System:
- the countries of the Hemisphere, through their *Democratic Charter* as its reflects the OAS Charter, have endorsed and imposed upon themselves individually an ‘obligation of democracy’; an obligation the breach of which carries immediate political and legal consequences; consequences for the individual country concerned, as well as consequences for the Organization of American States as such and its members collectively; quite clearly OAS member States can be sanctioned under the OAS Charter and the Inter-American Democratic Charter for not being democratic;

- but there is nowhere to be found any corresponding sanctionable or enforceable ‘obligation of development’; OAS documents only talk about an obligation to collaborate for development”. So it is indeed impossible to conclude that under those same instruments as they presently stand a state could incur sanctions for having failed to achieve development for itself, and/or failed in its obligation to cooperate with others to promote development; even under circumstances where lack of action could be determined to imperil democracy.

That led the rapporteur to ponder whether what the Committee had in fact been asked is whether there are legal answers that would correct or improve upon the above situation. He considered that Hemispheric documents as they now exist, and more specifically the OAS Charter and the Inter-American Democratic Charter, already establish in their proper and specific perspectives and legal extents the rights and obligations of its members, as well as the duties of the OAS itself and of its bodies, with regard to democracy on one hand, social and economic development on the other, and their interdependence.

Yet, should there be a political will on the part of OAS members to proceed with the negotiation and eventual approbation of a new instrument aimed at better addressing the interdependence between democracy and development, he offered that certainly such an instrument might contribute to a better understanding, interpretation, and effective application of such existing rights and obligations, including as they may have evolved.

He concluded that such an instrument would naturally need to find its foundation in the OAS Charter and take into account the Inter-American Democratic Charter. The rights and obligations it could spell out would therefore need to take into consideration the basic differences therein in the generally accepted legal parameters attached to the interrelated notions of “democracy” on one hand, and “economic and social development” on the other.

In adopting its resolution on “Legal Aspects on Interdependence Between Democracy and Economic and Social Development” on March 29, 2006 [CJI/RES.106 (LXVIII-O/06)], the Inter-American Juridical Committee saw fit to refer to some of its earlier considerations, including its resolutions of 1995 (CJI/RES.I-3/95) and of 2000 [CJI/RES.17 (LVII-O/00)] on *Democracy in the Inter-American System*. In relation to democracy, it restated that pursuant to OAS documents “the peoples of America have a right to democracy and their governments have an obligation to promote and defend it” and that “observation of the attributes inherent to democracy supported on the rule of law is indissolubly linked to the enforcement of representative democracy”. With regard to economic and social development, the Committee recalled that while “the primary responsibility to achieve development corresponds to each of the member States”, those have “the duty to cooperate with each other in accordance with the regulation on common and shared responsibility of the member States”.

Its main conclusions can be summed up as follows:

1. “International legal regulations with regard to the effective exercise of representative democracy in the States of the Inter-American System form a specific and special order, and, therefore, albeit complementary, different from others with another purpose, (...)” (CJI/RES.5/LII/98 dated March 19, 1998).
2. Although economic and social development consolidates and strengthens democracy, the absence of adequate levels of development cannot be a call to affect democracy; without detriment to the former, eradication of abject poverty is an essential part of promoting and consolidating representative democracy.
3. On analyzing the possible legal aspects of interdependence between democracy and economic and social development, there are differences in focus, to the extent that:

- i. the countries in the hemisphere, in accordance with the inter-American legal system, assumed that democracy is an obligation whose violation gives rise to legal actions by the Organization, while
 - ii. with regard to economic and social development, the current inter-American does not provide sanctions or legal consequences referring to failure to comply with obligations to cooperate to cooperation agreements for development.
4. Development has a component of economic, social and cultural rights provided in international and inter-American declarations and legal instruments in the sphere of human rights which are an essential part of democracy; increasing achieving development strengthens the legal tie and interdependence between democracy, integral development and combatting poverty.
 3. Consideration on the codification and standardization of international law in the Americas

(Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra, João Grandino Rodas and Antonio Fidel Pérez)

Contributing to preparations for the Inter-American Specialized Conference on Private International Law, better known as CIDIP under its Spanish acronym, and of which six have been held since 1975, has long become a permanent item on the IJC's agenda. In fact, as early as 1951, the Inter-American Juridical Committee began preparing several reports about the method that could best be used to carry out codification that would promote standardization of the rules of private international law of the different countries of the Americas.

In 2004, the Juridical Committee saw fit to add to the CIDIP item on its agenda the particular topic of "Re-examining the inter-American conventions on private international law", either anterior to or resulting from the CIDIP process. With the double objective of examining the reasons why the States have not yet ratified most of the legal instruments related to private international law, as well as of assessing the viability of model laws as an alternative to conventions.

In the course of examining reports prepared by Dr. Villalta at its last three sessions (CJI/doc.178/05 corr. 1; CJI/doc. 193/05 and CJI/doc. 208/06), the Committee discussed several issues. Such as the decrease in the number of ratifications of P.I.L. by OAS member States since the early '90s, and the reduction in the number of states taking part in CIDIPs; the need to look at more modern approaches than traditional conventions, such as model laws, to arrive at a greater harmonization of substantive laws; the fact that some of these conventions largely coincide in substance with universal conventions, which raises a question about a possible duplication of effort, and the advisability of analyzing the degree to which the said inter-American conventions replicate the universal ones; the need to evaluate the actual benefits to date of model laws and to determine the kind of model laws that would be particularly needed in the community of States of the hemisphere; the reasons why the Caribbean has stood apart from this process.

Amongst the many suggestions made by Committee members, one can mention: the importance of the need of regional norms on private international law, without diminishing world norms, since with regional norms the peculiarities of the countries of the continent can be preserved; the need to assess the framework of the processes of harmonization or standardization, given the reality that it has become more and more difficult to codify, and even more difficult to ratify the conventions, and that many of the Inter-American treaties have actually fallen into disuse; the need for a future final report on the subject to include an update of the norms established a long time ago (such as codes and conventions), taking into account that these arose in another reality, and did not have the contribution of countries like Canada, the United States and the countries of the Caribbean; the need for the Committee to concentrate on the analysis of the

institutional processes of drawing up norms of international private law, and to develop criteria on the circumstances in which model laws could be more or less useful than treaties.

That led to a decision by the Juridical Committee to modify its agenda item from “Re-examining the inter-American conventions on private international law”, to “Process of reflection on the Inter-American conventions on international private law”. The latest OAS General Assembly in June of this year has requested that the Committee continue to consider the subject (AG/RES. 2218 (XXXVI-O/06)).

4. Seventh Inter-American Specialized Conference on Private International Law - CIDIP-VII

(Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra, João Grandino Rodas and Antonio Fidel Pérez)

At its 35th regular session (June 2005), the OAS General Assembly adopted resolution AG/RES.2065 (XXXV-O/05), with the following agenda for CIDIP-VII:

- a. Consumer protection: applicable law, jurisdiction and monetary restitution (conventions and model laws);
- b. Secured transactions: electronic registries for the implementation of the Model Inter-American Law on Secured Transactions.

And as is customary it requested the Inter-American Juridical Committee to collaborate in preparations for CIDIP-VII.

Following subsequent discussions, notably of a report jointly presented by the three co-Rapporteurs (CJI/doc.196/05 rev. 1) and a “Note for the IAJC on CIDIP-VII” prepared by co-Rapporteur Dr. Antonio Fidel Pérez (CJI/doc.192.05), the Juridical Committee adopted a resolution (CJI/RES.104 (LXVIII-O/06)) during its March session of this year requesting the Rapporteurs to participate on a coordinated basis and as representatives of the Inter-American Juridical Committee in the consulting mechanisms established in order to develop the topics proposed for CIDIP-VII; to keep the Committee informed about the progress in the discussion of those topics, and to submit a further report to at its next regular session with comments and observations on the CIDIP-VII agenda.

5. Preparation of a draft Inter-American convention against racism and any kind of discrimination and intolerance

(Rapporteur: Dr. Jaime Aparicio)

At its 2001 session the OAS General Assembly had asked the Inter-American Juridical Committee to prepare an analytical document for the purpose of contributing to, and furthering, the work of the OAS Permanent Council in assessing the need to draw up an inter-American convention to prevent racism and all forms of discrimination and intolerance [AG/RES.1774 (XXXI-O/01)]. In so doing, the General Assembly had asked that account be taken of the provisions set forth in the international juridical instruments on the matter.

The Juridical Committee studied and discussed a report on the elaboration of such a draft during its 60th session of March 2002, submitted by then Rapporteur Dr. Felipe H. Paolillo (CJI/doc.80/02 rev .3 corr. 1), and conveyed it to the Permanent Council, together with a resolution in which it confirmed “*the need to make a common cause in opposition to such manifestations by intensifying cooperation among States in order to eradicate these practices*”. [CJI/RES.39 (LX-O/02)]

At its 35th regular session (June 2005), the OAS General Assembly instructed the Permanent Council to establish a working group in charge of receiving inputs from, *inter alia*, the Inter-American Juridical Committee, with a view to the Working Group’s preparation of a draft Convention in this subject [AG/RES.2126 (XXXV-O/05)], thereby

evidencing a political will within the Organization to eventually consider and adopt a convention.

That led the Inter-American Juridical Committee to place the item "Preparation of a draft Inter-American convention against racism and any kind of discrimination and intolerance" back on its active list. It appointed a new rapporteur, with a mandate to collect new criteria and information on the topic with a view of enabling the Committee to provide the OAS political bodies with legal support in the preparation and adoption of a convention on racism. Dr. Aparicio is to offer his collaboration and that of the Committee to the Working Group created by the Committee of Political and Legal Affairs of the OAS Permanent Council.

6. Others

Finally, let me mention, without elaborating further this time around, that the topics "Right to information: access to and protection of information and personal data" (Rapporteurs Drs. Alonso Gómez Robledo, Antonio Fidel Pérez y Jaime Aparicio) and "Principles of Judicial Ethics" (Rapporteur: Dr. José Manuel Delgado Ocando) are also under active consideration by the Committee.

V. ACTIVITIES OF INTEREST HELD BY THE INTER-AMERICAN JURIDICAL COMMITTEE

No report on the Inter-American Juridical Committee would be complete without a mention of the Course on International Law it organizes every year in Rio de Janeiro, together with the OAS Office of Inter-American Law and Programs. Its central topic in 2005 was "The Contribution of International Organizations to Current International Law." It was attended by 42 scholars and students and 28 teachers from different countries in America and Europe.

Worthy of particular mention this year are two colloquia the Committee held together with the American Society of International Law on the margins of its March 2006 session in Washington, one on "Democracy and Social and Economic Development in the Americas" and one on "The International Criminal Court"

Monsieur le président, distingués membres of la Commission, je vous remercie of votre attention.

Annex

The Inter-American Juridical Committee Annual Report

The Inter-American Juridical Committee Annual Reports are available on internet, on the Organization of American States site (www.oas.org/documents/eng/structure). To read the reports, access the "Department of Legal Affairs and Services", option "Inter-American Juridical Committee" and "Reports".

Current members of the Inter-American Juridical Committee

- Dr. Mauricio Herdocia Sacasa – Chairman (Nicaragua)
- Dr. Jean-Paul Hubert – Vice-Chairman (Canada)
- Dr. Eduardo Vio Grossi (Chile)
- Dr. João Grandino Rodas (Brazil)
- Dr. Ana Elizabeth Villalta Vizcarra (El Salvador)
- Dr. Luis Marchand Stens (Peru)
- Dr. Alonso Gómez-Robledo Verduzco (Mexico)
- Dr. Antonio Fidel Pérez (United States of America)
- Dr. Galo Leoro Franco (Ecuador)
- Dr. José Manuel Delgado Ocando (Venezuela)
- Dr. Jaime Aparicio Otero (Bolivia)

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Meetings organized by the Inter-American Juridical Committee

The Inter-American Juridical Committee invited the following people to take part in its meetings in 2006:

- Eduardo Cáliz, Vice Minister of Foreign Affairs of El Salvador.
- Francisco Villagrán de León, Permanent Representative of Guatemala to the OAS and Chair of the Committee on Juridical and Political Affairs of the OAS Permanent Council.
- Antônio Augusto Cançado Trindade, Judge of the Inter-American Court of Human Rights.
- Daniel Vignes, former Legal Adviser, Council of Ministers of the European Union.
- Juan Carlos Murillo, Regional Legal Adviser, UNHCR.
- Claude Emanuelli, Professor, Faculty of Law, Civil Law Section, University of Ottawa.
- Elvira Méndez, Chief, Academic Department of Law, Pontifical Catholic University, Peru.
- Diego Fernández-Arroyo, Professor of law, *Universidad Complutense*, Madrid.
- Ronald Herbert, Professor of Private International Law, University of the Republic, Montevideo.
- Caroline Kleiner, Assistant Professor, University of Geneva, Switzerland.

ANNEXES

CJI/doc.190/05 rev.3

**LEGAL ASPECTS OF THE INTERDEPENDENCE BETWEEN DEMOCRACY
AND ECONOMIC AND SOCIAL DEVELOPMENT:**

(presented by Dr. Jean-Paul Hubert)

Summary

Part I. 1. The mandate. 2. Interpretation of the mandate. 3. Methodology

Part II: The Inter-American Democratic Charter. 1. The Inter-American Democratic Charter seen as part of the 'Democratic Architecture' of the OAS. 2. The Inter-American Democratic Charter and the "progressive development of international law"; the Charter as a "resolution"

Part III: Some General Considerations and Reflections. 1. The interrelationship between democracy and economic and social development. 2. 'Democracy first' *versus* 'development first'. 3. The "right to democracy". 4. Democracy as a "human right". 5. "Development as a right" and as a "human right". 6. The notion of "Integral Development". 7. Remedies to lack of economic and social development as a threat to democracy. 8. The IAJC and "Democracy in the Inter-American System": previous considerations

Part IV: General Conclusions

Annexes: 1. United Nations Charter. 2. Charter of the Organization of American States. 3. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (November, 1988) 4. The Santiago Commitment to Democracy and the Renewal of the Inter-American System, & Resolution 1080 on Representative Democracy (June, 1991). 5. First Summit of the Americas, "Declaration of Principles" (Miami, December 1994). 6. First Summit of the Americas, "Plan of Action" (Miami, December 1994). 7. Second Summit of the Americas, "Declaration of Principles" (Santiago, April 1998). 8. Second Summit of the Americas, "Plan of Action" (Santiago, April 1998). 9. United Nations Millennium Declaration (New York, September 2000). 10. Third Summit of the Americas, "Declaration of Principles" (Quebec City, April 2001). 11. Third Summit of the Americas, "Plan of Action" (Quebec City, April 2001). 12. Inter-American Democratic Charter (Lima, September 2001). 13. Monterrey Consensus (March 2002). 14. Declaration of Margarita (Venezuela, October 2003). 15. Declaration on Security in the Americas (Mexico City, October 2003). 16. Declaration of Nuevo León (Monterrey, January 2004). 17. Declaration of Florida "Delivering the Benefits of Democracy" (Miami, June 2005). 18. Some relevant opinions on the Inter-American Democratic Charter in relation to democracy and economic and social development.

* * *

PART I

1. The mandate

On June 8, 2004, the 34th General Assembly of the Organization of American States held in Quito, Ecuador, adopted AG/RES. 2042 (XXXIV-O/04) "Observations and Recommendations on the Annual Report of the Inter-American Juridical Committee". That Resolution contains several specific mandates addressed to the Juridical Committee, among which the following:

7. To request the Inter-American Juridical Committee, in the context of its agenda item "Application of the *Inter-American Democratic Charter*," to analyze legal aspects of the interdependence between democracy and economic and social development, taking account, *inter alia*, of the recommendations of the High-Level Meeting on Poverty, Equity, and Social Inclusion contained in the Declaration of Margarita, the Monterrey Consensus, the Declarations and Plans of Action issued at the Summits of the Americas, and the objectives of the United Nations Millennium Declaration.

2. Interpretation of the mandate

Focus on the Inter-American Democratic Charter and its application. Upon its initial considerations of the language of the above mandate, the IAJC unanimously agreed that it was important to note that the analysis entrusted to it is to be carried within the precise context of its agenda item relating to the application of the Inter-American Democratic Charter, adopted on September 11, 2001 at a special session of the OAS General Assembly held in Lima, Peru.

Thus, the Inter-American Democratic Charter within the context of its application must therefore be a central focus of this study.

The OAS Charter as overall backdrop. That in turn necessarily entails that the OAS Charter itself, though not expressly mentioned in the mandate, must serve as the overall backdrop, so to speak, of our entire considerations. This is expressly recognized by the Inter-American Democratic Charter itself when it sees fit to recall in its very first preamble "... *that the Charter of the Organization of American States recognizes that representative democracy is indispensable for the stability, peace, and development of the region, and that one of the purposes of the OAS is to promote and consolidate representative democracy, with due respect for the principle of nonintervention; ...*"; thus simply repeating language found in Art. 2 (b) of the OAS Charter itself.

As we shall see further down¹, Amb. Humberto De la Calle, the coordinating editor of *Carta Democrática Interamericana: documentos e interpretaciones*,² recalls that the *Inter-American Democratic Charter* "(...) was conceived as a tool to actualize and interpret the fundamental Charter of the OAS, (...)"³. Dr. Mauricio Herdocia Sacasa, in his recent book *Soberanía clásica, un principio desafiado: ¿hasta donde?*⁴, writes that:

*"The Inter-American Democratic Charter constitutes, without any possible doubt, the reaffirmation and interpretation, on one hand, and the normative development, on the other, of principles already included in an anterior treaty such as the OAS Charter, which, from its beginnings in 1948, consecrates the effective exercise of representative democracy amongst its principles."*⁵

The legal aspects of the interdependence between democracy and economic and social development. Then, we are asked to concentrate in our analysis, on what are referred to as "*the legal aspects of the interdependence between democracy and economic and social development*". The General Assembly, in adopting that precise wording, therefore posited that such interdependence between democracy and economic and social development is an established fact. That such interdependence exists was, and is, thus clearly taken for granted. As we shall see, indeed the linkage between democracy on one hand, and economic and social development on the other hand, is very widely and repeatedly proclaimed in a large number of Hemispheric documents of various natures. Yet, given what at first glance may appear as the novelty of having to look for and analyze the 'legal' aspect of the interdependence between the two, something which is not self-evident⁶, that should prompt us to survey, at least in part, the various –and at times quite different– ways in which such linkage is expressed in those diverse documents. The Juridical Committee agreed that looking at how

¹ In Part III of this Report, when the Inter-American Democratic Charter is discussed in relation to the progressive development of international law.

² See De la Calle, Humberto. *Carta Democrática Interamericana: documentos e interpretaciones*. Consejo Permanente, Organización de los Estados Americanos. Columbus Memorial Library: Washington; 2003; p. 347. The full text of that key document can be found to be found on-line at http://www.oas.org/OASpage/esp/Publicaciones/CartaDemocratica_spa.pdf

³ Idem. Introduction, p. viii. A conclusion fully shared by many other analysts.

⁴ HERDOCIA SACASA, Mauricio. 1^a ed., Managua: 2005, XII, p. 206. Dr Sacasa. is currently the Chairman of the IAJC.

⁵ Idem, at p. 141.

⁶ Indeed, during the discussions held within the IAJC in relation to our mandate, several members expressed some doubts that such undeniable interdependence could carry, or be assigned, consequences of a "legal" nature.

and in what fashion such interrelationship arises in various Hemispheric and other international documents, could indeed be relevant.⁷

Definitions. The above also raises the complex issue of “definitions”. We had to ask ourselves whether an analysis of the “legal interdependence” between those concepts requires a prior attempt at defining them in any ‘abstract’ way, separately and individually.

Defining democracy. The Juridical Committee agreed that “democracy” taken in the abstract can hardly be defined in any precise ‘authoritative’ manner. True, what democracy entails in a general fashion can be, and has often been, described, notably by simply using some of its constitutive elements. Thus it is, for example, that Article 3 of the Inter-American Democratic Charter⁸ reads:

*“Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government”.*⁹

Interestingly enough, the Inter-American Democratic Charter, when it lists the “essential elements” of democracy¹⁰, or of the exercise of democracy¹¹, does not include development as such. While it emphatically declares in its Article 1 that “*Democracy is essential for the social, political, and economic development of the peoples of the Americas*”, nowhere does it state the reverse proposition that would have development declared “*essential for democracy*”. The two are declared “*interdependent and (...) mutually reinforcing*”¹², but only one, i.e. democracy, is essential to the other, i.e. development. And not *vice versa*.

Coming back to definitions of the constitutive elements of democracy, one can compare the language quoted above from the Democratic Charter to – and this is but one of an extremely large number of ‘definitions’ which can be found in political science literature – what one analyst terms the ‘five priorities’ amongst ‘the elements of democratic good governance’: “*1) free and fair elections; 2) democratic political parties; 3) independent and effective judicial systems; 4) comprehensive systems of horizontal accountability; and 5) pluralistic, open, and resourceful civil societies*”.¹³ Note, again, the absence of any reference to development.

⁷ Quite obviously, looking at the interdependence between democracy and economic and social development is one thing; looking at any possible legal aspects deriving from such interdependence is another thing ...

⁸ Full text at:

http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/OASpage/eng/Documents/Democratic_Charter.htm

⁹ Note the “*inter alia*”, which was added during the very last stages of the drafting of the Charter at the special session of the OAS General Assembly in Lima (Sept. 11, 2001), precisely to signify that the list of “essential elements” therein was not meant to be exhaustive.

¹⁰ Inter-American Democratic Charter. Art. 3 and part of Art. 4.

¹¹ Idem. Part of Art. 4.

¹² Idem. Art. 11, Inter-American Democratic Charter.

¹³ DIAMOND, Larry, “Moving Up Out of Poverty: What Does Democracy Have to Do With It?”; Working Paper published by the Center on Democracy, Development and the Rule of Law, Stanford Institute for International Studies, at p. 12; the full text of this paper is available at http://iis-db.stanford.edu/pubs/20669/Moving_Up_Out_of_Proverty.pdf.

Still on what democracy is and what its essential elements may be considered to be, the following extract from “The Interaction Between Democracy and Development, Executive Summary” (UNESCO, Paris, 2003; 47 pages; full text at <http://unesdoc.unesco.org/images/0013/001323/132343e.pdf>): “*Democracy is a system whereby the whole of society can participate, at every level, in the decision-making process and keep control of it. Its foundation is the full observance of human rights, (...). There can be no democracy without an independent judicial system and without institutions that guarantee freedom of expression and the existence of free media. The power to legislate must be exercised by representatives of the people who have been elected by the people. Laws must be implemented by legally responsible individuals, and the administrative apparatus must be accountable to the elected representatives. That is why a parliament that is truly representative of the people in all its diversity is indispensable for the democratic process. In this respect, the holding of free and fair elections by universal suffrage is a necessary, though not in itself sufficient,*

It is also well agreed that democracy is not a 'fixed' concept; especially and above all when looked upon through the modalities of its practical application in individual countries¹⁴. Thus, the then UN Secretary General Boutros Boutros-Ghali wrote "*there is no one model of democratization or democracy suitable to all societies*"¹⁵. In the same vein, the UN Commission on Human Rights has recognized the "*rich and diverse nature of the community of the world's democracies*"¹⁶.

In light of the above, we have seen no need to attempt any general, abstract definition of democracy, and have opted to limit our consideration of what "democracy" is or means to how it is actually 'defined' or presented as *per* the language actually found in the various documents under study.

Defining economic and social developments. The same reasoning is applied, for the same reasons, to attempts at defining with any precisions the notions of "economic" and "social" developments.¹⁷ An International Panel on Democracy and Development (IPDD) established by UNESCO in 1998¹⁸ arrived at a broad consensus to the effect that

*"(...) development should be understood to mean the whole range of economic, social and cultural progress to which peoples aspire. That is the meaning of 'sustainable human development' in the sense that the United Nations has given it. Sustainable development is, then, multidimensional. It is no longer restrictively understood to be narrowly economic or financial. In order to be complete, it also needs to be cultural and social, and more broadly to take into account all the factors that help individuals to fulfill themselves. The environment, social justice, democracy, education and the sharing of knowledge are closely connected with development. That is why the right to development has a natural place among human rights".*¹⁹ (More below).

The "Progressive Development of International Law"

In line with its mandate as it is described in the OAS Charter, the Juridical Committee considered it would be important to keep in mind the notion of the 'progressive development of international law' in the course of the present analysis and in the drawing of its final conclusions and recommendations²⁰.

All the more so that the drafters of the Inter-American Democratic Charter, one of the main frames of reference for the present analysis and its central departure point (since, again, it is within the express context of the application of the Democratic Charter that our mandate states that we are to consider 'the legal aspects of the interdependence between democracy and economic and social development'), saw fit to include the following important language in the last paragraph of its preamble: "*BEARING IN MIND the progressive development of international law and the advisability of clarifying*

precondition for the existence of a democratic regime. In short, democracy can be defined as a political system that is capable of correcting its own dysfunctions" (at p. 7-8). The above-quoted summary reflects the work of an International Panel on Democracy and Development (IPDD) established by UNESCO in 1998, chaired by Mr. Boutros Boutros-Ghali and made up of leading international figures. The entire 394-page Report of the IPDD can be found on-line at <http://unesdoc.unesco.org/images/0012/001282/128283e.pdf>

¹⁴ For example, Article 3, 3) of the OAS Charter states: "*Every State has the right to choose, without external interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State. Subject to the foregoing, the American States shall cooperate fully among themselves, independently of the nature of their political, economic, and social systems*".

¹⁵ "Agenda for Democratization; Supplement to Reports A/50/332 AND A/51/512 on Democratization, 17 Dec 1996, New York: United Nations, Dept. of Public Information, 1996; para. 4.

¹⁶ "Promotion of the right to democracy", UNCHR, E/CN 4/RES/1999/57, 28 Apr 1999.

¹⁷ In the course of IAJC's general discussions some members noted that "economic development" was a clearer concept than that of "social development". But as will be noted further down, the 'newer' concept of "integral development", now used in the OAS Charter, could be considered all "all encompassing".

¹⁸ See earlier footnote.

¹⁹ Executive Summary quoted above, at p. 10-11.

²⁰ Indeed, Art. 99 of the OAS Charter states in part: "*The purpose of the Inter-American Juridical Committee is (...) to promote the progressive development and the codification of international law*".

the provisions set forth in the ... OAS Charter and related basic instruments on the preservation and defense of democratic institutions, according to established practice, (...)".

Furthermore, the Declaration of Nuevo León adopted at a Special Summit of the Americas held in January 2004, did not hesitate to state that the Inter-American Democratic Charter constitutes "*an element of regional identity, and, projected internationally, is a hemispheric contribution to the community of nations*".²¹ Such a statement surely must be seen as an important factor in the most interesting debate as to whether, or to what extent, evolving international law may already harbor an "obligation to democracy".

Why the mandate? Chapter IV (Arts. 17-22) of the Inter-American Democratic Charter is of course one of its key parts. Some would say it represents the "teeth" of that Charter, in that it enunciates specific action which member States or the OAS itself are empowered to take and implement in the promotion, defense and restoration of democracy in the Americas. The IAJC wondered if one might not argue that it is the lack of a more visible or readily identifiable parallel avenue - or avenues - for the achievement of higher levels of "social and economic development", especially if such absence of development came to be perceived as putting democracy in danger, that has led to the request for the present report to be undertaken.

Political considerations. Looking at the overall language of the mandate, and keeping in mind the discussions that led to its drafting and, later, its adoption, the Juridical Committee was quick to recognize that the question submitted to it was not, far from it, devoid of any 'political' considerations or overtones. That should not be surprising if one remembers that, as we shall see later, the adoption of the Inter-American Democratic Charter was the direct and immediate result of, and in total keeping with, express instructions issued by the Heads of State and Government of the Americas, gathered at the Third Summit of the Americas, held from April 20 to 22, 2001 in Quebec City, Canada. And there can hardly be any higher and more authoritative expression of political will than that emanating from such summits. Ours is not of course, by its very nature, expected to be a 'political' study. It tries to skirt the hard-to-avoid political issues and challenges that naturally underlie the putting in practice, promotion and defense of democracy and the attainment of higher levels of development under all of its facets (*i.e.* economic, social, and many others) in our Hemisphere, two central – and so closely interrelated - aims of the Inter-American System.

Other documents. Our analysis is also expected to be carried out in light of the contents of various documents listed non-exhaustively in the mandate, some adopted within an inter-American hemispheric context, others of a more global nature. It has been found advisable to add, besides the UN and (for the specific reasons evoked above) OAS Charters, the Santiago Commitment to Democracy and the Renewal of the Inter-American System, as well as Resolution 1080 on Representative Democracy, given their specific and immediately related contents. We have also reviewed four additional documents, three of them fairly recent, namely the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (November, 1988), the Declaration on Security in the Americas (Mexico City, October 2003), the Declaration of Nuevo León issued at the Special Summit of the Americas (Monterrey, January 2004), and the Declaration of Florida "Delivering the Benefits of Democracy" (Miami, June 2005).

3. Methodology

A word about the way chosen for the general approach to the task entrusted to the Juridical Committee. As indicated above, we focused principally on an actual in depth review of the instruments identified in our Mandate, plus, as indicated above, a few more that seemed particularly relevant. Again, and for ease of reference those were:

1. United Nation Charter
2. Charter of the Organization of American States
3. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (November, 1988)

²¹ 2nd para. of 3rd Ch. of the *Declaration of Nuevo León*.

4. The Santiago Commitment to Democracy and the Renewal of the Inter-American System, and Resolution 1080 on Representative Democracy (June, 1991)
5. First Summit of the Americas, *Declaration of Principles* (Miami, December 1994)
6. First Summit of the Americas, Plan of Action (Miami, December 1994)
7. Second Summit of the Americas, Declaration of Principles (Santiago, April 1998)
8. Second Summit of the Americas, Plan of Action (Santiago, April 1998)
9. United Nations Millennium Declaration (New York, September 2000)
10. Third Summit of the Americas, Declaration of Principles (Quebec City, April 2001)
11. Third Summit of the Americas, Plan of Action (Quebec City, April 2001)
12. Inter-American Democratic Charter (Lima, September 2001)
13. Monterrey Consensus (March 2002)
14. Declaration of Margarita (Venezuela, October 2003)
15. Declaration on Security in the Americas (Mexico City, October 2003)
16. Declaration of Nuevo León (Monterrey, January 2004)
17. Declaration of Florida “Delivering the Benefits of Democracy” (Miami, June 2005)

As can be expected, we limited our review of the actual provisions of those documents to the immediate and specific purview of our mandate, *i.e.* we looked at them from the particular angle of the relationship posited between democracy on one hand, and economic and social development on the other hand. To better accomplish our purpose, we devised a ‘template’ to be similarly applied to each of the above documents. That template was divided into three parts or headings, corresponding respectively to the treatment given by each document to the concepts of “Democracy”, “Social and Economic Development” taken together, and “Democracy & Social and Democratic Development Interrelated”. For each of the above-identified documents we then proceeded to ‘fill in’ each of those headings with various extracts corresponding to those concepts²². Immediately following some of those extracts, brief comments are offered, some of which would later find their way, in whole or in part, in the body of the present report.

Though those templates, complete with texts and comments, are appended at the end of the present report, as annexes (numbered as *per* above), to a large extent they provide the basis for some of our conclusions and should very much be considered as integral parts of this report.

Given the place it came to occupy in the constant evolution of the Inter-American System, the Inter-American Democratic Charter has naturally been, and still is, the object of countless declarations on the part of political figures and state officials, as well as of a large number of scholarly studies and analysis. We have therefore found it potentially helpful to reproduce a limited -but hopefully representative- sample of reactions and opinions emanating from those involved in a proximate fashion in diverse stages of its preparation, adoption and application. Some useful guidance can follow there from. Those have been regrouped under Annex 18, under the heading “Some relevant opinions on the Inter-American Democratic Charter in relation to democracy and economic and social development”.

²² Admittedly, it proved impossible to avoid some arbitrariness in the choice of those extracts and the decision as to where exactly to locate them within each template.

PART II

The Inter-American Democratic Charter

The Inter-American Democratic Charter is of course the main focal point of the present analysis. Its adoption by the OAS General Assembly at a special session held in Lima, Peru, on September 11, 2001 was, as stated before, the direct result of express instructions issued at the highest political level, namely by the Heads of State and Government of the Americas gathered at their Third Summit in Quebec City in April of the same year. Hence its being often referred to as being first and foremost a “political” document. For example, Uruguay’s former Minister of Foreign Affairs, Didier Operti, described it as “a *political Charter*”, at the Protocolar Session of the Permanent Council held on 16 September 2002, to commemorate the 1st anniversary of the Inter-American Democratic Charter. Similarly, it was labelled “*the Hemispheric instrument with the most transcendental political character since the advent of the OAS Charter*” at the “Informal Dialogue” of the 2002 Bridgetown General Assembly²³.

The Inter-American Democratic Charter, which finds its origins in the OAS Charter itself and its later amendments, the Santiago Commitment to Democracy and the Renewal of the Inter-American System²⁴ and Resolution 1080 on Representative Democracy²⁵ (both adopted at the OAS 21st regular session of the OAS General Assembly), and in the above-mentioned Third Summit, is often recognized as the centerpiece of what is now commonly referred to as the “inter-American democracy architecture”.

Hence the need and utility, in dealing with the application of the Inter-American Democratic Charter, to look at the various aspects dealt with in the present chapter.

1. The Inter-American Democratic Charter seen as part of the ‘Democratic Architecture’ of the OAS

As Uruguay’s then Foreign Minister Didier Operti would rightly recall during the Protocolar Session of the Permanent Council of 16 September 2002 to commemorate the first anniversary of the adoption of the Inter-American Democratic Charter, that Charter was not a magic and instantaneous phenomenon that suddenly just happened, in some unusual fashion. No less rightly, he pointed out that its coming into being had to be seen not only as inscribed within the context of the evolution of the OAS, but also as part of a process which is all at once political, normative and historical.²⁶

And speaking of “historical” process, we all know that if the Inter-American Democratic Charter of 2001 takes its natural roots within the original OAS Charter, more immediately it comes at the –no doubt provisional– end of an evolutionary road that later went from the 1991 Santiago Commitment to Democracy and the Renewal of the Inter-American System and Resolution 1080 on Representative Democracy, to the 1992 Protocol of Washington²⁷, to the political mandate issued at the 2001 Quebec Summit of the America.

From the legal angle of (a) the application of an Inter-American Democratic Charter which was adopted as a “mere” resolution of an OAS General Assembly, and, (b) within the ambit of such application, of an analysis of the legal aspects of the interdependence found therein between democracy and economic and social development as called for by the mandate given to the Inter-American Juridical Committee, a look at the varying juridical nature of some of those hemispheric documents (Charters, resolutions, declarations,) would seem to be warranted. And there of course exist many diverse opinions of that subject, as exemplified –and in part only– in a study conducted by the Director of the Office of Inter-American Law and Programs in the OAS Department of Legal Affairs and Services, Jean-Michel Arrighi²⁸.

²³ By the representative of Peru, Amb. Eduardo Ferrero Costa; the theme of that “Informal Dialogue” was: “*Follow-up and Development of the Inter-American Democratic Charter*”.

²⁴ AG/RES. (XXX-O/91), June 4, 1991.

²⁵ AG/RES. 1080 (XXI-O/91), June 5, 1991.

²⁶ See De la Calle, Humberto, *op. cit.*, at p. 231.

²⁷ Which amended the OAS Charter as a result of the above-referenced documents adopted in Santiago the year before.

²⁸ In a book entitled *OEA*. ARRIGHI, Jean Michel. *OEA*. São Paulo: Manole, 2004.

Though Chapter 6 in Arrighi's book deals specifically with "The defense of the democratic system", some of the points he makes therein in relation to the immediate subject of his study no doubt would be, and can be, considered as relevant to the treatment given in hemispheric and other documents to, besides the promotion and defense of democracy, what could be justifiably called if not the 'parallel' at least the inescapably related promotion of social and economic development.

Looking at the OAS Charter, the Santiago Commitment to Democracy and the Renewal of the Inter-American System, Resolution 1080 on Representative Democracy, and the Inter-American Democratic Charter, Arrighi underlines the following considerations that he acknowledges can sometimes be open to some differences of opinion:

(A) First, Resolution 1080:

- being only a resolution of the OAS General Assembly, the extent, if any, of its binding character for individual member States, is debatable²⁹;
- the initiative to set in motions the mechanisms foreseen therein belongs to the Secretary General;
- it takes an actual "*sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization's member states*" for action by the Secretary General to be triggered;
- no specific measures or sanctions are foreseen, but "*any decisions deemed appropriate*" must be "*in accordance with the Charter and international law*".

(B) Then, Article 9 of the OAS Charter, following the entry into force of the Protocol of Washington in 1997:

- the Charter being a treaty, it has of course binding force, unlike, many would argue, General Assembly resolutions; but only for those members of the OAS that have ratified it;
- for Article 9 to be triggered, there has to have occurred the overthrow "*by force*" of the "*democratically constituted government*" of a member State;³⁰
- in Article 9, a precise sanction is spelled out, *i.e.* suspension "*from the exercise of the right to participate in the sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization and the Specialized Conferences as well as in the commissions, working groups and any other bodies (...)*", a 'limitation' one does not find in Resolution 1080.

As a result of those important differences, Arrighi pointedly raises the question as to whether it is possible, in a given situation that would qualify under both, to invoke and apply (i) Resolution 1080, with its opening on a wider but unspecified array of 'sanctions' but is not legally binding on members, and (ii) Article 9 of the OAS Charter, more limited 'sanction'-wise but with a superior legal status.³¹

But as would be seen in later developments, the OAS and its members, in a large part under the political impetus of various Hemispheric Summits, would come to develop further its approach to the defense and promotion of democracy, as other forms of breach or interruption of the legal democratic

²⁹ More on this later.

³⁰ Which is generally considered to mean a *coup d'état*, a question remains as to whether this, *i.e.* a *coup d'état*, is also what had been meant by the expression "*sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government*" in Resolution 1080.

³¹ Arrighi answers his own question by writing: "(...) Yes, both can be invoked, for various reasons: the Protocol of Washington has obligatory force only on the States Parties thereto, which has its limitations and a source of possible discrepancies, besides it only allows for suspension from the Organization; Resolution 1080 implicates all the member States (...) And allows for a greater margin in relation to the possible measures to be agreed upon. Hence I believe that those, however distinct in their juridical nature and hierarchy, are perfectly compatible and complementary".

order materialized. Sometimes even in the hands of previously democratically elected governments³². Furthermore, existing texts, such as those in Resolution 1080 and Article 9 of the OAS Charter, only dealt with situations former *post facto*, and then only to consider possible sanctions³³.

An important step was taken at the Third Summit of the Americas in Quebec City, Canada in 2001, when Hemispheric leaders instructed their Foreign Ministers “*to prepare, in the framework of the next General Assembly of the OAS, an Inter-American Democratic Charter to reinforce OAS instruments for the active defense of representative democracy*”, given that “*any unconstitutional alteration or interruption of the democratic order in a state of the Hemisphere constitutes an insurmountable obstacle to the participation of that state's government in the Summit of the Americas process*”. That directly lead to what would become the Inter-American Democratic Charter adopted by the General Assembly later that same year at a special session held in Lima, Peru.

(C) Then came the Inter-American Democratic Charter:

- like Resolution 1080, this *Charter* took the form ‘only’ of a General Assembly resolution; it therefore lacks, under traditional concepts of international law as accepted by most, the juridical hierarchy of a full treaty;
- it goes beyond both Resolution 1080 and Article 9 of the OAS Charter in that it extends the type of situations when the OAS can consider or take action; for example, and quite clearly, it goes from the realm of the restoration of democracy to that of its preservation³⁴;
- thus, it allows for a member State which “*considers that its democratic political institutional process or its legitimate exercise of power is at risk*” (Art. 17) to seek assistance from the Secretary General or the Permanent Council directly³⁵;
- in the same vein, the Secretary General or the Permanent Council can take preventive or remedial measures, with the consent of the State affected, “*when situations arise in a member State that may affect the development of its democratic political institutional process or the legitimate exercise of power*”... (Art. 18);
- finally (and here we are back to what Resolution 1080 and Article 9 of the OAS Charter contemplate, but extending the notion of *coup d'état* to its widest interpretation), should there be “*an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state*” (Art. 20), any member State or the Secretary General may set in motion a process of consultations, initiatives and actions that can eventually lead to suspension; the extension to “any member” of such faculty to initiate is noteworthy.

To sum up the above, looking jointly at Resolution 1080, Article 9 of the OAS Charter and the Inter-American Democratic Charter, and quoting Arrighi:

“*(...) we have on one hand rules that originate with General Assembly resolutions, and on the other hand norms derived from treaties; norms that apply to a very reduced number of situations (...), and others that also contemplate a much larger set of situations; rules that call for precise sanctions, and others that are much more imprecise.*”

With Arrighi one can wonder if just like the applicable-to-all but non-binding *Resolution 1080* led to the adoption of the binding but only-applicable-to-signatories *Protocol of Washington*, one day we may not have a new Protocol amending the OAS Charter a result of which would be to confer higher legal hierarchy to the Inter-American Democratic Charter. Or could it be argued that all those norms

³² Such as, but not exclusively, so-called “*auto golpes*”.

³³ Which, as Arrighi rightfully points out, often end up having negative effects mostly on those whose democratic rights have been trampled with.

³⁴ And it is here, *i.e.* in relation to the recognized need to take the necessary steps to preserve democracy, that possibly can arise some legal consequences between the interdependence between democracy and economic and social development.

³⁵ In relation to Art. 17 and some interesting question it raises, see section 7 in Part III below, on *Remedies to lack of economic and social development as a threat to democracy*.

taken together can be considered as evidencing what has become, or is in the process of becoming, a “regional custom”, and as such not requiring the form of a stand-alone treaty to acquire full legal validity and application?

That is where important considerations relating to the “progressive development of international law” come in. And such considerations are bound to influence the debate as to what effects the fact that the Inter-American Democratic Charter as “only” adopted as a resolution of the OAS General Assembly may have, legally speaking, on its application.

2. The Inter-American Democratic Charter and the “progressive development of international law”; the Charter as a “resolution”

As recalled earlier, the drafters of the Inter-American Democratic Charter, one of the main frames of reference for the present analysis and its central departure point (since it is within the express context of its application that our mandate states that we are to consider ‘the legal aspects of the interdependence between democracy and economic and social development’), saw fit to include the following language in the last paragraph of its preamble: *“BEARING IN MIND the progressive development of international law and the advisability of clarifying the provisions set forth in the OAS Charter and related basic instruments on the preservation and defense of democratic institutions, according to established practice, (...)”*.

Which leads Amb. Humberto De la Calle, in his introduction to *Carta Democrática Interamericana: documentos e interpretaciones*, to remind readers that the *Democratic Charter*, in spite of being a resolution and not a Treaty, is in reality more than ‘just an ordinary Resolution’ “because”, as he writes, *“it was conceived as a tool to actualize and interpret the fundamental Charter of the OAS, within the spirit of the progressive development of international law”*.³⁶

The IAJC has already pronounced itself with regard to this specific issue when, by its Resolution CJI/RES.32 (LIX-O/01) of 16 August 2001, it approved a report on “Observations and Comments of the Inter-American Juridical Committee on the draft Inter-American Democratic Charter”.³⁷ Those “Observations and Comments”, noted the Report, had been drafted *“on the assumption that the Draft Inter-American Democratic Charter will be adopted as a resolution of the General Assembly (...)”*.³⁸ It then went on to say: *“The provisions of resolutions of this nature generally have as their purpose the interpretation of treaty provisions, the provision of evidence of the existence of customary norms, the affirmation of general principles of law, or the proclamation of common aspirations, and they may contribute to the progressive development of international law. (...)”*.³⁹

That important aspect of what we might call the overall ‘legal atmospherics’ –if we may use such an expression– within which the Inter-American Democratic Charter is to be viewed, as been underlined, stressed, and expanded upon by many, politicians and scholars alike.

For example, the then Brazilian Foreign Minister, Celso Lafer, addressing the question as to whether the approval of the Democratic Charter by way of a resolution of the General Assembly “was viable”, answers in the positive, for the reason that *“it would represent an exercise of actualization of positive norms in vigor, in accordance with the principle of the progressive development of International Law”*. An opinion, he added, *“that all of us would later adopt”*.⁴⁰

Still early in the drafting of what would become the Inter-American Democratic Charter, Amb. Manuel Rodríguez Cuadros, Vice Minister and Secretary General for External Relations of Peru, in his address to the September 2001 Regular Session of the Permanent Council, having first labelled democracy *“a global condition of the present international system”* and spoken of *“new norms of international laws, formal and customary, regional and universal, which consecrate it [democracy] and submit it to international responsibility”*, added: *“Those processes allow us to see there now begins to exist a universal tendency to look at democracy from a juridical angle, as an internationally exigible”*

³⁶ *Op. cit.*, at p. viii. A conclusion fully shared by Dr. Mauricio Herdocia Sacasa, *op.cit.* See below.

³⁷ This latter report was published as CJI/doc.76/01, 15 August 2001.

³⁸ See para. 3 of the Report.

³⁹ See para. 5 of the Report. Dr. Mauricio Herdocia Sacasa quotes that paragraph in *op.cit.*, p. 147.

⁴⁰ At the XXXI Regular Session of the General Assembly of June 2001 in San José, as quoted by Amb. Valter Pecly Moreira at the regular session of the Permanent Council of September 6, 2001, in De la Calle, p. 64.

obligation. The Inter-American Democratic Charter constitutes, in that context, a contribution to that worldwide tendency, maybe the most developed and the most advanced (...). In many ways the Charter goes beyond the prior status quo in terms of principles, norms and mechanisms relating to then preservation and defense of democracy in the OAS, as seen in the dynamic perspective of the progressive development of international law".⁴¹

On the same occasion, the representative of El Salvador explained that in addressing the need for an Inter-American Democratic Charter, her country had been guided by "(...) *the necessity to go further and deepen the inter-American normative ambit relating to democracy*".⁴²

Speaking at the Protocolar Session of the Permanent Council of 16 September 2002 held in commemoration of the first anniversary of the Inter-American Democratic Charter, the then Minister of Foreign Affairs of Uruguay, Didier Operti, also dealt with clarity with the issue at hand. He said: "(...) *we were asking ourselves how to make of the Charter a resolution which at the same time would have the very rank of a binding international instrument, over and above the normative level the hierarchical pyramid of the OAS reserved for it. And it is then (...) that sprang the idea of making of that Charter a chapter in the progressive development of our contemporary international law, and conferring upon it the character of an authentic interpretation. The General Assembly, supreme organ of the System, interprets this [Democratic] Charter as a progressive development of the OAS Charter*".⁴³

The subject was dealt with at some length by Peruvian Ambassador Eduardo Ferrero Costa in a presentation made at the *Jornadas of Derecho Internacional*⁴⁴ in 2002, in Florianopolis, Brazil. In his essay, entitled *La Carta Democrática y el sistema interamericano*, he proposed to formulate an initial analysis of "(...) *the juridical purview of the Democratic Charter within the angle of the progressive development of international law, together with a few thoughts in relation to the sources of public international law and the obligatory nature of the resolutions of the general assembly of an international organization*".⁴⁵

In line with much of what we have seen above, Amb. Ferrero Costa, looking as the genesis of the Inter-American Democratic Charter, pointedly attributes its coming about to not only a hemispheric consensus in relation to democracy (and human rights), but also to the general sentiment that the system was perceived as lacking adequate juridical instruments to deal with the situation. There was of course Resolution 1080, applied to the cases of Haiti (1991), Peru (1992), and Guatemala (1993). In his words, such applications of Resolution 1080 can be considered as evidence of "*an accepted mode of international conduct*", but also of "*a mechanism which, if it did not prove entirely effective in its application, was not objected to*" by any states in the Hemisphere.⁴⁶

But at the same time, and that would come to have a major influence on the final wording of the Inter-American Democratic Charter, member States were increasingly convinced, and said so in the 1993 Managua Declaration for the Promotion of Democracy and Development, that "*democracy, peace and development are inseparable and indivisible parts of a renewed and integral vision of hemispheric solidarity, and that the capacity of the Organization to play a role in the preservation and strengthening of the democratic structure of the Hemisphere would depend upon the realization of a strategy inspired by the interdependence and complementarities of those values*".⁴⁷

It is against that background and with that in mind that the negotiators of the Democratic Charter came to address the issue of whether to draw up a text that would take the form of a formal treaty to be submitted to the individual approval/ratification of each member State of the OAS, or as a resolution

⁴¹ In De la Calle, p. 78; underlining provided.

⁴² ESCOBAR, Margarita, in De la Calle, p. 80.

⁴³ As quoted in De la Calle, p. 232, underlining provided.

⁴⁴ The full report of those "Jornadas" has been published as *Jornadas of Derecho Internacional* (Florianopolis, Brazil, 2002), Secretaría General de la OEA, Washington DC, 2003. Amb. Ferrero Costa; presentation can be found at p. 427-446, future references to his text will be simply given as *Jornadas, Florianopolis*.

⁴⁵ *Jornadas, Florianopolis*, p. 428.

⁴⁶ *Jornadas, Florianopolis*, p. 430.

⁴⁷ *Jornadas, Florianopolis*, p. 432; underlining provided.

to be approved by the usual consensus, *i.e.* with no one objecting, at an OAS General Assembly.⁴⁸ And as Min. Operti would later indicate, Amb. Ferrero Costa confirms that conceiving the Charter as part of the progressive development of international law was seen as a solution to everybody's desire to confer legal weight and value upon the Charter, while remaining short of using the formal treaty route.⁴⁹

That being said, whether every one would go so as far as Amb. Manuel Rodríguez Cuadros, one of the principal Peruvian negotiators of the Charter, in his following interpretation remains debatable: in his opinion, it is because the *Charter* is based on the principle of the progressive development of international law that it could in fact "reform"⁵⁰ the OAS Charter without the necessity of having recourse to a new treaty. And as quoted by Amb. Ferrero Costa, Amb. Rodríguez Cuadros concludes: "*That is why the Inter-American Democratic Charter is binding: it constitutes a normative development of the OAS Charter*".⁵¹

Of course, progressive development of international law notwithstanding, there is no unanimity amongst legal scholars that a 'resolution' passed by the body of an international organization can be of legally obligatory application unless the constitutional texts of such organizations expressly allow it. As stated by Amb. Ferrero Costa, such an interpretation would result in the Democratic Charter having mere "recommendatory" character.⁵² But international law is not static; it does evolve, or 'progressively develops', largely of course on the basis of the concordant behavior of States and the expression of their political will. That, we would submit, is especially true when those States are regrouped within a regional organization with strong habits of decisions by consensus.

Besides, as Amb. Ferrero Costa recalls, many are the specialists for whom the listing of sources of international law found in Article 38 the Statute of the International Court of Justice, is merely indicative, and not limitative, thus "*leaving the door open to the possibility that there may exist or develop other sources*"⁵³ as a result of the evolution of international society".⁵⁴

⁴⁸ The following extract, also taken from Amb. Ferrero Costa (*Jornadas, Florianópolis*, p. 443), is relevant to this issue: "*Even more, contrary to the United Nations, in the case of resolutions on the General Assembly of the OAS, those in practice are negotiated and approved by consensus, in spite of the fact the OAS Charter foresees a voting system. Such a situation results in all member States being more committed, since a resolution adopted by consensus entails that it has been adopted without any formal opposition from any States. Consensus commits all member States, thus conferring more legitimacy to resolutions thus adopted, since, as says George Abi-Saab, agreements and resolutions are adopted 'with the agreement concordance and participation of all those who are part of the Organisation'.*"

⁴⁹ See *Jornadas, Florianópolis*, p. 440, and the last para. in the preamble of the Inter-American Democratic Charter.

⁵⁰ Note that he did not use "amend".

⁵¹ *Jornadas, Florianópolis*, p. 441, underlining provided.

⁵² *Jornadas, Florianópolis*, p. 442.

⁵³ Such as certain types of "resolutions", depending on a series of factors. Jorge Castañeda, who has studied this issue, would agree that no matter what one concludes in strict legal theory regarding the legal standing of 'resolutions', the fact remains that States do accept to apply them as if binding. Writes Castañeda, as quoted by Amb. Ferrero Costa (*Jornadas, Florianópolis* p, 283): "... ordinary recommendations lack obligatory applicability from a juridical sense. Their value (or 'force' as one usually says) is political and moral. But that distinction is neither obvious nor clear. In theory, one can distinguish between obligatory applicability (*sanción*) in a technical sense aimed at complying with pre-existing legal obligations, and pressure aimed at the accomplishment on a non-obligatory conduct, but considered as desirable and recommended as such by an international body. More even, it happens that the measures of pressure used by international bodies to obtain the execution of a typically political recommendation, non-binding in nature, are the same as those they use and which are of an obligatory applicability to impose compliance with juridical obligations. In practice, it is hard to determine where the dividing line is". Castañeda advances that there is no unanimous doctrine yet on the legal purview of [those] resolutions. Furthermore, he adds, their content may vary a great deal since: "*There is no unanimous doctrine yet on the legal purview of [those] resolutions. Furthermore, their content may vary a great deal since a resolution can constitute an order, an invitation, or a range various intermediary forms; it can deal with technical matters or with matters which are eminently political; it can be is of a materially legislative nature, i.e. express juridical norms, or constitute an individual administrative act; it can be directed to another body of the same system, to a distinct international body, to all states in general, to some states, or even to individuals; it can be the result of a decision-making mechanism, which implicates representation of an equal or unequal nature; it can have been adopted*

Dr. Mauricio Herdocia Sacasa addresses those issues at some length in his recent study mentioned earlier⁵⁵, when writes that *“The International Law of the Americas has extended its action into the sphere of the internal political organization, in relation to the essential elements of Representative Democracy, which cannot be transgressed (...)”*⁵⁶ Which later leads him to affirm: *“The contribution of the Inter-American System to the 21st century will be its contribution to the universal consecration of the principle of Representative Democracy as a legally binding obligation worldwide (...)”*⁵⁷.

In that respect, the views of Steven Wheatley (who rejects the claim that international law should recognize a universal obligation for states to introduce and maintain democratic governments⁵⁸), on what he seems to admit are inroads towards such a recognition being made at regional levels are worth examining. In *“Democracy in International law: a European Perspective”*⁵⁹, while asserting that it is not yet possible – at least at the time he wrote, i.e. 2002 - to identify such a universal obligation, he does concede that *“the evolving internal aspect of the right of a people to self-determination, the increasing numbers of states party to universal and regional human rights instruments (which all contain provisions on free and fair elections and political participation), and recognition that a democratic system of government may not be legitimately be replaced by an authoritarian one, indicates a progressive and irreversible movement to a world community of democratic states.”*⁶⁰ He even considers that in Europe this irreversible “progress” is complete. For example, he rightly concludes from Article 6 (1) of the *Treaty on European Union*⁶¹ that the existence of a stable democracy is one of the criteria which must be met before new members may be considered for accession⁶². As for the Council of Europe’s Court on Human Rights, it has concluded that *“democracy appears to be the only political model contemplated by the [European Convention on Human Rights] and, accordingly, the only one compatible with it”*⁶³. The same applies for the Organization for Security and Co-operation in Europe (OSCE); its founding document, the 1990 *Charter of Paris for a New Europe*⁶⁴, proclaims: *“We undertake to build, consolidate and strengthen democracy as the only system of government of our nations”*. If, as says Wheatley, democracy is the only legitimate form of government in Europe, then *“any state which is not ‘democratic’ is in breach on an international obligation”*⁶⁵.

He also acknowledges that in the *Nicaragua* case the International Court of Justice *“has accepted that there is nothing within the body of international law to prevent a state from legally binding itself to adopt and maintain a particular form of government”*⁶⁶.

following a voting system requiring unanimity, or simply on the basis of a majority.” (Obras Completas, t. I, Naciones Unidas. México: Instituto Matías Romero de Estudios Diplomáticos de la Secretaría de Relaciones Exteriores y el Colegio de México, 1955, p. 271-272.

⁵⁴ *Jornadas, Florianópolis*, p. 443

⁵⁵ See footnote 4.

⁵⁶ *Op. cit.*, p. 137.

⁵⁷ *Op. cit.*, p. 138.

⁵⁸ More in Wheatley’s position in comments to be found in Annex 1, below.

⁵⁹ In *International and Comparative Law Quarterly* (ICQL), vol. 51, April 2002, p. 225-247.

⁶⁰ *Op. cit.*, p. 234.

⁶¹ Full text at http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002M/htm/C_2002325EN.000501.html. Art. 6 (1) reads: *“The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States”*.

⁶² *Op. cit.*, p. 235, footnote 70.

⁶³ In the case *United Communist Party of Turkey and others v Turkey*, Reports 1998-I, at para. 45; *op. cit.*, p. 235.

⁶⁴ Full text at <http://www.hri.org/docs/Paris90.html#Pt1>.

⁶⁵ *Op. cit.*, p. 235.

⁶⁶ *Op. cit.*, p. 234, footnote 69. On a related point, he adds: *“For those 148 states (...) who are signatories to the International Covenant on Civil and Political Rights, it is arguable that their obligations to introduce democratic government (...) are permanent and irreversible”*. And although Wheatley’s text focuses on Europe, as its title indicates, he does mention, in *passant*, that developments in the Americas with regard to an international obligation to democracy at regional levels, as evidenced by what then was the fairly recent *Santiago Commitment to Democracy and Renewal of the Inter-American System*, merit attention (*op. cit.*, p. 245, footnote 73).

We can conclude this part on “*The Inter-American Democratic Charter and the ‘progressive development of international law’; the Charter as a ‘resolution’*” by suggesting that given

- (1) the fact that the *Charter* was the result of a primarily political decision,
- (2) that it was conceived and brought forward with the clearly stated and accepted notion that it was to inscribe itself within the ambit of the development progressive international law, and
- (3) that in practice not only is it being used and applied, but the mandate given to the Inter-American Juridical Committee evidences a political will to look for ways to better fulfill the aspirations it is built upon and which in turn are directly guided and inspired by the principles and high aims solemnly proclaimed in the OAS Charter itself,⁶⁷

the *Charter* does indeed create for all member States, individually and collectively, a series of obligations and duties.

And that such obligations and duties, based on the very language of the *Charter*, deal with the preservation, defense and strengthening of democracy not only conceived as a *sine qua non* condition for inter-American solidarity and cooperation, but which by necessity require social and economic development to endure and flourish.

Or, as the then Secretary General, César Gaviria, referred to it when he addressed the September 2002 Protocolar Session of the Permanent Council held in commemoration of the first anniversary of the adoption of the Inter-American Democratic Charter, he was quick to recall that it is to be seen not only as “*a guide for democratic behavior*” but also as “*a code of conduct (... which) evidences a deep commitment to democracy.*”⁶⁸

PART III

Some General Considerations and Reflections

Preliminary reviews by the Juridical Committee of the documents thus presented led to some early considerations and reflections⁶⁹, which were to guide the Rapporteur for the later development and elaboration of the present study.

1. The interrelationship between democracy and economic and social development

An immediate conclusion the Juridical Committee came to was to the effect that, as stated earlier and posited in our mandate, there cannot indeed be any doubt whatsoever that the existence of interdependence between democracy and economic and social development has been, and is still being, widely and repeatedly proclaimed in various Hemispheric texts and documents of diverse natures⁷⁰. Even though it is widely acknowledged that the relationship between those concepts “*remain(s) a matter of controversy*”⁷¹, Yet, given what may somehow appear as the ‘novelty’ of having to look for and analyze the “legal” aspects of that interdependence or interrelationship (again, something which is far from self-evident), a close look at the various and often quite different angles from which such linkage is expressed in those documents, appeared called for. For example, at times the argument seemingly being put forward is that democracy leads to, is a pre-condition for,

⁶⁷ A conclusion, as indicated earlier, shared by Dr. Mauricio Herdocia Sacasa, *op. cit.*, p. 141, when he writes: “*The Inter-American Democratic Charter constitutes, without any possible doubt, the reaffirmation and interpretation, on one hand, and the normative development, on the other hand, of principles already included in an anterior treaty such as the OAS Charter...*”

⁶⁸ DE LA CALLE, p. xi; underlining provided.

⁶⁹ Notably at its 65th, 66th, and 67th regular sessions.

⁷⁰ Not to mention countless similar references in other, regional as well as universal, circles. For ex, in para. 16 of his above-referenced “Agenda for Democratization; Supplement to Reports A/50/332 AND A/51/512 on Democratization (17 Dec 1996), UN Sec. Gen. Boutros Boutros-Ghali considered as a “*deep(er) truth*” that “*democracy contributes to (...) promoting economic and social development*”; he also spoke of his “*conviction that peace, development and democracy are inextricably linked*” (para. 118).

⁷¹ Boutros Boutros-Ghali, *op. cit.*, para. 118. Larry Diamond (*op. cit.*, p. 8) similarly writes; “*the empirical evidence about the relationship between democracy and development is ambiguous*”.

development. At other times, the proposition seems to rather be that, a *contrario*, for democracy to flourish there must be development first. But most often, those lines are blurred and the proposition simply is that the two are inseparable and/or mutually supportive. That was quite eloquently expressed by the UNESCO International Panel on Democracy and Development when it stated: “(...) *history shows that cases where democracy and development have been dissociated have mostly resulted in failure. Conversely, the interlinking of democratization and development helps both of them to take root durably. For if political democracy, in order to consolidate itself, needs to be complemented by economic and social measures that encourage development, similarly any development strategy needs to be ratified and reinforced by democratic participation in order to be implemented*”.⁷²

The Juridical Committee therefore agreed that looking at how and in what fashion such interrelationship arises in various Hemispheric and other international documents, could indeed be relevant⁷³. But as a result of its preliminary discussions and debates the IAJC concluded that a review of the OAS Charter and of the *Inter-American Democratic Charter* warrants the following affirmations:

- economic and social development consolidate democracy, but do not ‘condition’ it;
- economic and social development strengthen democracy, but that does not mean that without development democracy cannot take hold;
- the absence or lack of development can and does imperil democracy;
- the absence or lack of development cannot be a justification to suppress or diminish democracy.

2. ‘Democracy first’ versus ‘development first’

The relative merits of ‘democracy first’ *versus* ‘development first’ approaches have been the object of countless academic studies, both theoretical and empirical. The following offers a good illustration of the underlying issues at stake, as expressed again by UN Secretary General Boutros Boutros-Ghali as he looked at what he called “*the difficult questions, raised by democratization, of prioritization and timing among peace, development and democracy (...)*”:

“In some cases, peace, development and democracy have been pursued simultaneously (...). In other cases, however, the joint pursuit of these goals has proved more difficult than expected, at time contributing to political instability, social disarray and economic disappointment. These experiences have brought to the fore the main question of prioritization: whether democratization requires as a precondition the achievement within a nation of a certain level of peace and development.

Peace can be seen as essential, for without some degree of peace, neither development nor democracy is possible. Yet, both development and democracy are essential if peace is to endure. The articulation between development and democracy is more complex. Experience has shown that development can take place without democracy. However, there is little to suggest that development requires an authoritarian regime and much to suggest that, over the long term, democracy is an essential ingredient for sustainable development. At the same time, development is an essential ingredient for true democracy (...)”.⁷⁴

As but one example of the many scholarly discussions evolving around the issue, some authors have strongly argued that historical data contradicts the argument that for poor countries to become really democratic they must develop first, an argument they consider to be “*not only wrong, but (leading) to atrocious policies*”, an argument that they claim results in favoring “*a go-slow approach to promoting democracy*”.⁷⁵ “*As compelling as the development-first thesis sounds*”, they add, “*the*

⁷² *Op. cit.*, at p. 10.

⁷³ See Annexes 1 to 17.

⁷⁴ *Op. cit.*, paras 119-121. Underling added.

⁷⁵ SIEGLE, Joseph T., WEINSTEIN, Michael M., and HALPERIN, Morton H. “*Why Democracies Excel*”, Foreign Affairs, Sept/Oct2004, vol. 83, No. 5, p. 57-71, at p. 57. They attribute that theory to what they call a “*common sense notion*”, popularized in the early 60’s by political sociologists such as Seymour Martin Lipset, “*that economic growth creates the necessary preconditions for democracy by expanding literacy, creating a secure*

empirical evidence is clear: democracies consistently outperform autocracies in the developing world”.⁷⁶

All things considered, the Juridical Committee was of the view that such a ‘debate’, remains primarily political in nature, rather than legal; which probably explains why its remains, to this date, so inconclusive. Hence the lack of immediate relevance of such a debate to the present study.

3. The “right to democracy”

Article 1 of the Inter-American Democratic Charter proclaims: “*The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. (...)*”. This clear affirmation (a) that there is such a thing as a “right to democracy”, (b) that such a right belongs to “the peoples”, and (c) that the governments of the Americas have an “obligation” to promote and defend that right, is of course of prime significance to the present study. Indeed, that part of Art. 1 of the Inter-American Democratic Charter has been said to be at the very center of what is now commonly referred to as the inter-American democracy ‘architecture’. Indeed, the emphatic recognition of the existence of a “right to democracy” is at the heart of the entire instrumentation that the OAS and its members have developed over time in order to fulfill the ‘obligation’ to promote and defend democracy. Thus, the 2003 Declaration on Security in the Americas (Mexico City) declared: “*We reaffirm that democracy is a right (...)*”⁷⁷. In 2004, the heads of States and Governments assembled at a Special Summit in Monterrey, Mexico, adopted the Declaration of Nuevo León in which the exact same phrase as quoted just above from the Inter-American Democratic Charter is repeated *verbatim*⁷⁸. And as recently as the 35th regular session of the General Assembly (June 2005) in Fort Lauderdale the *Declaration of Florida* likewise makes a specific reference to the Inter-American Democratic Charter as “establish(ing) that the peoples of the Americas have a right to democracy”.⁷⁹

This existence in what might be referred to as the international law of the Americas, of a “right to democracy”, initially met with some resistance. In the course of the negotiations that led to acceptance of Article I of the Inter-American Democratic Charter, some delegates felt that such language was “out in front of customary international law”. However, as one analyst points out,

*(...) when the dust had settled, it was found that (...) Art. 1 lifts the concept to a significantly advanced reciprocal contract of peoples with governments. (...). Whether an instrument that is a political declaration⁸⁰ becomes part of the fabric of customary international law is a function of precedent. In the case of the Charter, as was the case with Resolution 1080, precedents are already providing validation”.*⁸¹

Of no less importance is the fact that to the “right to democracy” belonging to the peoples, corresponds the “obligation” of their government to “promote and defend it”. In his previously mentioned book⁸², Dr, Mauricio Herdocia Sacasa writes that “*Such a collective obligation (...) removes the circumstances related to the serious alteration of the democratic institutional political processes*

middle class, and nurturing cosmopolitan attitudes”. That theory, they add, persisted in the post-Cold War period “*despite the abysmal economic records of Latin American military governments, the ‘strongman’ rulers in Africa, and the communist states in Eastern Europe and the former Soviet Union (...) largely because of the dazzling economic performance of certain Asian autocracies: Singapore, Indonesia, South Korea, Taiwan, and, lately, China*”. (at p. 58).

⁷⁶ *Op. cit.*, p. 58. They later add: “*(...) the overall evidence is overwhelming: poor democracies have had a consistent development advantage over poor autocracies over the past 40 years*” (p. 63).

⁷⁷ Ch. III, para. 5.

⁷⁸ 3rd Ch, 8th para.

⁷⁹ Preamble, 2nd para.

⁸⁰ More on that in Part III of the present Report.

⁸¹ GRAHAM, John, “[A MAGNA CARTA FOR THE AMERICAS: The Inter-American Democratic Charter: Genesis, Challenges and Canadian Connections](http://www.focal.ca/pdf/iad_charter.pdf)”, a policy paper published in Ottawa in August 2002 by FOCAL (Canadian Foundation for the Americas: Policy Paper FPP-02-09, p. 7; full text of the paper at http://www.focal.ca/pdf/iad_charter.pdf). The “precedents” he refers to were, as of 2002, the coup-d’état against President Aristide of Haiti by Raoul Cedras for Resolution 1080, and that of Pedro Carmona against President Hugo Chavez of Venezuela for the Democratic Charter. (John W. Graham was the first head of the Unit for Promotion of Democracy in the Organisation of American States).

⁸² HERDOCIA SACASA Mauricio. *Op cit.* p.206.

and to the legitimate exercise of power from the internal legal ambit and throws it into the inter-American one".⁸³ From which he later concludes: "Today one must accept that there also exist a collective action and a legitimate answer on the part of the Organization [OAS] in relation to the defense of democracy and human rights".⁸⁴

4. Democracy as a "human right"

As shall be seen, the above question of a "right to democracy" has sometimes been confused in Hemispheric and other international instruments with the notion of democracy as a "human right". Given the more readily accepted notion that development, economic and social, is a part of human rights⁸⁵, and that the often used expression "the promotion of democracy and human rights" would seem to indicate that the two notions, though intimately related as we shall see, are not to be confused, the Juridical Committee agreed that within a study on the legal aspects of the interdependence between democracy and economic and social development, it should be concluded that democracy as a right cannot be entirely subsumed in the sphere of human rights, notwithstanding their readily recognized mutually reinforcing character.

Such a conclusion finds ample support in the language of the Inter-American Democratic Charter itself. For example, when it "*recognis(es) the importance of the continuous development and strengthening of the inter-American human rights system for the consolidation of democracy*"⁸⁶, or when it recalls "*that the Protocol of San Salvador on Economic, Social, and Cultural Rights emphasizes the great importance of the reaffirmation, development, improvement, and protection of those rights in order to consolidate the system of representative democratic government*"⁸⁷, or even when it states that "*the promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Hemisphere*"⁸⁸, it more than impliedly recognizes that the two notions are quite distinct.

5. Development as a "right" and as a "human right"

If, as seen, above, OAS instruments do proclaim outright that democracy is a right, its approach to development as a right is much more circumlocutory, at best. For example, the OAS Charter, in its Article 17, enounces that "*Each State has the right to develop its cultural, political, and economic life freely and naturally (...)*". But can easily argue that this formulation has nothing to do with declaring a "right to development", an argument which is reinforced by a look at the Spanish version of that same article, which reads in part "*Cada Estado tiene el derecho a desenvolver libre y espontáneamente (...)*". And in its Article 45, one reads "(...): a) *All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being*". Worthy of note, whereas in Art. 17 the "right to develop", or "derecho a desenvolver", belongs to the State, in Art. 45 the right "to material well-being" – and here we are assuming that this is equivalent to "development", is presented as an individual one. On the other hand, UN-inspired documents are more forthright in their references to a "right to development". For example, in paragraph 11 or Part III of the 2000 Millennium Declaration, one finds; "*(...) We are committed to making the right to development a reality for everyone (...)*". And in paragraph 24 of Part V, interestingly labelled "*Human Rights, democracy and good governance*", one can read: "*We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development*".⁸⁹ In the 2002 Monterrey Consensus, another UN-type document, one can read in part: "*(...) Freedom, peace and security, domestic stability, respect for*

⁸³ At p. 133 of a chapter (4.8; pp. 133-152) devoted entirely to "The Inter-American Democratic Charter, a New Instrument for Collective Action".

⁸⁴ *Op. cit.*, p. 134.

⁸⁵ Though it can, and should be, argued that democracy, development and human rights, even if closely interdependent and mutually reinforcing, are better treated as three distinct concepts.

⁸⁶ 9th para. of the Preamble.

⁸⁷ 12th para. of the Preamble.

⁸⁸ Art. 13.

⁸⁹ Note that a clear distinction is made between promoting democracy and promoting human rights, thus reinforcing the argument that democracy and human rights are not really concepts that belong to the exact same order.

human rights, including the *right to development*, and the rule of law, gender equality, market-oriented policies, and an overall commitment to just and democratic societies are also essential and mutually reinforcing”.⁹⁰ And as we have seen above, the UNESCO-appointed International Panel on Democracy and Development proclaimed “the right to development has a natural place among human rights”⁹¹; it also spoke of the “interdependence of the right to democracy and the right to development”⁹².

Thus, as was suggested by Dr. Jonathan Fried during his 2004 lecture at the XXI Session of the IACJ Summer Course on International law of the Inter-American System, one can safely assert that there is growing international consensus that a right to development exists⁹³. But, as he also points out, there are skeptics about such an assertion.⁹⁴ What was referred to above as “UN-inspired documents” can be traced back to much older documents, such as, for example, the 1986 UNGA Declaration on the Right to Development⁹⁵, worth quoting at some length:

- “Recognizing that development is a comprehensive economic, social, cultural and political process”⁹⁶

- “Recognizing that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development”,⁹⁷

- “Recognizing that the creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their States”⁹⁸

- “Confirming that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations”⁹⁹

- “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”.¹⁰⁰

- “The human person is the central subject of development and should be the active participant and beneficiary of the right to development”.¹⁰¹

- “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from”.¹⁰²

- “States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development”.¹⁰³

- “States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development (...)”.¹⁰⁴

⁹⁰ Part II, section (A), para. 11.

⁹¹ *Op. cit.*, at p. 10.

⁹² *Op. cit.*, at p. 11.

⁹³ See *Curso de Derecho Internacional*, XXXI - 2004. Washington, DC: Secretaría General de la OEA, 2005, p. 295-322, at p. 320. Dr. Fried is a past member of the IAJC, on which he served for 11 years.

⁹⁴ More on that, *infra*.

⁹⁵ A/RES/41/128 of 4 December 1986 97th plenary meeting; full text at <http://www.un.org/documents/ga/res/41/a41r128.htm>

⁹⁶ 2nd para. of preamble.

⁹⁷ 13th para. of preamble.

⁹⁸ 14th para. of preamble.

⁹⁹ 16th para. of preamble.

¹⁰⁰ Art. 1, 1

¹⁰¹ Art. 2, 1

¹⁰² Art. 2, 3

¹⁰³ Art. 3, 1

- "States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development".¹⁰⁵

- "All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms (...)"¹⁰⁶

- "All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights".¹⁰⁷

- "States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights"¹⁰⁸.

- "States should undertake, at the national level, all necessary measures for the realization of the right to development (...)"¹⁰⁹

- "All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole".¹¹⁰

Worthy of special note in the above are the notions that (1) the individual human being is the main subject of development; (2) States have the duty to take the actions necessary for the realization of the 'right to development', both nationally and internationally; and (3), as an immediate corollary, States have the duty to collaborate with one another in that development process. Notions all that can be found repeatedly in many hemispheric documents, including the OAS Charter and the Inter-American Democratic Charter.

The 1993 UN Conference on Human Rights¹¹¹, adopted a *Vienna Declaration and Programme of Action*, which reiterated much of the above. It reaffirmed the "right to development (...) as a universal and inalienable right and an integral part of fundamental human rights"; that "the human person is the central subject of development"; that "States should cooperate with each other in ensuring development and eliminating obstacles to development" and that "the international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development".¹¹²

Amongst the reasons or arguments advanced by the sceptics in relation to the exact purview - or even existence - in international law of a "right to development" and which Dr. Fried summarizes, one finds the following:

¹⁰⁴ Art. 3, 3

¹⁰⁵ Art. 4, 1

¹⁰⁶ Art. 6, 1

¹⁰⁷ Art. 6, 2.

¹⁰⁸ Art. 6, 3.

¹⁰⁹ Art. 8, 1.

¹¹⁰ Art. 9, 1.

¹¹¹ 14-25 June 1993.

¹¹² Full text at A/CONF.157/23, 12 July 1993, available at

[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument).

With regard to the need for state to cooperate in ensuring development and eliminating obstacles to development, authors Siegle, Weinstein and Halperin lament the fact that "despite increased rhetoric and funding for democracy-promotion projects, the simple fact is that the West does not tilt its development assistance to democracies", a situation they claim "can and must change". They also advocate that the charters of the World Bank, the IMF and regional lending institutions "should be amended to favor democratic regimes"; it would appear for ex. that at present the World Bank and the IMF "are prohibited from considering democratic legitimacy when making financing decisions". But they do acknowledge that increasingly such factors as "democratic governance, transparency, existence of economic rights, and investments in health and education are held up as qualifying criterias for countries to receive assistance" (see op. cit., at p. 67-68).

- “Declarations setting out right to development have no status under international law, as they are non-binding”.
- “Development is a collective process. Like the purported right to peace or the right to a healthy environment, development is too broad a concept to be characterized as a right”.
- “Individual rights connected to the development process (security of the person) may be violated by the claimant’s state. There is no basis in international law, however, to aggregate these claims into a right to development that creates obligations on foreign states, or that creates a cause of action against a foreign state”.
- “There is no obligation on states to help developing countries develop, and no obligation to provide transfers of wealth. The UN Charter only creates a general obligation for states to cooperate”.
- “Development is on the international agenda, but it is pre-mature to discuss it as a legal right”.¹¹³

6. The notion of “Integral Development”

Though our mandate speaks of “economic and social development”, several members of the Juridical Committee wondered whether and to what extent it would not be quite appropriate to factor into our study the more “modern” or recent concept of “integral development”.

It is that more all-encompassing notion that the Inter-American Democratic Charter uses in the heading of its Chapter III: “Democracy, Integral Development, and Combating Poverty”. Just as its Article 14 speaks of “cooperation for integral development”.

As we all know, the OAS Charter now has a long chapter¹¹⁴ entirely devoted to “integral development”, and has created the Inter-American Council for Integral Development, directly responsible (like the Permanent Council) to the General Assembly¹¹⁵, with its composition and purposes set out in its Chapter XIII. Declaring integral development for the peoples of the Americas to be a condition essential to peace and security, the OAS Charter then confers upon that same notion a wide-ranging meaning by saying that “(...) *Integral development encompasses the economic, social, educational, cultural, scientific, and technological fields through which the goals that each country sets for accomplishing it should be achieved*”¹¹⁶. It then immediately proceeds to state that inter-American cooperation for integral development “ (...) *should include the economic, social, educational, cultural, scientific, and technological fields, support the achievement of national objectives of the Member States, and respect the priorities established by each country in its development plans*”.¹¹⁷

It is not without consequence for the present report that the OAS Charter, still in its Chapter devoted to the Inter-American Council for Integral Development, further proclaims that its “(...) *Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development*”¹¹⁸. Though there is no direct mention of “democracy” as such here, the reference to “full participation in decisions (...)” can certainly be interpreted as establishing a link between, on one hand, development in its ‘integral’, *i.e.* all-encompassing form -which as we have seen naturally incorporates economic and social development- and, on the other hand, democracy.

Finally, one finds yet another, this time more direct, reference to democracy at it relates to “integral development” in the first part of Article 31 when the OAS Charter establishes that “*Inter-American cooperation for integral development is the common and joint responsibility of the Member States, within the framework of the democratic principles and the institutions of the inter-American*

¹¹³ See page 322 of the document referred to above. Dr. Fried refers to Malcolm M. Shaw: International Law (4th ed.), p. 224.

¹¹⁴ Ch. VII, Art. 30 to 52.

¹¹⁵ Art. 70.

¹¹⁶ Art. 30.

¹¹⁷ Art. 31.

¹¹⁸ Art. 34.

system". It is arguable that such a reference to "within the framework of the democratic principles" of the System, can be interpreted as meaning that such common and joint responsibility can only be fully exercised if undertaken by States placing themselves within the ambit of such "democratic principles" as are enunciated by the *Charter*.

So, any "legal" obligations attached to 'integral development' in the OAS Charter may well be a factor in determining the legal aspects of the interdependence between democracy and economic and social development.

7. Remedies to lack of economic and social development as a threat to democracy.

Upon reviewing, in Annex 11, the text of the Inter-American Democratic Charter, some comments were made in relation to its Chapter IV (entitled *Strengthening and Preservation of Democratic Institutions*), which are worth repeating here, at least in part.

Chapter IV (Arts. 17-22) of the Inter-American Democratic Charter is of course one of its key parts. Some would say it represents the "teeth" of that *Charter*, in that it enunciates specific action which member States or the OAS itself are empowered to take and implement in the promotion, defense and restoration of democracy in the Americas. The IAJC wondered if one might not argue that it is the lack of a more visible or readily identifiable parallel avenue - or avenues - for the achievement of higher levels of "social and economic development", especially if such absence of development came to be perceived as putting democracy in danger, that has led to the request for the present report to be undertaken.

In that context, Article 17 of the Inter-American Democratic Charter raises an interesting question. Found at the very beginning of Chapter IV it reads:

"When the government of a member state considers that its democratic political institutional process or its legitimate exercise of power is at risk, it may request assistance from the Secretary General or the Permanent Council for the strengthening and preservation of its democratic system".

The questions that arise are: (a) In light of the broadly recognized and often proclaimed interdependence between democracy and economic and social development, does this article open the door for a member State which would consider its lack of economic and social development to put at risk its "democratic political institutional process" or "its legitimate exercise of power" to request assistance from the Secretary General or the Permanent Council? And if so, what would be the measures expected from those? And of the member States? Or (b), in light of the remainder of the language in Chapter IV of the Inter-American Democratic Charter, could one argue that Article 17 was not, and is not, meant to offer the remedy to such a situation, and that the answer to such a situation is to be found in other instruments of the OAS?¹¹⁹

Article 18 of the Inter-American Democratic Charter also raises a question of the same general nature. It reads:

"When situations arise in a member state that may affect the development of its democratic political institutional process or the legitimate exercise of power, the Secretary General or the Permanent Council may, with prior consent of the government concerned, arrange for visits or other actions in order to analyze the situation. The Secretary General will submit a report to the Permanent Council, which will undertake a collective assessment of the situation and, where necessary, may adopt decisions for the preservation of the democratic system and its strengthening."

The recent Florida Declaration may shed some light on those issues. Indeed, its Article 3 proclaims:

"The Secretary General shall be instructed, (...) taking into account the purposes and principles of the OAS Charter, in particular that of promoting and consolidating representative democracy, to devise proposals for timely, effective, balanced, and

¹¹⁹ Could it be that the "democratic political institutional process" or the "legitimate exercise of power" are to be distinguished from democracy taken more generically?

gradual initiatives for cooperation, as appropriate, in addressing situations that might affect the workings of the political process of democratic institutions or the legitimate exercise of power, in keeping with the provisions of Chapter IV of the Inter-American Democratic Charter, (...)".

If one recognizes that lack of development can imperil democracy, as is being reaffirmed in many Hemispheric documents, Article 3 of the Declaration of Florida would indeed seem to confirm unequivocally that in a situation where lack of development runs the risk of adversely affecting democracy, the Secretary General has indeed the duty or obligation to take action.

(And in that light, it would seem that Art. 4 of the *Florida Declaration* is almost superfluous; it reads: "*It is reaffirmed that the Secretary General may bring to the attention of the Permanent Council, in the exercise of the authority conferred on him by the OAS Charter and pursuant to the Inter-American Democratic Charter, those situations likely to lead to action under the said Charters*").

Indirectly, the above raises yet another set of fundamental issues: (a) quite obviously, as is apparent from so many hemispheric basic documents, a country has a clear (and, many would say, not only 'binding' but accepted by all as such) obligation to democracy if it is to be part of the OAS; (b) yet, and no less obviously, development at any level is no such condition for membership, and the lack thereof is no bar to such membership.

The corollary to what precedes would seem to be that whereas (i) a member can be "sanctioned" if it drifts away from democracy (and such "sanctions" have been described in detail, have been applied and can certainly still be in the future), and (ii) there are well-defined 'triggers' that can be resorted to in order to impede or stop such drifting, (iii) no less obviously there hardly could be any "binding" obligation to be developed, and (iv) the remedies to the danger to democracy that lack of appropriate levels of development can come to represent are far less 'institutionalized'.

It would seem that what the Juridical Committee is in fact being asked is whether there are legal answers that would correct or improve upon that situation. And here one cannot but take note of Article 6 of the 2005 Florida Declaration, which reads: "*Encouragement is given to the Working Group to Negotiate the Social Charter of the Americas and a Plan of Action, so that its work may serve effectively to strengthen existing OAS instruments on democracy, integral development, and the fight against poverty*". Such language would appear to establish a link between a future "Social Charter" and the existing Inter-American Democratic Charter, under the understanding that one of the aims of such a social charter would be to encourage and foster development, thus helping to create conditions favourable to the preservation of democracy.

The above discussions centered on Articles 17 and 18 of the Inter-American Democratic Charter would not be complete without a few words about that Charter's next two articles. First, Article 19, which reads:

"Based on the principles of the Charter of the OAS and subject to its norms, and in accordance with the democracy clause contained in the Declaration of Quebec City, an unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, constitutes, while it persists, an insurmountable obstacle to its government's participation in sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization, the specialized conferences, the commissions, working groups, and other bodies of the Organization".¹²⁰

¹²⁰ Underlining added. The "democracy clause contained in the Declaration of Quebec" reads in part: "We acknowledge that the values and practices of democracy are fundamental to the advancement of all our objectives. The maintenance and strengthening of the rule of law and strict respect for the democratic system are, at the same time, a goal and a shared commitment and are an essential condition of our presence at this and future Summits. Consequently, any unconstitutional alteration or interruption of the democratic order in a state of the Hemisphere constitutes an insurmountable obstacle to the participation of that state's government in the Summit of the Americas process". (See 5th para. of "Declaration of Quebec City" adopted at the Third Summit of the Americas; full text at

Then, Article 20, which foresees:

“In the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, any member state or the Secretary General may request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate”.

Therein appears a very fundamental difference between “democracy” and “economic and social development”, universally proclaimed to be interrelated or interdependent in hemispheric documents, when looked upon from the specific angle of the possible ‘legal’ aspects of such interdependence. The countries of the Hemisphere, through their Democratic Charter as it reflects their OAS Charter, have endorsed and imposed upon themselves individually an ‘obligation of democracy’. An obligation the breach of which carries immediate political and legal consequences. Consequences for the individual country concerned, as well as consequences for the Organization of American States as such and its members collectively.

But there is nowhere to be found any corresponding ‘obligation of development’. Nowhere does it say that lack or absence of development in a given country would become *“an insurmountable obstacle”* to that country taking part in Hemispheric Summits or in OAS sessions and bodies. That would be nonsense. OAS members are not obliged – and neither are any other countries, of course - to be developed; and they therefore quite obviously could not be ‘sanctioned’ if they were not.

That being said, the one obligation which all OAS members undoubtedly do have with regard to development, and which is clearly spelled out in the OAS Charter as well as countless other hemispheric documents, is that of collaborating with one another to promote and achieve development. The promotion, by cooperative action, of the economic, social, and cultural development of its members is indeed one of the essential purposes of the OAS¹²¹. And that in turns translates into a series of undertakings, most of which are spelled out in Chapter VII of the OAS Charter, devoted to “Integral Development”.

For example, Article 30 proclaims that:

“The Member States, inspired by the principles of anti-American solidarity and cooperation, pledge themselves to a united effort to ensure international social justice in their relations and integral development for their peoples (...)”¹²²

And if Article 33 establishes that *“Development is a primary responsibility of each country and should constitute an integral and continuous process for the establishment of a more just economic and social order (...)*”¹²³, it is noteworthy that it does so after Article 31 has declared:

*“Inter-American cooperation for integral development is the common and joint responsibility of the Member States, within the framework of the democratic principles and the institutions of the inter-America system. It should (...) respect the priorities established by each country in its development plans, without political ties or conditions”.*¹²⁴

That brings us back to a very central point of our mandate as it relates to the application of the Inter-American Democratic Charter in light of the interdependence between democracy and social and

<http://www.summit-americas.org/Documents%20for%20Quebec%20City%20Summit/Quebec/Declaration%20of%20Quebec%20City%20-%20Eng%20-%20final.htm>

¹²¹ See Art. 2 (f), OAS Charter.

¹²² Underlining added. Art. 30 later describes integral development as “(...) encompass(ing) the economic, social, educational, cultural, scientific, and technological fields through which the goals that each country sets for accomplishing it should be achieved”.

¹²³ Underlining added.

¹²⁴ Underlining added. It is also of interest to note that Art. 32 stipulates that the member-states “shall contribute to inter-American cooperation for integral development in accordance with their resources and capabilities and in conformity with their laws”.

economic development, and the possible 'legal aspects' thereof. Indeed, in paragraph 17 of its Preamble, the Inter-American Democratic Charter recalls that:

*"(...) in the Declaration of Managua for the Promotion of Democracy and Development, the member states expressed their conviction that the Organization's mission is not limited to the defense of democracy wherever its fundamental values and principles have collapsed, but also calls for ongoing and creative work to consolidate democracy as well as a continuing effort to prevent and anticipate the very causes of the problems that affect the democratic system of government;(...)"*¹²⁵

As expressed amongst our comments on the Inter-American Democratic Charter¹²⁶, there is a recognition here that the OAS's 'mission' to defend democracy is accompanied by that of preventing and anticipating the 'causes' that affect democracy, lack of development being widely acknowledged as one of such causes.

To conclude, it would seem though that whatever obligations states individually or groups of states collectively have to either promote, and cooperate for, development, or to seek remedies to the lack of it and its resulting threat to democracy, the juridical nature of such 'obligations' could probably not have the same purview or legal consequences as those linked to the "obligation of democracy". For example, it is noteworthy that Art. 32 of the OAS Charter tempers the 'obligation' of member-states to "*contribute to inter-American cooperation for integral development*" by adding that this is to be done "*in accordance with their resources and capabilities*" and "*in conformity with their laws*".¹²⁷ While quite clearly states can be sanctioned under the OAS Charter and the Inter-American Democratic Charter for not being democratic or for failing to meet their obligation to promote democracy, it is indeed impossible to conclude that under those same instruments as they presently stand a state could incur sanctions for having failed to achieve development for itself, and/or to cooperate with others to promote development, even under circumstances where lack of action could be determined to imperil democracy.

8. The IAJC and "Democracy in the Inter-American System": previous considerations

It is worth recalling that the Inter-American Juridical Committee has extensively and regularly dealt with the issue of democracy in the Americas.¹²⁸

Of particular interest for the purpose of the present report was Resolution CJI/RES.I-3/95 of 23 March 1995 entitled "Democracy in the Inter-American System", the result of a double mandate received by the IAJC. First from the Commission on Juridical and Political Affairs of the OAS Permanent Council, asking the IAJC to proceed with the study of "Democracy in the Inter-American System" ... "*insofar as this is one of the main pillars of the Inter-American System*"¹²⁹ And soon thereafter from an OAS General Assembly resolution adopted at its 24th regular session (Belem, 1994) and "*urging the IAJC to continue its studies on Democracy in the Inter-American System, given that this is one of the basic topics of the Organization*"¹³⁰.

¹²⁵ Underlining added.

¹²⁶ See Annex 12.

¹²⁷ The question has been raised as to whether any such obligation members have to contribute to integral development can be said to be thus limited, in the *OAS Charter*, by an element of gradualness in relation to their means, or whether there is or can be a greater obligation.

¹²⁸ For example, as far back as 1959 it produced a study on the relation between respect for human rights and the exercise of democracy: IAJC, Recommendations and Reports, Official Documents, v. VI, 1959-1960, Rio de Janeiro— GB, 1961, p. 221 ff.). See also, amongst several others: (1) the report by Drs. Seymour Rubin and Francisco Villagrán-Kramer on the topic "Study on legitimacy on the Inter-American System and the inter-relationship between the provisions of the OAS Charter on self-determination, non-intervention, representative democracy and protection of human rights" (CJI/SO/II/doc.13/91, rev.2, 13 August 1992); (2) two preliminary reports by Dr. Eduardo Vio Grossi on the topic "Democracy in the Inter-American System" (CJI/SO/II/doc.10/93 and CJI/SO/II/doc.11/93); (3) three further reports on the same theme by Dr. Vio Grossi, amongst them: (CJI/SO/II/doc.37/94 rev.1, corr.2, 18 October 1994; CJI/SO/II/doc.7/95 rev.2, 22 March 1995; and CJI/doc.35/00 rev.1, 17 August 2000); (4) Dr. Vio Grossi's report on "Implementation of the Inter-American Democratic Charter (CJI/doc.127/03, 20 March 2003),

¹²⁹ CP/doc.2479/94).

¹³⁰ AG/RES.1226 (XXIV-O/94).

Before proceeding with its declarative part, which can be seen as immediately relevant to this report, it is worth quoting two excerpts from the preamble of that Resolution CJI/RES.I-3/95:

“CONVINCED that the international legal regulations with regard to the effective exercise of representative democracy in the States of the Inter-American System form a specific and special order, and, therefore, albeit complementary, different from others with another purpose, such as those referring to human rights and international peace and security;

UNDERSTANDING that the effective exercise of representative democracy constitutes a legally protected interest or value in the Inter-American System; (...)”¹³¹

Such reference to the effective exercise of democracy as belonging to “a specific and special order” which is “complementary” but “different from others with another purpose” reinforces what was suggested above, under Sections 4 and 5 of Part II of this report. And that the same be labelled as “legally protected” in the hemispheric system, if true then, has now become even more evident and unquestionable.

Resolution CJI/RES.I-3/95 then proceeds to declare:

“That in accordance with¹³² the Charter of the Organization of American States and the resolutions of its organs, the Organization and its member States observe the following principles and norms with regard to the effective exercise of Representative Democracy:

FIRST: Every State in the Inter-American System has the obligation to effectively exercise Representative Democracy in its political organization and System. This obligation exists in relation to the Organization of American States and in order to fulfill it, every Inter-American State has the right to select the ways and means deemed appropriate thereby.

SECOND: The principle of non-intervention and the right of each State in the Inter-American System to elect its political, economic and social System without external intervention, and to organize its structure in the manner most convenient thereto, may not cover a violation of the obligation to effectively exercise Representative Democracy in such System and organization.

THIRD: The Organization of American States is empowered to promote and consolidate Representative Democracy in each and every one of its member States. In particular, through the Ad Hoc Meeting of Ministers of Foreign Affairs or the General Assembly sitting in an extraordinary period of sessions, within the framework of the Resolution on “Representative Democracy” (AG/RES.1080 (XXI-0/91)), the Organization is empowered to determine when one of its member States has violated or failed to meet the obligation to effectively exercise Representative Democracy.

FOURTH: The abrupt or irregular interruption of the institutional democratic political process or the legitimate exercise of power by a government that is democratically elected or the overthrow by force of a democratically established government, constitute non-compliance under the Inter-American System with the obligation to effectively exercise Representative Democracy.

FIFTH: Any State in the Inter-American System that fails to comply with the obligation to effectively exercise Representative Democracy acquires the obligation to re-establish the effective exercise thereof. The Resolutions adopted by the Organization of American States in such case should be designed to ensure the re-establishment thereof.”¹³³

When, three years later, in 1998, the IAJC adopted a further resolution on “Democracy in the Inter-American System” in which it proceeded to reiterate *verbatim* those exact same principles and norms, it prefaced them with the following statement:

¹³¹ Underlining added.

¹³² The words “in compliance with” have been used in some translations of the Spanish original.

¹³³ Underlining added.

“The concept of Representative Democracy has already been converted by the Inter-American System into one of the basic components of Inter-American Public International Law (...)”¹³⁴

The IAJC again quoted, *in extenso*, those principles and norms as first spelled out in CJI/RES.I-3/95 in yet another resolution on “Democracy in the Inter-American System”, that one adopted in 2000¹³⁵, and which on that more recent occasion recalled that said 1995 text had been based “*on all the Inter-American juridical antecedents that have existed prior to that date [i.e. 1995] concerning Democracy (...)*”¹³⁶.

PART IV

General Conclusions

On the basis of his review of the OAS and Inter-American Democratic Charters, and in light of his consideration of various other Hemispheric and universal official documents, of previous studies by the IAJC, as well as of views expressed by government representatives, scholars, academicians, etc, the Rapporteur offers the following general conclusions.

I. The question submitted to the Inter-American Juridical Committee (IAJC) in relation to the Inter-American Democratic Charter and its application is not devoid of any ‘political’ considerations or overtones. Yet, this IAJC’s study has tried to skirt the hard-to-avoid political issues and challenges that naturally underlie parallel promotion and defense of democracy and the attainment of higher levels of development, two central – and so closely interrelated - fundamental aims of the Inter-American System.

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II. The IAJC has extensively and regularly dealt with the issue of democracy in the Americas, and finds it pertinent, in the context of the present analysis, to restate some of its earlier conclusions, namely:

- *“the international legal regulations with regard to the effective exercise of representative democracy in the States of the Inter-American System form a specific and special order, and, therefore, albeit complementary, different from others with another purpose, such as those referring to human rights and international peace and security”;*

- *“the effective exercise of representative democracy constitutes a legally protected interest or value in the Inter-American System; (...)” -*

- *“in accordance with the Charter of the Organization of American States and the resolutions of its organs, the Organization and its member States observe the following principles and norms with regard to the effective exercise of Representative Democracy:*

FIRST: Every State in the Inter-American System has the obligation to effectively exercise Representative Democracy in its political organization and System. This obligation exists in relation to the Organization of American States and in order to fulfill it, every Inter-American State has the right to select the ways and means deemed appropriate thereby.

SECOND: The principle of non-intervention and the right of each State in the Inter-American System to elect its political, economic and social System without external intervention, and to organize its structure in the manner most convenient thereto, may not cover a violation of the obligation to effectively exercise Representative Democracy in such System and organization.

¹³⁴ CJI/RES.5/LII/98, 19 March 1998, para. 1; underlining added.

¹³⁵ CJI/RES.17(LVII-O/00), 19 August, 2000.

¹³⁶ Also worth considering is CJI/RES.32 (LIX-O/01) of 16 August 2001, approving a report on “Observations and Comments of the Inter-American Juridical Committee on the draft Inter-American Democratic Charter”; this latter report was published as CJI/doc.76/01, 15 August 2001.

THIRD: The Organization of American States is empowered to promote and consolidate Representative Democracy in each and every one of its member States. In particular (...), within the framework of the Resolution on "Representative Democracy" (AG/RES.1080 (XXI-0/9)), the Organization is empowered to determine when one of its member States has violated or failed to meet the obligation to effectively exercise Representative Democracy.

FOURTH: The abrupt or irregular interruption of the institutional democratic political process or the legitimate exercise of power by a government that is democratically elected or the overthrow by force of a democratically established government, constitute non-compliance under the Inter-American System with the obligation to effectively exercise Representative Democracy.

*FIFTH: Any State in the Inter-American System that fails to comply with the obligation to effectively exercise Representative Democracy acquires the obligation to re-establish the effective exercise thereof. The Resolutions adopted by the Organization of American States in such case should be designed to ensure the re-establishment thereof.*¹³⁷

*-“The concept of Representative Democracy has already been converted by the Inter-American System into one of the basic components of Inter-American Public International Law (...).”*¹³⁸

*

III. The Inter-American Democratic Charter is inseparable from the OAS Charter, since it is generally agreed

- (a) that the former was conceived as a tool to actualize and interpret the fundamental Charter of the OAS, and
- (b) that in actual fact it constitutes without any possible doubt, the reaffirmation and interpretation, on one hand, and the normative development, on the other, of principles already included the OAS Charter, with regard to the effective exercise of representative democracy.

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IV. The Inter-American Democratic Charter finds its origins in the OAS Charter itself and its later amendments, the *Santiago Commitment to Democracy and the Renewal of the Inter-American System* and Resolution 1080 on *Representative Democracy*. It is rightly considered as the centerpiece of what is now commonly referred to as the “inter-American democracy architecture.

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V. The Inter-American Democratic Charter was expressly adopted *“BEARING IN MIND the progressive development of international law and the advisability of clarifying the provisions set forth in the OAS Charter and related basic instruments on the preservation and defense of democratic institutions, according to established practice”*¹³⁹.

*

VI. Looking at what was then a draft of the future Inter-American Democratic Charter the IAJC approved a report that had concluded that *“The provisions of resolutions of this nature generally have as their purpose the interpretation of treaty provisions, the provision of evidence of the existence of customary norms, the affirmation of general principles of law, or the proclamation of common aspirations, and they may contribute to the progressive development of international law. (...).”*¹⁴⁰

¹³⁷ Taken from Resolution CJI/RES.I-3/95 of 23 March 1995 entitled “Democracy in the Inter-American System”.

¹³⁸ Taken from Resolution CJI/RES.5/LII/98, 19 March 1998, para. 1

¹³⁹ From the 20th para. of its preamble.

¹⁴⁰ See para. 5 of “Observations and Comments of the Inter-American Juridical Committee on the on the draft Inter-American Democratic Charter”, CJI/doc.76/01, 15 August 2001, as approved by CJI/RES.32(LIX-O/01) of 16 August 2001.

*

VII. There is ample support for the proposition that the Inter-American Democratic Charter represents *“an exercise of actualization of positive norms in vigor, in accordance with the principle of the progressive development of International Law”*¹⁴¹.

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VIII. The Rapporteur shares the view that *“there now begins to exist a universal tendency to look at democracy from a juridical angle, as an internationally exigible obligation”* and that *“(t) he Inter-American Democratic Charter constitutes, in that context, a contribution to that worldwide tendency, maybe the most developed and the most advanced (...)”*¹⁴².

*

IX. The Rapporteur shares the view that the Inter-American Democratic Charter was adopted as *“a resolution which at the same time would have the very rank of a binding international instrument, over and above the normative level the hierarchical pyramid of the OAS reserved for it”* and for that purpose was conceived as *“a chapter in the progressive development of our contemporary international law”*¹⁴³.

*

X. The Rapporteur shares the view that through the Inter-American Democratic Charter *“(t) he International Law of the Americas has extended its action into the sphere of the internal political organization, in relation to the essential elements of Representative Democracy, which cannot be transgressed (...)”* and that the Inter-American System has thus contributed *“to the universal consecration of the principle of Representative Democracy as a legally binding obligation worldwide”*¹⁴⁴.

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XI. Whether an instrument that is a political declaration becomes part of the fabric of customary international law is a function of precedent. In the case of the Charter, as was the case with Resolution 1080, precedents are already providing validation.

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XII. In asking the IAJC to focus its analysis on *“the legal aspects of the interdependence between democracy and economic and social development”* the General Assembly posited that such interdependence between democracy and economic and social development is an established fact. Indeed the linkage between democracy on one hand, and economic and social development on the other hand, is very widely and repeatedly proclaimed in a large number of hemispheric documents of various natures, and that such interdependence exists was, and is, therefore taken for granted.

Yet, it is widely acknowledged that the precise nature of the relationship between those concepts remains a matter of controversy; empirical evidence about such relationship remains ambiguous.

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XIII. The articulation between development and democracy, and notably the co-called “priorization” between the two or, in other words, the relative merits of ‘democracy first’ versus ‘development first’ is complex and has been the object of countless academic studies, both theoretical and empirical.

At times arguments are put forward to the effect that democracy leads to, is a pre-condition for, development. At other times, the proposition rather is that, *a contrario*, for democracy to flourish there must be development first. But most often, those lines are blurred and the proposition simply is that the two are inseparable and/or mutually supportive.

¹⁴¹ Amb. Celso Lafer, Brazilian Foreign Minister, as quoted earlier in this Report.

¹⁴² Amb. Manuel Rodríguez Cuadros, Vice Minister and Secretary General for External Relations of Peru, as quoted earlier in this Report.

¹⁴³ Amb. Didier Operti, Minister of Foreign Affairs of Uruguay, as quoted earlier in this Report.

¹⁴⁴ Dr. Mauricio Herdocia Sacasa, Chairman of the IAJC, as quoted earlier in this Report.

All things considered, such a 'debate' can be considered as primarily political in nature, rather than legal.

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XIV. A review of the OAS Charter, the *Inter-American Democratic Charter* and various studies on the subject warrants the following affirmations:

- economic and social development consolidate democracy, but do not 'condition' it;
- democratization does not require as a precondition the achievement within a nation of a certain level of peace and development;
- economic and social development strengthen democracy, but that does not mean that without development democracy cannot take hold;
- the absence or lack of development cannot be a justification to suppress or diminish democracy, and there is little to suggest that development requires an authoritarian regime;
- the absence or lack of development can and does imperil democracy.

*

XV. With regard to the 'legal' aspects of the interdependence between democracy and economic and social development, there is room for some doubt, as initially expressed by several members of the IAJC:

- that such undeniable interdependence necessarily carries consequences of a "legal" nature, or
- that the application of the Inter-American Democratic Charter implies a legal bond between one and the other,
- or that the obligations and duties spelled out in the Inter-American Democratic Charter and the OAS Charter, as they relate to democracy on one hand, and to economic and social development on the other, and as they pertain either to individual members, the members collectively, or the OAS as such, are of the same nature or purview.

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XVI. While it is not possible to define "democracy", taken in the abstract, in any precise or authoritative manner, what it entails in a general fashion can be, and has often been, described, notably by simply using what are generally regarded as its constitutive or essential elements (for example, in Art. 3 of the Inter-American Democratic Charter)

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XVII. It is also well agreed (a) that democracy is not a 'fixed' concept; especially and above all when looked upon through the modalities of its practical application in individual countries, and thus (b) that there is no one model of democratization or democracy suitable to all societies.

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XVIII. Development is generally not included amongst what are considered to be the constitutive or essential elements of democracy. Thus, the Inter-American Democratic Charter, when it lists the "essential elements" of democracy, or of the exercise of democracy, does not include development as such. While it emphatically declares in its Article 1 that "*Democracy is essential for the social, political, and economic development of the peoples of the Americas*", nowhere does it state the reverse proposition that would have development declared "*essential for democracy*". The two are declared "*interdependent and (...) mutually reinforcing*", but only one, i.e. democracy, is said to be essential to the other, i.e. development. And not vice versa.

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XIX. Defining development with any precisions presents the same difficulties as with democracy. "Economic" and "social" development have come to be considered as key components, but not the

only ones, of the newer, and all-encompassing, concept of “integral development”, now used in the OAS Charter and in the Inter-American Democratic Charter, and which the later *Charter* links directly with democracy.

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XX. The Inter-American Democratic Charter clearly establishes: (a) that there is such a thing as a “right to democracy”, (b) that such a right belongs to “the peoples”, and (c) that the governments of the Americas have an “obligation” to promote and defend that right. (Art. 1)

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XXI. A “right to democracy” belonging to the peoples of the Americas and which their government must protect is recognized by what can be referred to as the International Law of the Americas.

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XXII. This emphatic recognition of the existence of a “right to democracy” is at the heart of the entire instrumentation that the OAS and its members have developed over time in order to fulfill the ‘obligation’ to promote and defend democracy.

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XXIII. The notion of a “right to democracy” is sometimes confused in Hemispheric and other international instruments with that of “democracy as a human right”. Democracy, development and human rights, even if closely interdependent, are better treated as three separate concepts. As can be derived from the common use of the expression “the promotion of democracy and human rights”, the two notions, though intimately related and closely interdependent, are better treated as two distinct separate concepts, and are not to be confused. Democracy as a right cannot be entirely subsumed in the sphere of human rights, notwithstanding their readily recognized mutually reinforcing character.

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XXIV. As to a “right to development”, UN-inspired documents are more forthright than Hemispheric ones in their references to the existence or recognition of such a right, and one can speak of a growing international consensus that such a right exists, and that it falls within the general concept of human rights. UN documents of a non-binding legal nature have declared the right to development to be an inalienable human right.

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XXV. But there is no unanimity on the above. For many, it is still premature to discuss development in terms of being it a legal right; there is no basis yet in international law that would establish a right to development that would create obligations on foreign states, or create a cause of action against a foreign state. There is no obligation on states to help developing countries develop, and no obligation to provide transfers of wealth. UN documents, including its Charter, only create a general obligation for states to cooperate.

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XXVI. The same UN documents declare that the human person is the central subject of the development process, that the primary responsibility for the realization of the right to development belongs to States, that States have the right and duty to formulate appropriate national development policies, and that in so doing States have the duty to act individually and collectively, and to co-operate with each other, notions all that are also contained in the OAS Charter and the Inter-American Democratic Charter, especially with reference to ‘integral development’ and the *“common and joint responsibility”* Member States have to cooperate in its achievement.

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XXVII. So, any “legal” obligations attached to ‘integral development’ in the OAS Charter and the Inter-American Democratic Charter would be a factor in determining the legal aspects of the interdependence between democracy and economic and social development.

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XXVIII. With regard to the application of the Inter-American Democratic Charter: it would seem at first glance that the possibility Article 17 gives the government of a member state to “*request assistance from the Secretary General or the Permanent Council for the strengthening and preservation of its democratic system*” if it considers “*that its democratic political institutional process or its legitimate exercise of power is at risk*” was not, originally at least, meant to be triggered by the fact that such a member state came to view its lack of economic and social development came to constitute such a risk unless remedied. That, in spite of the broadly recognized and often proclaimed interdependence between democracy and economic and social development. Article 17 was not, and is not, meant to offer the remedy to such a situation, and the answer to such a situation has to, and can be, be found in other instruments of the OAS, either already in existence, like the OAS Charter itself, or to be created, like a “Social Charter” that would come to parallel the Inter-American Democratic Charter?

*

XXIX. With regard to the application of the Inter-American Democratic Charter: it would seem at first glance that the possibility Article 18 gives the Secretary General or the Permanent Council, with prior consent of the government concerned, to take action to “*analyze the situation*” arising in a member state “*that may affect the development of its democratic political institutional process or the legitimate exercise of power*”, eventually leading to the adoption by the Permanent Council, of “*decisions for the preservation of the democratic system and its strengthening*”, was not, originally at least, meant to be triggered by the fact that Secretary General or the Permanent Council came to view that lack of economic and social development in the country concerned constituted such a risk to democracy, unless remedied. That, in spite of the broadly recognized and often proclaimed interdependence between democracy and economic and social development. Article 18 was not, and is not, meant to offer the remedy to such a situation, and the answer to such a situation has to, and can be, be found in other instruments of the OAS, either already in existence, like the OAS Charter itself, or to be created, like a “Social Charter” that would come to parallel the Inter-American Democratic Charter?

*

XXX. With regard to the application of the Inter-American Democratic Charter: Articles 17 and 18 can be seen as of an “immediately preventive” nature aimed at avoiding the kind of situation envisaged under Articles 19 and 20, i.e. an actual ‘breach of democracy’ which automatically becomes “*an insurmountable obstacle*” to participation and triggers a possible “*collective assessment*” and remedial action.

*

XXXI. The above interpretations of Articles 17-20 of the Inter-American Democratic Charter cannot in any way detract from the otherwise unequivocal duty and obligation, based on the OAS Charter and its basic principles as reaffirmed in countless other Hemispheric Declarations and Resolutions, that befall the Secretary General, the OAS and its political bodies, and member-states to take action to promote, defend and protect democracy, including where lack of development runs the risk of adversely affecting said democracy. That in “*in keeping with the provisions of Chapter IV of the Inter-American Democratic Charter (Art. 3, 2005 Declaration of Florida; Delivering the Benefits of Democracy)*”.

*

XXXII. The OAS’s ‘mission’ to defend democracy is clearly accompanied by that of preventing and anticipating the ‘causes’ that affect democracy, lack of development being widely acknowledged as one of such causes.

*

XXXIII. If Hemispheric documents repeatedly declare development to be “*a primary responsibility of each country*”, they also establish no less emphatically that “*Inter-American cooperation for integral development is the common and joint responsibility of the Member States*”.

*

XXXIV. The one obligation which all OAS members undoubtedly do have with regard to development, is that of collaborating with one another to promote and achieve development; the promotion, by

cooperative action, of the economic, social, and cultural development of its members is indeed one of the essential purposes of the OAS; that in turns translates into a series of undertakings, most of which are spelled out in Chapter VII of the OAS Charter, devoted to “Integral Development”.

*

XXXV. When looked upon from the specific angle of the possible ‘legal’ aspects of the universally proclaimed interdependence between “democracy” and “economic and social development”, there would appear to be very fundamental differences between the two:

- the countries of the Hemisphere, through their *Democratic Charter* as it reflects their OAS Charter, have endorsed and imposed upon themselves individually an ‘obligation of democracy’; an obligation the breach of which carries immediate political and legal consequences; consequences for the individual country concerned, as well as consequences for the Organization of American States as such and its members collectively;
- but there is nowhere to be found any corresponding ‘obligation of development’; nowhere does it say that lack or absence of development in a given country would become “*an insurmountable obstacle*” to that country taking part in Hemispheric Summits or in OAS sessions and bodies; that would be nonsense; OAS members are not obliged – and neither are any other countries - to be developed; and they therefore quite obviously could not be ‘sanctioned’ if they were not.

*

XXXVI. In other words, (a) quite obviously OAS members have a clear (and, many would say, not only ‘binding’, but accepted by all as such) obligation to democracy if they are to be part of the OAS; (b) yet, and no less obviously, development at any level is no such condition for membership, and the lack thereof is no bar to such membership.

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XXXVII. The corollary to what precedes would seem to be that whereas (i) a member can be “sanctioned” if it drifts away from democracy, and (ii) there are well-defined ‘triggers’ that can be resorted to in order to impede or stop such drifting, (iii) no less obviously there hardly could be any “binding” obligation to be developed, and (iv) the remedies to the danger to democracy that lack of appropriate levels of development can come to represent are far less ‘institutionalized’.

*

XXXVIII. It would therefore seem that whatever obligations states individually or groups of states collectively have to either promote, and cooperate for, development, or to seek remedies to the lack of it and its resulting threat to democracy, the juridical nature of such ‘obligations’ could probably not have the same purview or legal consequences as those linked to the “obligation of democracy”.

*

XXXIX. The OAS Charter tempers the ‘obligation’ of member-states to “*contribute to inter-American cooperation for integral development*” by adding that this is to be done “*in accordance with their resources and capabilities*” and “*in conformity with their laws*”; while quite clearly states can be sanctioned under the OAS Charter and the Inter-American Democratic Charter for not being democratic, it is indeed impossible to conclude that under those same instruments as they presently stand a state could incur sanctions for having failed to achieve development for itself, and/or to cooperate to achieve development for itself, and/or to cooperate with others to promote development, even under circumstances where lack of action could be determined to imperil democracy.

*

XL. It would seem that what the IAJC is in fact being asked is whether there are legal answers that would correct or improve upon that situation. By expressing in its 2005 Florida Declaration its encouragement to the negotiation of a “*Social Charter of the Americas*” that would “*strengthen existing OAS instruments on democracy, integral development, and the fight against poverty*”, the OAS

General Assembly would appear to have established a link between a future Social Charter and the existing Inter-American Democratic Charter.]

*

XLII. The Rapporteur considers that Hemispheric documents as they now exist, and more specifically the OAS Charter and the Inter-American Democratic Charter, already establish in their proper and specific perspectives and legal extents the rights and obligations of its members, as well as the duties of the OAS itself and of its bodies, with regard to democracy on one hand, social and economic development on the other, and their interdependence.

*

XLII. The Rapporteur, having analyzed the legal aspects of the interdependence between democracy on one hand, and social and economic development on the other, did not come to the conclusion that those legal aspects, such as they exist, necessarily call for any additional formal instrumentation dealing with the rights and obligations attached thereto.

*

XLIII. Yet, given what appears to be a political will on the part of the OAS member-states to proceed with the negotiation and eventual approbation, presumably by way of a declaration or a resolution, of a "Social Charter of the Americas", the Rapporteur considers that such an instrument could certainly contribute to a better understanding, interpretation, and effective application of such existing rights and obligations, including as they may have evolved.

*

XLIV. Such a "*Social Charter of the Americas*", would naturally need to find its foundation in the OAS Charter and take into account the Inter-American Democratic Charter. The rights and obligations it could spell out would therefore need to take into consideration the basic differences therein in the generally accepted legal parameters attached to the interrelated notions of "democracy" on one hand, and "economic and social development" on the other, especially with regard to the respective rights, duties and obligations that can be attributed to the peoples of the Americas, OAS member-states and their governments, and the OAS itself.

* * *

Annex 1

UNITED NATIONS CHARTER¹⁴⁵

Democracy

Text:

- **Opening words:** *We the Peoples of the United Nations Determined*
 - to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
 - to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
 - to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
 - to promote social progress and better standards of life in larger freedom (...)

Comment: → The UN Charter makes no direct mention of "democracy". Nor, writes Steven Wheatley in "Democracy in International law: a European Perspective", is there "*a breach of the obligations of*

¹⁴⁵ <http://www.un.org/aboutun/Charter/>

*membership by those states who are not democratic*¹⁴⁶. It has been argued that “cold war politics” at the time of the drafting of the *Charter* is what precluded the express inclusion of the term “democracy” in it.¹⁴⁷

In a commentary¹⁴⁸ on democracy and the UN Charter, the Office of the United Nations High Commissioner for Human Rights, acknowledging such direct absence therein of any mention of democracy, suggests that “however, with the opening words of that document ‘We the Peoples of the United Nations’, the founders invoked the most fundamental principle of democracy, rooting the sovereign authority of the member States, and thus the legitimacy of the Organization which they were to compose, in the will of their peoples”. It adds that “their commitment to democracy was further reflected in the stated ‘Purposes’ of the United Nations”, which include [as shall be seen below] respect for the principle of equal rights and self-determination of peoples, and the promotion and encouragement of respect for human rights and fundamental freedoms for all without distinction.¹⁴⁹

The Office of the UNHCR then rightly points out that the Universal Declaration of Human Rights, adopted by the General Assembly in 1948, “elaborated on this original commitment to democracy by proclaiming that ‘the will of the people shall be the basis of the authority of government’ and guaranteeing to everyone the rights that are essential for effective political participation”. Furthermore, the International Covenant on Civil and Political Rights, adopted by the UN General Assembly in 1966, “conferred binding legal status on the right of individuals to participate in the processes that constitute the conduct of public affairs, and further strengthened the protection accorded to participatory rights and freedoms”.

In the same general commentary, the Office of the UNHCR refers to the fact that nearly every year the UN General Assembly has adopted at least one resolution dealing with some aspect of democracy. As one example,¹⁵⁰ refers to Resolution A/RES/50/133 *Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies* which affirmed that “*democracy is one of the principles enshrined in the UN Charter*”¹⁵¹.

¹⁴⁶ In *International and Comparative Law Quarterly* (ICQL), vol. 51, April 2002, pp 225-247, at p. 227.

¹⁴⁷ For example, Rich, Roland, *Bringing democracy into international law*, *Journal of Democracy*, 12 (13), 20–34. Rich also mentions that the Covenant of the League of Nations was similarly silent on “democracy”, and that “none of the standard textbooks on international law includes chapters on democracy”. He adds that “the International Court of Justice has not based any of its decisions on the legal application of democratic principles”. Yet, he points out that the Vienna Declaration and Programme of Action adopted by the 1993 World Conference on Human Rights asserted in paragraph 8 of Section I, “*Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing . . . The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world*”, concluding that “though a nonbinding instrument, this Declaration represents a clear indication of the direction of international opinion and the development of international law”. Similarly, the Office of the UNHCR comments: “*While the Charter, the Universal Declaration and the International Covenant on Civil and Political Rights provided a strong normative foundation for a United Nations role in promoting democracy, the onset of the cold war effectively stalled United Nations support for democratization. It was not until the end of the cold war that the drive for democratization gained momentum, bringing with it renewed prospects for pursuing neglected elements of the Charter’s original purposes. The pursuit of democracy restarted both within and outside the United Nations system in a series of complementary and mutually reinforcing processes*”. (See footnote 11 for the reference).

¹⁴⁸ See <http://www.ohchr.org/english/issues/democracy/>

¹⁴⁹ For very similar language, see the UN Secretary General “Supplement to Reports A/50/332 and A/51/512 on Democratization” (17 December 1996) para. 28, at <http://www.library.yale.edu/un/un3d3.htm>

¹⁵⁰ *Op. cit.*, at p. 227, footnote 10.

¹⁵¹ A/RES/50/133 was adopted by UNGA at its 96th plenary meeting, on 20 December 1995. The 3rd para. of its preamble reads: “*Considering the major changes taking place on the international scene and the aspirations of all the peoples for an international order based on the principles enshrined in the Charter of the United Nations, including the promotion and encouragement of respect for human rights and fundamental freedoms for all and other important principles, such as respect for the equal rights and self-determination of peoples, peace, democracy, justice, equality, the rule of law, pluralism, development, better standards of living and solidarity, (...)*”. Full text at <http://www.un.org/documents/ga/res/50/a50r133.htm>

The UNHCR commentary further points out that the Commission “has also sought to enhance its relevance in the promotion of democracy and has committed itself to further exploring the interdependence between democracy and human rights”. For example, in its Resolution 2001/36 *Strengthening of popular participation, equity, social justice and non-discrimination as essential foundations of democracy*¹⁵², the UNHCR looked at “democratic development in the broader context of sustainable human development and realization of all human rights, including the right to development” and examined “the interrelationship between poverty and democracy”.

Text:

- Art 1.2 ***The Purposes of the United Nations are (...)***

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

Comment: → It might be argued that such a mention of “self-determination” did not relate to the concept of “democracy” as understood today.¹⁵³ But then, there is also Art. 73. b, immediately below. Wheatley, who rejects the claim that international law should recognize a universal obligation for states to introduce and maintain democratic governments, does acknowledge that Art 1.2 above, and Art. 73.b, below, evidence a “nascent legal principle of self-determination”; but he then adds that “*the principle of self-determination, as originally conceived in the [UN] Charter, was not intended to be a threat to the principle of sovereignty*”.¹⁵⁴

Text:

- Art 73.b: ***Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government (...) accept (...)***

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

Comment: → Taken from Chapter XI, *Declaration regarding non-self-governing territories*, this does lend itself to the interpretation that to the extent that the “development of (...) free political institutions could be equated to “democracy”, that latter concept was indeed considered to be a universal goal.¹⁵⁵

Text:

- Art. 1.3 ***The Purposes of the United Nations are (...)***

To achieve international co-operation (...) in promoting and encouraging respect for human rights and for fundamental freedoms (...)¹⁵⁶

¹⁵² Adopted by a roll-call vote of 28 votes to 4, with 21 abstentions, 71st meeting, on 23 April 2001; full text at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2001.36.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2001.36.En?Opendocument)

¹⁵³ See also Article 55, from Chapter IX on *International economic and social co-operation* for a reference to the principle of equal rights and self-determination of peoples.

¹⁵⁴ *Op. cit.*, p. 228. In his view, the later recognition of a “right to self-determination”, for ex. in Art. 1 of the *International Covenant on Civil and Political Rights* (1966) “ (...) was essential to the development of an internal aspect of the right to self-determination”, and represents “both a Convention obligation and (...) general international law”: *op. cit.*, p. 229.

¹⁵⁵ The same language can be found in Art. 76 of Chapter XII on the *International trusteeship system* established under the Charter.

¹⁵⁶ See also Article 55 of the UN Charter for a reiteration of the duty of the UN to “promote (...) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (...)”.

Comment: → Based on later developments, it might be argued that “democracy” could be considered as impliedly included in such language.

Social and Economic Development

Text:

- Preamble, 4th para.: *We the Peoples of the United Nations determined (...) to promote social progress and better standards of life in larger freedom, ...*

Text:

- Preamble, 8th para.: *We the Peoples of the United Nations determined (...) to employ international machinery for the promotion of the economic and social advancement of all peoples, ...*

Text:

- Art 1.3: *The Purposes of the United Nations are (...)*

To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, (...)

Text:

- Art. 55: (...) *the United Nations shall promote:*

- a. higher standards of living, full employment, and conditions of economic and social progress and development;*
- b. solutions of international economic, social, health, and related problems; (...)*

Text:

- Art 73.b: *Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government (...) accept (...)*

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses; (...)*
- d. to promote constructive measures of development, (...) with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; (...)*¹⁵⁷

Social and Economic Development Interrelated

Text:

- Art 1.3: *The Purposes of the United Nations are (...) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;*¹⁵⁸

¹⁵⁷ See footnote 5, above.

¹⁵⁸ Article 13.1 of the UN Charter stipulates that the General Assembly shall initiate studies and make recommendations for those same purposes.

Comment: → Again, and in spite of the absence any specific mention of “democracy” in that article, it does directly juxtapose –though without actually linking or interrelating them– concepts of socio-economic problems in general and of basic rights and freedoms, amongst which one could possibly include democracy.¹⁵⁹

Text:

• Art 55: ***With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:***

- a. ***higher standards of living, full employment, and conditions of economic and social progress and development;***
- b. ***solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and***
- c. ***universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.***

Comment: → Art. 55 heads the Charter’s Chapter IX on *International economic and social co-operation*. Again here we have juxtaposition which mirrors the language found in Art. 1.3 on the UN “purpose”. See the comment immediately above.

Text:

- Art 62.1: ***The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters (...).***
- 2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.***

Comment: → Art. 62 and 68, below, are part of an entire Chapter in the Charter (Ch. 10) devoted to the Economic and Social Council it sets up. Again, the language therein mirrors the language found in Art. 1.3 on the UN “purpose”. See the comment immediately above.

Text:

- Art 68: ***The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.***

¹⁵⁹ In that same light, one can note that in the 8th paragraph of its preamble, UNHCR Resolution 2001/36 *Strengthening of popular participation, equity, social justice and non-discrimination as essential foundations of democracy* (23 April 2001) includes, amongst the principles enshrined in the *Charter of the United Nations*, “promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity”. For the full text of that Resolution: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2001.36.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2001.36.En?Opendocument)

CHARTER OF THE ORGANIZATION OF AMERICAN STATES¹⁶⁰

Democracy

Text:

• **Art 2:** *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: (...):*

b) To promote and consolidate representative democracy, with due respect for the principle of non-intervention;

Comment: → The reference to “the principles on which it is founded” as a source of the “essential purpose” that is the promotion and consolidation of representative democracy, is noteworthy. That same language was repeated in the very first paragraph of the preamble to the Inter-American Democratic Charter. Article 2.b was added to the *OAS Charter* in 1995.

Text:

• Art. 3: ***The American States reaffirm the following principles: (...)***

d) 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; (...)

Comment: → Taken together, those articles 2.b and 3.d have led one observer to conclude that the OAS Charter thus “consecrates the commitment of the American States to the exercise of representative democracy, and the intention, if not the obligation, of the Organization to work to insure such exercise”.¹⁶¹

Text:

• Art. 9: ***A Member of the Organization whose democratically constituted government has been overthrown by force may be suspended from the exercise of the right to participate in the sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization and the Specialized Conferences as well as in the commissions, working groups and any other bodies established. (...):***

a) The power to suspend shall be exercised only when such diplomatic initiatives undertaken by the Organization for the purpose of promoting the restoration of representative democracy in the affected Member State have been unsuccessful; (...),

d) The suspension notwithstanding, the Organization shall endeavor to undertake additional diplomatic initiatives to contribute to the re-establishment of representative democracy in the affected Member State.

¹⁶⁰ Full text at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/consejo>. As amended by the Protocol of Amendment to the Charter of the Organization of American States, Protocol of Buenos Aires, signed on February 27, 1967, at the Third Special Inter-American Conference, by the Protocol of Amendment to the Charter of the Organization of American States, Protocol of Cartagena of Indias, adopted on December 5, 1985, at the Fourteenth Special Session of the General Assembly, by the Protocol of Amendment to the Charter of the Organization of American States, Protocol of Washington, approved on December 14, 1992, at the Sixteenth Special Session of the General Assembly, and by the Protocol of Amendment to the Charter of the Organization of American States, Protocol of Managua, adopted on June 10, 1993, at the Nineteenth Special Session of the General Assembly.

¹⁶¹ ARRIGHI, Jean-Michel, *op.cit.*

Comment: → This simply confirms that “representative democracy” is the norm expected of members; sanctions can flow from interference with it, and its restoration and re-establishment are to be pursued in cases of interruption.

This article 9 was added to the OAS Charter by the Protocol of Washington, adopted in 1992, *i.e.* in the year immediately following the Santiago General Assembly where the *Santiago Commitment to Democracy* and Resolution 1080¹⁶² had been adopted. The Protocol of Washington entered into force in 1997.

Social and Economic Development

Text:

• Art 2: *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: (...)*

f) To promote, by cooperative action, their economic, social, and cultural development;

Comment: → Thus, the Charter establishes the “essential purpose” of promoting “development”, taken in a holistic way, right along that of promoting and consolidating representative democracy.¹⁶³

Text:

• Art 17: *Each State has the right to develop its cultural, political, and economic life freely and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality.*

Comment: → While this Article deals mainly with the “freedom” with which development is to be pursued as a “right”, that this must be achieved within the respect for “the rights of the individual” is worth noting.¹⁶⁴

Text:

• Art. 30: *The Member States, inspired by the principles of inter-American solidarity and cooperation, pledge themselves to a united effort to ensure international social justice in their relations and integral development for their peoples, as conditions essential to peace and security. Integral development encompasses the economic, social, educational, cultural, scientific, and technological fields through which the goals that each country sets for accomplishing it should be achieved.*

Comment: → That is the introductory Article of the long chapter¹⁶⁵ devoted to “Integral Development” in the Charter. As can be seen, its definition of “integral development” is very wide-ranging.

Text:

• Art. 31: *Inter-American cooperation for integral development is the common and joint responsibility of the Member States, within the framework of the democratic principles and the institutions of the inter-American system. It should include the economic, social, educational, cultural, scientific, and technological fields, support the achievement of national objectives of the Member States, and respect the priorities established by each country in its development plans, without political ties or conditions.*

¹⁶² On *Representative Democracy*.

¹⁶³ See Art. 2 (b).

¹⁶⁴ The “right to choose, without external interference, its political, economic, and social system” is also enshrined as a “principle” by the Charter: See Art. 3 (e).

¹⁶⁵ Art. 20 to 52.

Comment: → Besides a repeat of what “integrated development” encompasses, what is interesting here is the notion that Member States have a “common and joint responsibility” to cooperate in its achievement.

As for the reference to “within the framework of the democratic principles ... of the Inter-American System”, one might ask whether that is meant to say that such common and joint responsibility can only be fully exercised if undertaken by States placing themselves within the ambit of such “democratic principles” as are enunciated by the Charter.¹⁶⁶

Text:

- Art. 33: ***Development is a primary responsibility of each country and should constitute an integral and continuous process for the establishment of a more just economic and social order that will make possible and contribute to the fulfillment of the individual.***

Comment: → While the Charter often refers to development as a common and shared responsibility of the Member States¹⁶⁷, this Article, interestingly, refers to it as “a primary responsibility of each country”.

Text:

- Art. 39: ***The Member States, recognizing the close interdependence between foreign trade and economic and social development, should make individual and united efforts to bring about the following:***

- a) ***Favorable conditions of access to world markets for the products of the developing countries of the region, particularly through the reduction or elimination, by importing countries, of tariff and nontariff barriers that affect the exports of the Member States of the Organization, except when such barriers are applied in order to diversify the economic structure, to speed up the development of the less developed Member States, and intensify their process of economic integration, or when they are related to national security or to the needs of economic balance; (...)***

Comment: → The principle that economic and social development and foreign trade are closely linked is a long-recognized one. It raises the interesting question as to whether, to the extent that there is or may be a direct interrelationship between democracy and development, one can also bring in “foreign trade” conducted in fairness as a factor with a role to play *vis-à-vis* democracy.

Text:

- Art. 45: ***The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms:***

- a) ***All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security; b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working; c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws; d) Fair and efficient systems and procedures for consultation and collaboration among the sectors of production, with due regard for safeguarding the interests of the entire society; e) The operation of systems of public administration, banking and credit, enterprise, and distribution and sales, in such a way, in harmony with the private sector, as to meet the requirements and interests of the community; f) The incorporation and increasing***

¹⁶⁶ See the comments below, at Art 3 (d) under the heading *Democracy and social development interrelated*.

¹⁶⁷ See for ex. Arts. 2 (f), 3 (f) and 31. And also Arts. 94 and 111.

participation of the marginal sectors of the population, in both rural and urban areas, in the economic, social, civic, cultural, and political life of the nation, in order to achieve the full integration of the national community, acceleration of the process of social mobility, and the consolidation of the democratic system. The encouragement of all efforts of popular promotion and cooperation that have as their purpose the development and progress of the community; g) Recognition of the importance of the contribution of organizations such as labor unions, cooperatives, and cultural, professional, business, neighborhood, and community associations to the life of the society and to the development process; h) Development of an efficient social security policy; and i) Adequate provision for all persons to have due legal aid in order to secure their rights.

Comment: → One could argue there is, here, an embryo of some form of a “social Charter”, though in some limited aspects only.¹⁶⁸

Text:

• Art. 94: *The purpose of the Inter-American Council for Integral Development is to promote cooperation among the American States for the purpose of achieving integral development and, in particular, helping to eliminate extreme poverty, in accordance with the standards of the Charter, especially those set forth in Chapter VII with respect to the economic, social, educational, cultural, scientific, and technological fields.*

Comment: → Again we see here, where the purposes of the Inter-American Council for Integral Development are enunciated, a clear reference to “cooperation” as essential for the development of Member States.¹⁶⁹

Text:

• Art. 111: *The General Secretariat shall promote economic, social, juridical, educational, scientific, and cultural relations among all the Member States of the Organization, with special emphasis on cooperation for the elimination of extreme poverty, in keeping with the actions and policies decided upon by the General Assembly and with the pertinent decisions of the Councils.*

Comment: → Yet another reference on “cooperation” as a necessary instrument to achieve development.¹⁷⁰

Democracy and Social and Democratic Development Interrelated

Text:

• Preamble, 3rd para.: ***Convinced that representative democracy is an indispensable condition for the stability, peace and development of the region;***¹⁷¹

Comment: → “Democracy” is posited here as a “condition” of development. Most would want to argue that this formulation should be interpreted as meaning that the two concepts naturally go hand-in-hand, as opposed to putting forward a “development first” theory (*i.e.* that development must precede democracy, or even that only ‘developed’ countries can accede to ‘representative democracy’). That same language was repeated in the very first paragraph of the preamble to the Inter-American Democratic Charter.

¹⁶⁸ Para. (f) of this Art. 45 has also been incorporated under the next development on “Democracy & Social and Democratic Development Interrelated”.

¹⁶⁹ That “Economic cooperation is essential to the common welfare and prosperity of the peoples of the continent” is recognized in Art. 3 (k) of the *Charter* as one of the principles of the OAS.

¹⁷⁰ See above footnote.

¹⁷¹ As will be seen later, one finds the same language in the Declaration of Principles adopted at the First Summit of the Americas (Miami, 1994), as well as in the preamble to the Inter-American Democratic Charter (Lima, 2001).

Text:

- Preamble, 4th para. ***Confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man;***

Comment: → Again, the inference seems to be that the natural ‘environment’ for “individual liberty”, “social justice” and “essential rights” to be consolidated is that of “democratic institutions”.

- Art. 2: ***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: (...)***

g) To eradicate extreme poverty, which constitutes an obstacle to the full democratic development of the peoples of the hemisphere; (...)

Comment: → Without positing that democracy is not possible as long as there is a serious lack of development, this nevertheless infers that “full” democracy is impeded by “extreme poverty”¹⁷².

Text:

- Art. 3: ***The American States reaffirm the following principles: (...)***

d) 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; (...)

Comment: → This Art. 3.d already quoted above is repeated here because democracy is presented therein as a requirement for the achievement of all the “high aims” set out in the *Charter*, amongst which one finds development. It can also be argued that since, as seen before¹⁷³, development requires solidarity, democracy, by being a requirement for solidarity, is therefore also seen as a prerequisite for development.¹⁷⁴

Unlike Article 2.b, which was added to the Charter in 1995, Article 3.d supra was part of the original 1948 text. As has been underlined¹⁷⁵, that language with regard to democracy as found in Article 3.d was a “first” in comparative international law.

Text:

- Art. 3: ***The American States reaffirm the following principles: ...***

f) The elimination of extreme poverty is an essential part of the promotion and consolidation of representative democracy and is the common and shared responsibility of the American States; (...)

Comment: → That follows directly from the “basic principle” enunciated in Art. 2 (g). But it goes further by making the elimination of poverty an “essential part” of the promotion and consolidation of democracy, thereby directly linking the two and making them inseparable.

Text:

- Art 34: ***The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. (...)***

¹⁷² See also the comment under Preamble, 3rd para., above.

¹⁷³ For ex., articles 2 (f), 30, 94, 111

¹⁷⁴ On this subject, see Art 31 of the Charter and the comments made thereon, above, under the heading Social and Economic Development.

¹⁷⁵ ARRIGHI, *op. cit.*, then goes on to mention that the 5th Consultative Meeting of Foreign Ministers of the OAS held in Santiago, Chile in 1995, adopted a Declaration proclaiming that “*the existence of anti-democratic regimes constitutes a violation of the principles on which the OAS is established*”. (translation).

Comment: → Though there is no direct mention of “democracy” as such here, the reference to “full participation in decisions (...)” can certainly be interpreted as establishing yet another link between development and democracy.

Text:

• Art. 45: *The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: (...)*

f) The incorporation and increasing participation of the marginal sectors of the population, in both rural and urban areas, in the economic, social, civic, cultural, and political life of the nation, in order to achieve the full integration of the national community, acceleration of the process of social mobility, and the consolidation of the democratic system. (...)

Comment: → Again, coming as it does in the long Chapter in the *Charter* devoted to “Integral Development”, we find a clear reference to the linkage between economic development and the consolidation of the democratic system.

Text:

• Art. 47: *The Member States will give primary importance within their development plans to the encouragement of education, science, technology, and culture, oriented toward the overall improvement of the individual, and as a foundation for democracy, social justice, and progress.*

Comment: → Same as above, under art. 45.

Annex 3

ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (PROTOCOL OF SAN SALVADOR)¹⁷⁶

(Adopted at the 18th Regular Session of the General Assembly,
San Salvador, El Salvador, November 17, 1988)

Democracy

Text:

• Art. 5: *The State Parties may establish restrictions and limitations on the enjoyment and exercise of the rights established herein by means of laws promulgated for the purpose of preserving the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights.*¹⁷⁷

• Art. 8, 2nd para.: *The exercise of the rights set forth above may be subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others.*¹⁷⁸

¹⁷⁶ Full text at <http://www.cidh.org/Basicos/basic5.htm>

¹⁷⁷ Art. 5 deals with “Scope of Restrictions and Limitations” in relation to rights in general dealt with by the Protocol

¹⁷⁸ Art. 8 deals with Trade Unions Rights.

Comment: → Those two articles of the Protocol are to be read in conjunction with, in particular, the 5th and 6th paragraphs of the Preamble¹⁷⁹. Dealing with possible limitations or restrictions on rights, they contemplate the possibility of such limitations only if applied within a democratic society, thus seemingly attributing to democracy an overriding prominence and the unique capacity to offer the guarantees necessary for the preservation of such rights.

Social and Economic Development

Text:

- *Nil*

Democracy and Social and Democratic Development Interrelated

Text:

- Preamble, 1st para.: ***Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;***

Comment: → It is interesting to note how “democratic institutions” are considered to constitute the general framework within which the system referred to (i.e. “personal liberty and social justice based on respect for the essential rights of man”) is to be consolidated.

Text:

- Preamble, 3rd para.: ***Considering the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favour of the realization of others can never be justified;***

Comment:→ To the extent that the possibility for one to fully exercise his/her “civil and political rights” can be said to be one of the basic constitutive elements of ‘democracy’, this affirmation of the two sets of rights dealt with above constituting an “indivisible whole” is worth underlining. And so is the proclamation that as a result of that ‘indivisibility’ the achievement on one sets of rights cannot justify violating the other.

Text:

- Preamble, 5th para.: ***Recalling that, in accordance with the Universal Declaration of Human Rights and the American Convention on Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights;***

Comment: → An interesting example of a distinction being drawn between “economic, social and cultural rights” on one hand, and “civil and political rights” on the other. A distinction already made in the 3rd paragraph of the preamble, quoted above.

¹⁷⁹ See below.

Text:

• **Preamble, 6th para.:** *Bearing in mind that, although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic representative form of government as well as the right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources;*

Comment: → This time, economic and social rights are ‘subordinated’ not only to respect for “democratic representative form of government” but also to “the right of its peoples to development”, a rather rare mention of that notion of a “right to development” in a Hemispheric document.

Text:

• **Art. 1:** *The States Parties to this Additional Protocol to the American Convention on Human Rights undertake to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol.*

Comment: → This article, which does not directly fall within the heading “Democracy and Social and Democratic Development Interrelated”, falls in a category by itself. Under the title “Obligation to adopt measures”, it enounces what one can certainly be warranted to refer to as ‘generally recognized principles’ throughout many hemispheric documents:

- when it comes to the observance (one could also say “the attainment”) of rights, countries of the hemisphere are expected to take, among others, “economic* measures”;
- they are expected to do so in part through “cooperation”;
- the “extent” of their “internal resources” as well as their “degree of development» are recognized as factors in determining their internal as well as international cooperation;
- such “full observance” may require time, and posits “internal legislation”.

Annex 4

**THE SANTIAGO COMMITMENT TO DEMOCRACY
AND THE RENEWAL OF THE INTER-AMERICAN SYSTEM¹⁸⁰**
(Adopted at the 21st Regular Session of the General Assembly
Santiago, Chile, June 4, 1991)

REPRESENTATIVE DEMOCRACY¹⁸¹

(Adopted at the 21st Regular Session of the General Assembly
Santiago, Chile, June 5, 1991)

Democracy

¹⁸⁰ OEA/Ser.P AG/RES. (XXI-O/91). It will be referred to as “Commitment”. Full text at http://www.upd.oas.org/lab/Documents/general_assembly/ag_res_santiago_xxi_O_91_eng.pdf

¹⁸¹ OEA/Ser.P AG/RES. 1080 (XXI-O/91), most commonly called “Resolution 1080”. In the present review, it will be referred to as “Resol. 1080”. Full text at: http://www.upd.oas.org/lab/Documents/general_assembly/ag_res_1080_xxi_O_91_eng.pdf

Text:

- **Commitment, preamble, 3rd para.:** *Bearing, in mind that the changes towards a more open and democratic international system are not completely established, and that therefore, cooperation must be encouraged and strengthened so that those favorable trends may continue (...)*

Comment: → Such a relatively “early” (1991) call within the Hemisphere for a more a more democratic “international system”, or, as in the following (4th) paragraph, a “just and democratic order”, is noteworthy.

Text:

- **Commitment, preamble, 4th para.:** ***Recognizing the need to advance decisively towards a just and democratic order based on full respect for international law, the peaceful settlement of disputes, solidarity, and the revitalization of multilateral diplomacy and of international organizations (...)***

- **Commitment, preamble, 5th para.:** ***Mindful that representative democracy is the form of government of the region and that its effective exercise, consolidation, and improvement are shared priorities (...)***

Comment: → This is a remarkably strong and unequivocal statement: “democracy is THE form of government ...”

Text:

- **Commitment, 1st resol. para.:** ***DECLARE Their inescapable commitment to the defense and promotion of representative democracy and human rights in the region, within the framework of respect for the principles of self-determination and non-intervention;***

Comment: Some would argue that this linking together of democracy and human rights in fact interrelates democracy and development, especially in light of later pronouncements. For example, the Millennium Declaration¹⁸², adopted as a Resolution by the United Nations General Assembly in 2000, mentions the “right to development”. So did, later, the *Monterrey Consensus*.¹⁸³

Text:

- **Commitment, 3rd resol. para.:** ***DECLARE (...) Their determination to continue to prepare and develop a relevant agenda for the Organization, in order to respond appropriately to the new challenges and demands in the world and in the region, and their decision to assign special priority on that agenda, during the present decade, to the following actions: (...)***

b. Strengthening representative democracy as an expression of the legitimate and free manifestation of the will of the people, always respecting the sovereignty and independence of member states; (...)

Text:

- **Commitment, 3rd resol. para.:** ***DECLARE (...) Their determination to continue to prepare and develop a relevant agenda for the Organization, in order to respond appropriately to the new challenges and demands in the world and in the region, and their decision to assign special priority on that agenda, during the present decade, to the following actions: (...)***

i. Increasing technical cooperation and encouraging a transfer of technology to enhance the capabilities for economic growth of the countries in the region.

Text:

- **Commitment, 5th resol. para.:** ***DECLARE (...) Their decision to adopt efficacious, timely, and expeditious procedures to ensure the promotion and defense of representative democracy, in keeping with the Charter of the Organization of American States.***

¹⁸² See below, in the Annex devoted to that Declaration, notably its paras 11 and 24.

¹⁸³ See below, in the Annex devoted to that Consensus, notably its para. 11.

Text:

- Resol. 1080, preamble, 2nd para.: ***WHEREAS (...) Under the provisions of the Charter, one of the basic purposes of the OAS is to promote and consolidate representative democracy, with due respect for the principle of non-intervention (...)***

Text:

- Resol. 1080, preamble, 2nd para.: ***WHEREAS (...) In view of the widespread existence of democratic governments in the Hemisphere, the principle, enshrined in the Charter, that the solidarity of the American states and the high aims which it pursues require the political organization of those states to be based on effective exercise of representative democracy must be made operative. (...)***

Comment: → We have here an interesting proposal to the effect that operative representative democracy is an important factor if 'solidarity' is to be achieved.

Text:

- Resol. 1080. ***The General Assembly RESOLVES 1. To instruct the Secretary General to call for the immediate convocation of a meeting of the Permanent Council in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization's member states, in order, within the framework of the Charter, to examine the situation, decide on and convene and ad hoc meeting of the Ministers of Foreign Affairs, or a special session of the General Assembly, all of which must take place within a ten-day period. 2. To state that the purpose of the ad hoc meeting of Ministers of Foreign Affairs or the special session of the General Assembly shall be to look into the events collectively and adopt any decisions deemed appropriate, in accordance with the Charter and international law. 3. To instruct the Permanent Council to devise a set of proposals that will serve as incentives to preserve and strengthen democratic systems, based on international solidarity and cooperation, and to appraise the General Assembly thereof at its twenty-second regular session.***

Comment: → Though limited and rather vague in practical terms, this setting in motion, at the initiative of the OAS Secretary General, of regional mechanisms to consider and deal with a "sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization's member states", could be seen as a logical, as well as an immediate and direct result of the Santiago Commitment adopted at the same occasion¹⁸⁴.

Social and Economic Development

Text:

- **Commitment, preamble, 7th para.:** *Recognizing that cooperation to guarantee the peace and security of the hemisphere is one of the essential purposes consecrated in the Charter of the Organization of American States (OAS), and that the proliferation of arms adversely affects*

¹⁸⁴ In the previously quoted policy paper "[A MAGNA CARTA FOR THE AMERICAS The Inter-American Democratic Charter: Genesis, Challenges and Canadian Connections](http://www.focal.ca/pdf/iad_charter.pdf)", published in August 2002 by FOCAL (Canadian Foundation for the Americas), John W. Graham wrote: "For a region where the high walls of sovereignty, enshrined in the OAS Charter, had long sheltered illegal and dictatorial government from outside censure, Santiago Resolution 1080 represented an extraordinary change: a determination not only to collectively condemn the violent overthrow of constitutionally elected governments, but to invest the OAS with the authority of expulsion and sanctions to defend and maintain the democratic gains of the preceding fifteen years. No regional organization outside Western Europe and not even the United Nations had struck out so boldly for the values of democratic governance". (FOCAL Policy Paper FPP-02-09, p. 3; full text of the paper at http://www.focal.ca/pdf/iad_charter.pdf).

international security and takes resources away from the economic and social development of the peoples of the member states;

Text:

- Commitment, 3rd resol. para.: ***DECLARE (...)*** *Their determination to continue to prepare and develop a relevant agenda for the Organization, in order to respond appropriately to the new challenges and demands in the world and in the region, and their decision to assign special priority on that agenda, during the present decade, to the following actions: (...)*

c. Promoting the observance and defense of human rights in accordance with the inter-American instruments in force and through the specific existing agencies; and ensuring that no form of discrimination becomes an obstacle to political participation by undervalued or minority ethnic groups;

Text:

- Commitment, 4th resol. para.: ***DECLARE (...)*** *Their decision to initiate a process of consultation on hemispheric security in light of the new conditions in the region and the world, from an updated and comprehensive perspective of security and disarmament, including the subject of all forms of proliferation of weapons and instruments of mass destruction, so that the largest possible volume of resources may be devoted to the economic and social development of the member states; and an appeal to other competent organizations in the world to join in the efforts of the OAS.*

Democracy and Social and Democratic Development Interrelated

Text:

- **Commitment, preamble, 6th para.:** *Reaffirming that the principles enshrined in the OAS Charter and the ideals of peace, democracy, social justice, comprehensive development and solidarity are the permanent foundation of the inter-American system;*

Comment: → That democracy and development be proclaimed together as part of the “permanent foundation” of the Hemispheric system speaks for itself.

Text:

- Commitment, 3rd resol. para.: ***DECLARE (...)*** *Their determination to continue to prepare and develop a relevant agenda for the Organization, in order to respond appropriately to the new challenges and demands in the world and in the region, and their decision to assign special priority on that agenda, during the present decade, to the following actions:*

a. Intensifying the common struggle and cooperative action against extreme poverty to help reduce economic and social inequalities in the hemisphere, and thereby strengthen the promotion and consolidation of democracy in the region; (...)

Comment: → We have here a clear equation between reducing economic inequalities, and the promotion and consolidation and democracy.

Text:

- Commitment, 6th and final resol. para.: ***Consequently, the Ministers of Foreign Affairs and the Heads of Delegation of the member states of the OAS, in the name of their peoples, declare their firm political commitment to the promotion and protection of human rights and representative democracy, as indispensable conditions for the stability, peace, and development of the region, and for the success of the changes and renewal that the inter-American system will require at the threshold of the twenty-first century.***

Comment: → It is interesting to compare this language here with that found in paragraph 3.a (*supra*) of the Commitment. Indeed, while in paragraph 3.a the implication seems to be that development

reinforces democracy, here the implication is that without democracy there cannot be development. Again, those two different approaches can be seen as being primarily political in nature, rather than legal.

Text:

- Resol. 1080, preamble, 1st para.: ***WHEREAS The Preamble of the Charter of the OAS establishes that representative democracy is an indispensable condition for the stability, peace, and development of the region; (...)***

Comment: → So, no democracy = no development. And..

Text:

- Resol. 1080, preamble, 5th para.: ***WHEREAS (...) The region still faces serious political, social, and economic problems that may threaten the stability of democratic governments, (...)***

Comment: → economic shortcomings = threat to stable democracy.

Annex 5

**FIRST SUMMIT OF THE AMERICAS
Declaration of Principles¹⁸⁵
(Miami, USA, December 9-11, 1994)**

Democracy

Text:

- *Nil*

Social and Economic Development

Text:

- 2nd Ch, Heading: ***To Promote Prosperity Through Economic Integration and Free Trade***

Comment: → The *Declaration of Principles* of Miami, while otherwise extensively dealing with development issues and concerns in general, devotes the entirety of one – the 2nd - of its four chapters to the promotion of prosperity.

Democracy and Social and Democratic Development Interrelated

Text:

- Subtitle of Declaration: ***Partnership for Development and Prosperity: Democracy, Free Trade and Sustainable Development in the Americas.***

Comment: → That, in their very first Summit, the political leaders of the inter-American family would place their Declaration of Principles under a general heading where the notions and concepts of Development, Prosperity and Democracy are all bundled together, and that their attainment or achievement be sought in “partnership”, is but a reflection of what had been long proclaimed in the OAS Charter itself.

¹⁸⁵ <http://www.summit-americas.org/miamidec.htm>

Text:

- Initial para.: *The elected Heads of State and Government of the Americas are committed to advance **the prosperity, democratic values** and institutions, and security of our Hemisphere.*

Comment: → That very first phrase of the substantive part of the Declaration follows naturally from its subtitle and again places the advancement of prosperity (or economic development) and the development of democracy side-by-side in the Leaders' general quest and endeavor.

Text:

- 1st Ch.¹⁸⁶, 1st para.: ***The Charter of the OAS establishes that representative democracy is indispensable for the stability, peace and development of the region. It is the sole political system that guarantees respect for human rights and the rule of law; it safeguards cultural diversity, pluralism, respect for the rights of minorities, and peace within and among nations. Democracy is based, among other fundamentals, on free and transparent elections and includes the right of all citizens to participate in government. Democracy and development reinforce one another.***

Comment: → One might be tempted argue that the initial part of that statement, drawn from the OAS Charter¹⁸⁷, seems to establish 'democracy' as a pre-condition of development, by advancing that the former is impossible without the latter. But that the two "reinforce one another" certainly is not in doubt.

Text:

- 1st Ch., 2nd para.: ***We reaffirm our commitment to preserve and strengthen our democratic systems for the benefit of all people of the Hemisphere. We will work through the appropriate bodies of the OAS to strengthen democratic institutions and promote and defend constitutional democratic rule, in accordance with the OAS Charter. We endorse OAS efforts to enhance peace and the democratic, social, and economic stability of the region.***

Comment: → Again we have, in the same breadth, commitments to both the strengthening of democracy and greater economic 'stability'.

Text:

- 1st Ch., 4th para.: ***Effective democracy requires a comprehensive attack on corruption as a factor of social disintegration and distortion of the economic system that undermines the legitimacy of political institutions.***

Comment: → In the context of the present report, one can advance that what this language is saying is that anything that damages the economy, thus hindering development, adversely affects democracy and makes it less effective.

Text:

- 3rd Ch.¹⁸⁸, 1st para.: ***It is politically intolerable and morally unacceptable that some segments of our populations are marginalized and do not share fully in the benefits of growth. With an aim of attaining greater social justice for all our people, we pledge to work individually and collectively to improve access to quality education and primary health care and to eradicate extreme poverty and illiteracy. The fruits of democratic stability and economic growth must be accessible to all, without discrimination by race, gender, national origin or religious affiliation.***

Comment: → In a general fashion this kind of language considers both democratic stability and economic growth as essential factors in the eradication of poverty.

Text:

¹⁸⁶ Under the heading *To preserve and strengthen the community of democracies of the Americas.*

¹⁸⁷ See, notably, the 3rd para. of the preamble to the OAS Charter. One finds the same language in the 1st para. of the preamble to the Inter-American Democratic Charter.

¹⁸⁸ Under the heading *To eradicate poverty and discrimination in our hemisphere.*

- 3rd Ch., 3rd para.: ***Aware that widely shared prosperity contributes to hemispheric stability, lasting peace and democracy, (...)***

Comment: → Again, democracy and economic development are presented here as going hand-in-hand. This does not say that prosperity leads to democracy, that it must come first if there is to be democracy; but that it “contributes” to it, that without it democracy is hindered or diminished.

Text:

- Ch. 4¹⁸⁹, last para.: ***Our thirty-four nations share a fervent commitment to democratic practices, economic integration, and social justice.*** (...)

Comment: → Yet another reaffirmation of a concurrent commitment to values and goals that are constantly portrayed as inseparable.

Annex 6

FIRST SUMMIT OF THE AMERICAS Plan of Action¹⁹⁰ (Miami, USA, December 9-11, 1994)

Democracy

Text:

- Ch. I, Part 1¹⁹¹, 1st para: ***The strengthening, effective exercise and consolidation of democracy constitute the central political priority of the Americas.*** (...)

Comment: → Such an affirmation to the effect that strengthening democracy in the Americas is a “political” priority was no doubt to be expected, coming as it does at a Summit which is, by essence, political by its very nature¹⁹².

Text:

- Ch. I, Part 1, 1st para.: (...)***The Organization of American States (OAS) is the principal hemispheric body for the defense of democratic values and institutions; among its essential purposes is to promote and consolidate representative democracy, with due respect to the principle of non-intervention.*** (...)

¹⁸⁹ Under the heading *To guarantee sustainable development and conserve our natural environment for future generations.*

¹⁹⁰ <http://www.summit-americas.org/miamiplan.htm#1> This Plan of Action, as stated in its preamble, represents a “commitment” on the part of the Heads of State and Government; it is, like many documents of the same nature, the expression of a political will and not, strictly speaking, a legally binding one. That paragraph reads in part: “*The heads of state and government participating in the 1994 Summit of the Americas in Miami, Florida, (...) mindful of the need for practical progress on the vital tasks of enhancing democracy, promoting development, achieving economic integration and free trade, improving the lives of their people, and protecting the natural environment for future generations, affirm their commitment to this Plan of Action*”. Worthy of note, the affirmation, in the Appendix to this Plan of Action, that “*The primary responsibility for implementing this Plan of Action falls to governments, individually and collectively, with participation of all elements of our civil societies*”.

¹⁹¹ Chapter I of the Miami Summit Plan of Action deals with the overall theme of “Preserving and Strengthening the Community of Democracies of the Americas”; its Part 1 is devoted to “Strengthening Democracy”.

¹⁹² See footnote 1.

Comment: → A simple reaffirmation of the OAS Charter.¹⁹³

Social and Economic Development

Text:

- **Ch II, Title:** *Promoting Prosperity Through Economic Integration and Free Trade.*

Comment: → The Miami Plan of Action has an entire chapter devoted specifically, as *per* its very title, to the “promotion of economic prosperity”. But it does so from an angle, “Economic Integration and Free Trade”, which is not treated in any direct relation to ‘democracy’.

Text:

- **Ch. II, 5th para.:** *As we work to achieve the "Free Trade Area of the Americas," opportunities such as technical assistance will be provided to facilitate the integration of the smaller economies and increase their level of development.*

Comment: → Though the focus of this Chapter II is on “Free Trade” as a vehicle for prosperity, the recognition in the above language of a duty to provide technical assistance for the purpose of “increasing ... development” is nothing new in inter-American documents.¹⁹⁴

Text:

- **Ch. III, Title:** *Eradicating Poverty and Discrimination in Our Hemisphere*

Comment: → As was the case for Ch. II above, the plans put forward here to contribute to the “eradication of poverty” do not relate directly to ‘democracy’. Yet, certainly elements of ‘democracy’ are at least present, for example in the language devoted to “universal literacy and access to education at all levels”¹⁹⁵. The same can be argued in relation to the sub-chapter on “The strengthening of the role of women in society”¹⁹⁶.

Text:

- **Ch. III, 1st para.:** *In pursuit of these objectives, we reaffirm our support for the strategies contained within the "Commitment on a Partnership for Development and Struggle to Overcome Extreme Poverty" adopted by the OAS General Assembly.*

Comment: → Yet another reaffirmation of the need to cooperate and associate with a view to development.

Democracy and Social and Democratic Development Interrelated

Text:

- **Preamble.:** *The heads of state and government participating in the 1994 Summit of the Americas in Miami, Florida, desirous of furthering the broad objectives set forth in their Declaration of Principles and mindful of the need for practical progress on the vital tasks of enhancing democracy, promoting development, achieving economic integration and free trade, improving the lives of their people, and*

¹⁹³ See art. 2 (b) of the OAS Charter.

¹⁹⁴ See, *inter alia*, art. 2 (f), 31 and 111 of the OAS Charter.

¹⁹⁵ See 1st subpara. of para. 16, where those are referred to as “an indispensable basis for sustainable social and cultural development, economic growth and democratic stability”.

¹⁹⁶ See 1st subpara. of para. 18, which reads in part: “It is essential to strengthen policies and programs that improve and broaden the participation of women in all spheres of political, social, and economic life and that improve their access to the basic resources needed for the full exercise of their fundamental rights. Attending to the needs of women means, to a great extent, contributing to the reduction of poverty and social inequalities”. See also 4th subpara. of same, where Governments undertake to “Promote the participation of women in the decision-making process in all spheres of political, social and economic life”.

protecting the natural environment for future generations, affirm their commitment to this Plan of Action.

Comments: → As can be noted, “democracy” and “development” are immediately juxtaposed, quite naturally, given the many references in OAS texts and instruments in which those two concepts are interrelated.

Text:

• Ch. I, Part 1, 1st para.: (...) **The OAS has adopted multilateral procedures to address the problems created when democratic order has been interrupted unconstitutionally. In order to prevent such crises, the OAS needs to direct more effort toward the promotion of democratic values and practices and to the social and economic strengthening of already-established democratic regimes.** (...)

Comment: → By implication, this language, found in a Chapter - the first one - devoted to “Strengthening Democracy”, acknowledges that to prevent crises to democracy, efforts need be directed not only to the promotion of democratic values, but also to the strengthening social and economic life in democracies. This can be seen as yet other recognition that democracy and economic development go hand in hand, that one must accompany the other. As if to say that promoting democratic values and practices without looking after economic and social development will not be enough to prevent interruptions of democracy and solve the problems that come with such interruptions.

Text:

• Ch. I, Part 2, 1st para.¹⁹⁷: (...) **There must also be universal access to justice and effective means to enforce basic rights. A democracy is judged by the rights enjoyed by its least influential members.** (...)

Comment: → In other words, a democracy without respect to human rights cannot be a democracy. And to the extent that various inter-American instruments devoted to human rights deal with social and economic development, then one again we see here an expression, in another form, of the interrelation between democracy and development.

Text:

• Ch. I, Part 5, 1st para.¹⁹⁸: (...) **Corruption in both the public and private sectors weakens democracy and undermines the legitimacy of governments and institutions. (...). All aspects of public administration in a democracy must be transparent and open to public scrutiny.** (...)

Comment: → One can certainly argue that to the extent that corruption is seen and recognized as taking funds away from economic development, we have here an indirect admission that what impedes or curtails economic development stands in the way of an effective democracy.

Text:

• Ch. I, Part 8, 1st para.¹⁹⁹: **The expansion and consolidation of democracy in the Americas provide an opportunity to build upon the peaceful traditions and the cooperative relationships that have prevailed among the countries of the Western Hemisphere. Our aim is to strengthen the mutual confidence that contributes to the economic and social integration of our peoples.**

Comment: → This is not the place to debate whether economic ‘development’ requires economic ‘integration’. But since the Miami Summit Plan of Action devotes its entire Chapter II to “Promoting Prosperity Through Economic Integration and Free Trade”, its authors, Heads of States and of Governments, obviously linked the two. Hence the unambiguous relationship proclaimed in this Plan of Action between democracy and economic integration as a tool for development.

¹⁹⁷ Chapter I of the Miami Summit Plan of Action deals with the overall theme of “Preserving and Strengthening the Community of Democracies of the Americas”; its Part 2 is devoted to “Promoting and Protecting Human Rights”.

¹⁹⁸ Part 5 of Ch. I is devoted to “Combating Corruption”.

¹⁹⁹ Part 8 of Ch. I is devoted to “Building Mutual Confidence”.

**SECOND SUMMIT OF THE AMERICAS
Declaration of Principles²⁰⁰
(Santiago, Chile, April 18-19, 1998)**

Democracy

Text:

- **12th para.: The strength and meaning of representative democracy lie in the active participation of individuals at all levels of civic life. The democratic culture must encompass our entire population.**

Social and Economic Development

Text:

- **4th para.: *Hemispheric integration is a necessary complement to national policies aimed at overcoming lingering problems and obtaining a higher level of development. (...)***

Comment: → Considering integration as a “*necessary complement to national policies*” in the pursuit of development is a simple restatement of an oft-repeated theme in the Hemisphere.

Text:

- **10th para.: *The FTAA negotiating process will be transparent, and take into account the differences in the levels of development and size of the economies in the Americas, in order to create the opportunities for the full participation by all countries²⁰¹ (...)***

Comment: → This acknowledgement of the need to take such differences into account in actions or programs aimed at promoting development also appears in many hemispheric documents. (Note also the appeal for ‘democracy’ as applied between states.).

Text:

- **16th para.: *Overcoming poverty continues to be the greatest challenge confronted by our Hemisphere. We are conscious that the positive growth shown in the Americas in past years has yet to resolve the problems of inequity and social exclusion.***

Comment: → A clear admission that there remains much to be done on that front, and, indirectly – given the inter-relationships between democracy and social and economic development - in the area of the strengthening of democracy.

Democracy and Social and Democratic Development Interrelated

Text:

- **2nd para.: *The strengthening of democracy, political dialogue, economic stability, progress towards social justice, the extent to which our trade liberalization policies coincide, and the will to expedite a process of ongoing Hemispheric integration have made our relations more***

²⁰⁰ Full text at <http://www.summit-americas.org/chiledec.htm>

²⁰¹ An interesting reference to the principle of ‘democracy’ extended to international organizations or associations of countries.

mature. We will redouble our efforts to continue reforms designed to improve the living conditions of the peoples of the Americas and to achieve a mutually supportive community. (...)

Comment: → Again we have here a repeat of the proposition that better democracy, economic stability and more social justice are all closely associated in the pursuit and achievement of improved living conditions, *i.e.* development.

Text:

- 6th para.: ***Education is the determining factor for the political, social, cultural, and economic development of our peoples.***

Comment: → As expressed in the *Declaration's* 2nd paragraph, the Santiago Summit placed a particular emphasis on education “a key theme and is of particular importance in our deliberations”.

Text:

- 14th para.: ***Confident that an independent, efficient, and effective administration of justice plays an essential role in the process of consolidating democracy, strengthens its institutions, guarantees the equality of all its citizens, and contributes to economic development, we will enhance our policies relating to justice and encourage the reforms necessary to promote legal and judicial cooperation. (...)***

Comment: → Associating an “*independent, efficient, and effective administration of justice*” to furthering democracy and economic development is a recurring theme in many official hemispheric texts. For example, in the Declaration of Principles adopted at the First Summit of the Americas in 1994, one reads²⁰² “... it [*i.e.* representative democracy] is the sole political system which guarantees (...) the rule of law”.

Annex 8

**SECOND SUMMIT OF THE AMERICAS
Plan of Action²⁰³
(Santiago, Chile, April 18-19, 1998)**

Democracy

Text:

- Ch. II, 1st para.: ***The strengthening of democracy, justice and human rights is a vital hemispheric priority. In this Plan of Action, we endorse new initiatives designed to deepen our commitment to these important principles. Specifically, we will intensify our efforts to promote democratic reforms at the regional and local level (...). We further resolve to defend democracy against the serious threats of corruption, terrorism, and illegal narcotics, and to promote peace and security among our nations. Taken together, these measures consolidate our democratic gains, reaffirm our commitment to democratic institutions, and commit us to building a Hemisphere of shared values.***

Comment: → That is the introductory language of the chapter on the Santiago Plan of Action entitled “Preserving and Strengthening Democracy, Justice and Human Rights”. That chapter has an entire section specifically devoted to linkages between “Democracy and Human Rights”.

²⁰² 1st Ch., 1st para.

²⁰³ Full text at <http://www.summit-americas.org/chileplan.htm>

Text:

- Ch. II, sub-ch. 1, 8th para.: ***Governments will also enhance cooperation with and support for the activities of the Organization of American States (OAS) in order to: (...) Support States that so request in the processes of promoting and consolidating democratic values, practices and institutions by strengthening the respective organs of the Organization, including the Unit for the Promotion of Democracy (UPD).***

Comment: → As often seen on previous documents, OAS member States are seen here as committing themselves to what is seen as a cooperative effort in support and defense of democracy.

Text:

- Ch. II, sub-ch. 1, 9th para.: ***Governments will also enhance cooperation with and support for the activities of the Organization of American States (OAS) in order to (...): Strengthen the exercise of and respect for all human rights and the consolidation of democracy, including the fundamental right to freedom of expression and thought, through support for the activities of the Inter-American Commission on Human Rights in this field, in particular the recently created Special Rapporteur for Freedom of Expression.***

Comment: → Again as often seen in earlier documents, we find an immediate juxtaposition of “democracy” and “human rights”. Such juxtaposition would seem to reinforce the concept that “democracy” can be seen as an individual right and that its realization entails respect of, and compliance with, many basic human rights. As will be seen later, the Inter-American Democratic Charter adopted in 2001 proclaims in its very first article that: “*The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. (...)*”.

Social and Economic Development

Text:

- Ch III²⁰⁴, Section A, subsect. 4: ***Ensure that the negotiating process is transparent and takes into account the differences in the levels of development and size of the economies in the Americas, in order to create opportunities for the full participation of all countries, including the smaller economies.***

Comment: → Where we have here a simple recognition of the fact that the state or level of economic development amongst the countries of the Americas is dissimilar, and that such differences must be taken into account in any process aimed at fostering greater economic integration²⁰⁵.

Democracy and Social and Democratic Development Interrelated

Text:

- **Introductory para.:** *We, the democratically elected Heads of State and Government of the Americas, recognizing the need to make a collective effort that complements the actions being developed and executed at the national level to improve the economic well-being and the quality of life of our peoples, mindful of our commitment to the continued implementation of the Miami Plan of Action, affirm our resolute determination to carry out this Plan of Action, which constitutes a body of concrete initiatives intended to promote the overall development of the countries of the Hemisphere and ensure access to and improve the quality of education, promote and strengthen democracy and the respect for human rights, deepen economic integration and free trade and eradicate poverty and*

²⁰⁴ Chapter III is devoted to “Economic Integration and Free Trade.

²⁰⁵ Similar language would appear later in the 15th para. of the III Summit Declaration (Quebec City): “*We attach great importance to the design of an Agreement [FTAA] that takes into account the differences in the size and levels of development of participating economies*”. It is also found in many other Hemispheric documents.

discrimination. We have adopted this Plan of Action conscious that all the initiatives are inter-related and equally important to the attainment of our common endeavour.

Comment: → It would be difficult to imagine language describing in a more emphatic way the inter-relationship between democracy and development. It is also worthy of note that the “commitment” referred to, political rather than, strictly speaking, legal, is presented as in direct continuity to the Plan of Action of the previous, *i.e.* Miami, summit.

Text:

- Ch. IV, Introductory para.: ***Extreme poverty and discrimination continue to afflict the lives of many of our families and impede their potential contribution to our nations' progress. To move toward a prosperous future for all, (...) We will seek to enhance the quality of life of all people of the Americas through efforts that ensure access to adequate health services, to improved health technologies, to clean water and proper nutrition. Taken together, these measures will facilitate the inclusion of all inhabitants, without exception, in the economic and democratic transformation of the Hemisphere.***

Comment: → This language, again linking economic development and democracy, heads the chapter of the Santiago Plan of Action entitled “Eradication of Poverty and Discrimination”.

Annex 9

UNITED NATIONS MILLENNIUM DECLARATION²⁰⁶

**(Resolution adopted by the United Nations General Assembly
New York, USA, September 8, 2000)**

Introductory Note: The entire “sense” or purpose of this Declaration can be found in its two initial paragraphs: “1. *We, heads of State and Government, have gathered at United Nations Headquarters in New York from 6 to 8 September 2000, at the dawn of a new millennium, to reaffirm our faith in the Organization and its Charter as indispensable foundations of a more peaceful, prosperous and just world.* 2. *We recognize that, in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders we have a duty therefore to all the world's people, especially the most vulnerable and, in particular, the children of the world, to whom the future belongs.*”

Democracy

Text:

- ***Nil.***

Comment: → Quite possibly some parts or excerpts of the paragraphs from the *Millennium Declaration* treated below under “Democracy & Social and Democratic Development Interrelated” could have been included in the above section. But for reasons that will be evident, it was considered better not to separate such references to «democracy», and therefore to incorporate them only in the immediate context where they were found below, and which also dealt with development.

Social and Economic Development

Text:

- Part I²⁰⁷, 4th para.: ***(...) We rededicate ourselves to (...) respect for human rights and fundamental freedoms, respect for the equal rights of all without distinction as to race, sex,***

²⁰⁶ Full text at <http://www.un.org/millennium/declaration/ares552e.htm> and at <http://www.un.org/millennium/declaration/ares552e.pdf>

²⁰⁷ Entitled *Values and principles*.

language or religion and international cooperation in solving international problems of an economic, social, cultural or humanitarian character.

Text:

• Part 1, 5th para.: ***We believe that the central challenge we face today is to ensure that globalization becomes a positive force for all the world's people. For while globalization offers great opportunities, at present its benefits are very unevenly shared, while its costs are unevenly distributed. We recognize that developing countries and countries with economies in transition face special difficulties in responding to this central challenge. Thus, only through broad and sustained efforts to create a shared future, based upon our common humanity in all its diversity, can globalization be made fully inclusive and equitable. These efforts must include policies and measures, at the global level, which correspond to the needs of developing countries and economies in transition and are formulated and implemented with their effective participation.***

Comment: → A succinct description of the challenges that globalization poses to development²⁰⁸. (And again, an appeal to 'democracy' as applies amongst all States).

Text:

• Part I, 6th para: ***We consider certain fundamental values to be essential to international relations in the twenty-first century. These include: (...) Equality. No individual and no nation must be denied the opportunity to benefit from development. The equal rights and opportunities of women and men must be assured (...)***

Comment: → This language is logically reflected further down in paragraphs 11 and 24 of the Millennium Declaration, which, as will be seen *infra*, refer to development as a right included in the general notion of human rights.

Text:

• Part I, 6th para.: ***We consider certain fundamental values to be essential to international relations in the twenty-first century. These include: (...) Shared responsibility. Responsibility for managing worldwide economic and social development, as well as threats to international peace and security, must be shared among the nations of the world and should be exercised multilaterally. As the most universal and most representative organization in the world, the United Nations must play the central role.***

Comment: → The notion of a "shared responsibility" for development also appears quite regularly in hemispheric documents.

Text:

• Part III²⁰⁹, 11th para.: ***We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.***²¹⁰

Comment: → Note the reference to a "right to development". See also the text in Part V, para. 24, quoted below.

Text:

• Part III, 13th para.: ***We also undertake to address the special needs of the least developed countries.*** (...)

Text:

²⁰⁸ Can be read in conjunction with part of para. 6 in Part I: "*Solidarity. Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most*".

²⁰⁹ Entitled *Development and poverty eradication*.

²¹⁰ See paras. 6 and 24, as well as comments thereto.

- Part VIII, 29th para.: ***We will spare no effort to make the United Nations a more effective instrument for pursuing all of these priorities: the fight for development for all the peoples of the world, the fight against poverty, ignorance and disease; the fight against injustice; the fight against violence, terror and crime; and the fight against the degradation and destruction of our common home.***

Democracy and Social and Democratic Development Interrelated

Text:

- Part I²¹¹, 6th para.: ***We consider certain fundamental values to be essential to international relations in the twenty-first century. These include: (...) Freedom. Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice. Democratic and participatory governance based on the will of the people best assures these rights. (...)***

Comment: → Such a direct relationship between what we could call ‘social rights’ and development is more and more often seen in UN Documents. In a brief commentary on the Millennium Declaration during his 2004 lecture at the XXI Session of the ICJ Summer Course on International law of the Inter-American System²¹², Dr Jonathan Fried noted that what he called the emphasis made by the Declaration on the linkage between democracy, development and respect for human rights was especially evidenced by the commitment of world leaders later to be found in paragraph 24 of the same Declaration, quoted further down, below.²¹³ This text stops short of establishing that a democratic system of government is an essential prerequisite for such rights; but it does say that it is the “best” one. It can be compared with that found in the Bucharest Declaration adopted by the Third UN International Conference on the New or Restored Democracies and which asserts the existence of “ (...) *an almost universal recognition that a democratic system of government is the best model to ensure a framework of liberties for lasting solutions to the political, economic and social problems that our societies face*”.²¹⁴

Text:

- Part III, 12th & 13th paras.: ***12. We resolve therefore to create an environment – at the national and global levels alike – which is conducive to development and to the elimination of poverty. 13. Success in meeting these objectives depends, *inter alia*, on good governance within each country. It also depends on good governance at the international level and on transparency in the financial, monetary and trading systems. We are committed to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system.***

Comment: → To say that the success of creating an environment conducive to development depends in part on “good governance” refers us back to the proposal that democratic systems are generally recognized as those best suited to the achievement of such good governance: see paragraph 6 (see *supra*) of the Millennium Declaration. And therefore restates, albeit in a tacit way, the relationship between democracy and development which is so often established in many hemispheric documents

Text:

- Part V²¹⁵, 24th para.: ***We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.***

²¹¹ Entitled *Values and principles*.

²¹² Referred to above.

²¹³ At p. 298.

²¹⁴ That Conference was held from 2 to 4 September 1997; see UN Doc. A/52/334, 11 Sept 1997; full text at <http://daccessdds.un.org/doc/UNDOC/GEN/N97/238/39/PDF/N9723839.pdf?OpenElement>.

²¹⁵ Entitled *Human rights, democracy and good governance*.

Comment: → The commitment to promote ‘democracy’ and ‘development’ is not expressly put forward here in any interrelated fashion, but rather, and simply, as a parallel or side-by-side undertaking. It is also worth noting that ‘development’ is seen as a not only a “right”, but as a right that is to be considered as included within the notions of “human rights and fundamental freedoms”. See also the text in Part III, para. 11, quoted above.

The Monterrey Consensus adopted later at the International Conference on Financing for Development²¹⁶ (18-22 March 2002), also referred to development as a “right” which forms part of “human rights”; it also considered ‘development’ and ‘democracy, to be “mutually reinforcing”²¹⁷.

In contrast, Art. 1 of the Inter-American Democratic Charter, adopted by the OAS General Assembly in Lima, Peru, on September 11, 2001, *i.e.* one year after the adoption by the UN General Assembly of this Millennium Declaration, speaks of a “right to democracy”.²¹⁸

Whereas here in the Millennium Declaration we only find a commitment to « promote » democracy, the Inter-American Democratic Charter will go further and add the notion of “defending” it.²¹⁹ But see the comment below the next article.

Text:

- Part V, 25th para.: ***We resolve therefore***

To respect fully and uphold the Universal Declaration of Human Rights.

To strive for the full protection and promotion in all our countries of civil, political, economic, social and cultural rights for all.

To strengthen the capacity of all our countries to implement the principles and practices of democracy and respect for human rights, including minority rights.

(...)

To work collectively for more inclusive political processes, allowing genuine participation by all citizens in all our countries.

Comment: → Given, as indicated earlier in relation to paragraph 24, that in the Millennium Declaration the “right to development” is seen as part of “human rights”, one can say that the ‘resolve’ expressed in this Article 25 addresses in a simultaneous but not expressly related fashion both ‘more development’ and ‘better democracy’.

Given what was said in the immediately preceding comment about the Inter-American Democratic Charter going further than the Millennium Declaration by adding the notion of “defending” democracy, as opposed to merely “promoting” it, one might want to reassess such a judgement by looking at the above expression of a resolve “*to strive for the full **protection and promotion in all our countries of civil, political, economic, social and cultural rights***”.

Text:

²¹⁶ Held in Monterrey, N.L., Mexico.

²¹⁷ Para. 11 of the *Monterrey Consensus* reads: “*Good governance is essential for sustainable development. Sound economic policies, solid democratic institutions responsive to the needs of the people and improved infrastructure are the basis for sustained economic growth, poverty eradication and employment creation. Freedom, peace and security, domestic stability, respect for human rights, including the right to development, and the rule of law, gender equality, market-oriented policies, and an overall commitment to just and democratic societies are also essential and mutually reinforcing.*”

²¹⁸ Art. 1 of the Inter-American Democratic Charter reads: “*The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. (...)*”.

²¹⁹ See footnote 72, *supra*. As can be seen in the review of the entire text of the Inter-American Democratic Charter, that particular part of Art. 1 of that Charter can be said to be at the very centre of what one might refer to as the Inter-American Democracy ‘architecture’. The emphatic recognition of the existence of such a right is at the heart of the entire instrumentation that the OAS and its members have developed over time in order to fulfill the ‘obligation’ to promote and defend democracy.

- Part VIII²²⁰, 30th para.: ***We further resolve therefore (...) To strengthen further cooperation between the United Nations and national parliaments through their world organization, the Inter-Parliamentary Union, in various fields, including peace and security, economic and social development, international law and human rights and democracy and gender issues.***

Annex 10

**THIRD SUMMIT OF THE AMERICAS
Declaration of Principles²²¹
(Quebec City, Canada, April 20-22, 2001)**

Democracy

Text:

- 5th para.: ***We acknowledge that the values and practices of democracy are fundamental to the advancement of all our objectives. The maintenance and strengthening of the rule of law and strict respect for the democratic system are, at the same time, a goal and a shared commitment and are an essential condition of our presence at this and future Summits. (...)***

Comment: → A clear enunciation of the principle that the practice of, and respect for, democracy is a cornerstone of the Americas²²². Note that if 'democracy' is a condition for participation at Summits, 'development' is not.

Text:

- 6th para.: ***Threats to democracy today take many forms. To enhance our ability to respond to these threats, we instruct our Foreign Ministers to prepare, in the framework of the next General Assembly of the OAS, an Inter-American Democratic Charter to reinforce OAS instruments for the active defense of representative democracy²²³.***

Comment: → Such a Charter would be adopted by the General Assembly at its special session held in Lima, Peru, on September 11, 2001, its adoption being declared "in keeping with express instructions from the Heads of State and Government gathered at the Third Summit of the Americas, in Quebec City".

Social and Economic Development

Text:

²²⁰ Entitled *Strengthening the United Nations*.

²²¹ The full text of that Declaration can be found at <http://www.summit-americas.org/Documents%20for%20Quebec%20City%20Summit/Quebec/Declaration%20of%20Quebec%20City%20-%20Eng%20-%20final.htm>

²²² Not surprisingly, then, that same paragraph goes on to say: "Consequently, any unconstitutional alteration or interruption of the democratic order in a state of the Hemisphere constitutes an insurmountable obstacle to the participation of that state's government in the Summit of the Americas process. Having due regard for existing hemispheric, regional and sub-regional mechanisms, we agree to conduct consultations in the event of a disruption of the democratic system of a country that participates in the Summit process".

²²³ The Declaration has a footnote at this point, stating: "Venezuela reserves its position (...)".

- 4th para.: ***We have made progress in implementing the collective undertakings made at Miami in 1994 and continued at Santiago in 1998. We recognize the necessity to continue addressing weaknesses in our development processes and increasing human security. We are aware that there is still much to be achieved if the Summit of the Americas process is to be relevant to the daily lives of our people and contribute to their well-being.***

Comment: → A recognition that much remains to be done on the “economic development” side of the democracy/development equation enunciated elsewhere in the *Declaration*.²²⁴

Democracy and Social and Democratic Development Interrelated

Text:

- Initial para.: ***We, the democratically elected Heads of State and Government of the Americas, have met in Quebec City at our Third Summit, to renew our commitment to hemispheric integration and national and collective responsibility for improving the economic well-being and security of our people. We have adopted a Plan of Action to strengthen representative democracy, promote good governance and protect human rights and fundamental freedoms.***²²⁵
We seek to create greater prosperity and expand economic opportunities while fostering social justice and the realization of human potential.

Comment: → As was done at the Miami and Santiago summits, this initial statement by the Heads of States and Heads of Governments links together the notions of ‘democracy’ and greater ‘prosperity’, the latter being, in some ways, synonymous with ‘economic development’.

Text:

- 3rd para.: ***Our rich and varied traditions provide unparalleled opportunities for growth and to share experiences and knowledge and to build a hemispheric family on the basis of a more just and democratic international order. We must meet the challenges inherent in the differences in size and levels***²²⁶ ***of social, economic and institutional development in our countries and our region.***

Comment: → That the international order being sought must be not only “more democratic”, but also “more just”, is another recognition, albeit less explicit, that democracy and economic development for all go hand in hand.

Text:

- 9th para.: ***(...) Acknowledging that corruption undermines core democratic values, challenges political stability and economic growth and thus threatens vital interests in our Hemisphere, we pledge to reinvigorate our fight against corruption, we pledge (...)***

Comment: → Again we see the notions of democracy and economic growth being lumped together as similarly and simultaneously affected by a same factor (this time, corruption).

²²⁴ Almost identical language can be seen in the 16th para. of the Declaration of Principles of the Second Summit of the Americas (Santiago, 1998).

²²⁵ The *Declaration* has a footnote at this point, stating: “Venezuela reserves its position (...)”.

²²⁶ See also para. 15 of the same Declaration, with regard to a proposed FTAA: “We attach great importance to the design of an Agreement that takes into account the differences in the size and levels of development of participating economies”.

Text:

- 19th para.: **Democracy and economic and social development are interdependent and mutually reinforcing as fundamental conditions to combat poverty and inequality. (...)**

Comment: → Yet another reflection, stated in a clear and unequivocal way, of the immediate relationship and interdependence seen between democracy and development.

Text:

- 23rd para.: **Progress towards more democratic societies, growing economies and social equity relies on an educated citizenry (...)**

Comment: → Another indication that the pursuit of democracy and economic development entails the achievement of common realizations.

Text:

- 26th para.: (...)**We are committed (...) to achieving the full participation of all persons in the political, economic, social and cultural life of our countries.**

Comment: → This commitment to achieving “full participation” in those interrelated aspects of national life acknowledges in a way that democracy remains central to a country’s overall development.

Text:

- Final para.: (...)**We are united in our determination to leave to future generations a Hemisphere that is democratic and prosperous, more just and generous, a Hemisphere where no one is left behind. (...)**

Comment: → A final restatement of what the Declaration has enunciated in several fashions before. It is also worth underlining that better democracy and greater prosperity are seen in parallel with more justice and increased solidarity.

Annex 11

THIRD SUMMIT OF THE AMERICAS

Plan of Action²²⁷

(Quebec City, Canada, April 20-22, 2001)

Introductory Note: It is not insignificant that the very first words of that long Plan of Action are: ***“To strengthen democracy, create prosperity and realize human potential, our Governments will: (...). Moreover, the first of the Plan’s 18 chapters is entitled “Making Democracy Work Better”, and begins with “Recognizing the relationship among democracy, sustainable development”. Whereas the 12th, which is devoted to “Growth With Equity”, begins with “Recognizing that economic growth is fundamental to overcoming economic disparities and strengthening democracy in the Hemisphere (...).”***

Democracy

Text:

- Introd. to 2nd section of Ch. 1: **Recognizing that good governance requires effective, representative, transparent and accountable government institutions at all levels, public**

²²⁷ The full text of that *Declaration* can be found at <http://www.summit-americas.org/chileplan.htm>

participation, effective checks and balances, and the separation of powers, as well as noting the role of information and communications technologies in achieving these aims: (...)

Comment: → Those requirements for “good governance” all fall within what are often understood as essential parts or attributes of democracy.

Text: • Introd. para. to 5th section²²⁸ of Ch. 1²²⁹: **Recognizing that citizen participation and appropriate political representation are the foundation of democracy, and that local governments are closest to the daily lives of citizens.**

Text:

• 4th para. of 1st section²³⁰ of Ch. 2²³¹: **(...) stressing that political platforms based on racism, xenophobia or doctrines of racial superiority must be condemned as incompatible with democracy and transparent and accountable governance.**

Comment: → Another way of saying that non-respect for human rights is incompatible with democracy, or *vice versa*.

Text:

• Introd. para. to Ch. 4²³²: **(...) and noting that the constitutional subordination of armed forces and security forces to the legally constituted authorities of our states is fundamental to democracy: (...)**

Comment: → Here, as in the previous texts, we can find references to some of the elements considered essential to the notion of democracy.

Social and Economic Development

Text:

• 3rd para. of 1st section²³³ of Ch. 6²³⁴: **Ensure full participation of all our countries in the FTAA, taking into consideration the differences in the levels of development and size of the economies of the Hemisphere, in order to create opportunities for the full participation of the smaller economies and to increase their level of development;**

Comment: → As seen already, this acknowledgement of the need to take into account the differences in the levels of development of the countries of the hemisphere can be found in many hemispheric declarations, plans of action etc.

Text:

• 1st para. of 2nd section²³⁵ of Ch. 6²³⁶: **Welcome and support the work of our Ministers of Finance (...) to promote financial and economic stability as well as strong and sustainable growth, as fundamental preconditions for accelerated development and poverty reduction, and to ensure that the benefits of globalization are broadly and equitably distributed to all our people;**

Comment: → The insertion down in the next sub-section, *infra*, of this reference to ‘financial and economic stability’ as a precondition to accelerated development, would have been warranted, as it can be easily argued that democracy favors and breeds stability.

²²⁸ Dealing with *Empowering Local Governments*.

²²⁹ See footnote 3, *supra*.

²³⁰ Dealing with *Implementation of International Obligations and Respect for International Standards*.

²³¹ Entitled *Human Rights and Fundamental Freedoms*.

²³² Entitled *Hemispheric Security*.

²³³ Dealing with *Trade and Investment*.

²³⁴ Entitled *Trade, Investment and Financial Stability*.

²³⁵ Dealing with *Economic and Financial Stability*.

²³⁶ Entitled *Trade, Investment and Financial Stability*.

Text:

- 1st para. to 3rd section²³⁷ of Ch. 6²³⁸: ***Recognizing the central role that businesses of all sizes play in the creation of prosperity and the flow and maintenance of trade and investment in the Hemisphere, and, noting that businesses can make an important contribution to sustainable development and increasing access to opportunities, including the reduction of inequalities in the communities in which they operate, and taking into consideration the increasing expectations of our citizens and civil society organizations that businesses carry out their operations in a manner consistent with their social and environmental responsibilities.***

Comment: → Such a reference to the role and responsibilities of the business world in the creation of prosperity, hence development, if of course not new.

Text:

- Introd. para. to 1st section²³⁹ of Ch. 9²⁴⁰: ***Recognizing that the protection of the environment and the sustainable use of natural resources are essential to prosperity and to the sustainability of our economies, as well as the quality of life and health for present and future generations; (...)***

Comment: → Some would argue that the more democratic a government the more sensitive it would normally be to the need to protect the environment. In that context, the linkage made here between development and the environment could possibly be construed as indirectly linking environment and democracy.

Text:

- Introd. para. to 3rd section²⁴¹ of Ch. 12²⁴²: ***Recognizing the positive aspects and benefits of orderly migration in countries of origin, transit and destination as a factor contributing to economic growth and national and regional development:***

Comment: → Here again we can see a linkage – orderly migration and economic growth – that is not without relevance to the concept of ‘democracy’, given the widely acknowledged interrelationship between democracy and economic development, and the incidence between on one part economic development or the lack thereof, and on another part migration and whether it takes place in an orderly fashion or not²⁴³.

Text

- 8th para. of 1st section²⁴⁴ of Ch. 9²⁴⁵: ***Consult and coordinate domestically and regionally, as appropriate, with the aim of ensuring that economic, social and environmental policies are mutually supportive and contribute to sustainable development, building on existing initiatives undertaken by relevant regional and international organizations.***

Comment: → “Domestic” consultation and coordination to better attain development can certainly be seen as more susceptible of realization within democratic systems.

Text:

²³⁷ Dealing with *Corporate Social Responsibility*.

²³⁸ Entitled *Trade, Investment and Financial Stability*.

²³⁹ Dealing with *Environment and Natural Resources Management*.

²⁴⁰ Entitled *Environmental Foundation for Sustainable Development*.

²⁴¹ Dealing with *Migration*.

²⁴² Entitled *Growth With Equity*.

²⁴³ That seems to be directly reflected in the 4th para. of the same section, which reads in part: “Support programs of cooperation in immigration procedures for cross-border labor markets and the migration of workers, both in countries of origin and destination, as a means to enhance economic growth in full cognizance of the role that cooperation in education and training can play in mitigating any adverse consequences of the movement of human capital from smaller and less developed states”.

²⁴⁴ Dealing with *Environment and Natural Resources Management*.

²⁴⁵ Entitled *Environmental Foundation for Sustainable Development*.

- Introd. para. to Ch.11²⁴⁶: (...) **noting the importance of promoting employment security consistent with economic growth and developing mechanisms to assist workers with periods of unemployment, as well as of strengthening cooperation and social dialogue on labor matters among workers, their organizations, employers and governments.**

Comment: → Here again, as in the immediately preceding text, achieving social dialogue amongst all concerned in a sector – labour - so intimately related to growth and development, can be seen as more susceptible of realization within democratic systems.

Democracy and Social and Democratic Development Interrelated

Text:

- Very first words of the Plan of Action: **“To strengthen democracy, create prosperity and realize human potential, our Governments will: (...).”**

Comment: → See the Introductory Note, *supra*. Those words announce the entire purpose of the Plan of Action, thus summarizing the will of the Heads of States and Governments to devise actions aimed at simultaneously promoting democracy and development as two inseparable concepts.

Text:

- Introd. para. to the 1st section²⁴⁷ of Ch 1²⁴⁸: **Recognizing the relationship among democracy, sustainable development, (...)**²⁴⁹

- Introd. para. to the 4th section²⁵⁰ of Ch. 1: **Recognizing that corruption gravely affects democratic political institutions and the private sector, weakens economic growth and jeopardizes the basic needs and interests of a country’s most underprivileged groups (...).**

Comment: → This kind of language can be found in several other previous hemispheric documents, incl. at the previous Summits. It restates that some evils, such as – here – corruption²⁵¹, equally and simultaneously affect democracy and economic development.

Text:

- 3rd para. of 5th section²⁵² of Ch. 1²⁵³: **Promote the development, autonomy and institutional strengthening of local government in order to promote favorable conditions for the sustainable economic and social development of their communities; (...)**

Comment: → An interesting affirmation that democracy at all levels, incl. local ones, creates conditions favourable to development.

Text:

²⁴⁶ Entitled *Labor and Employment*.

²⁴⁷ Dealing with *Electoral Processes and Procedures*.

²⁴⁸ Entitled *Making Democracy Work Better*.

²⁴⁹ See the Introductory Note, *supra*, at the beginning of the present section of this Report.

²⁵⁰ Dealing with *Fight against Corruption, under the chapter on Making Democracy Work Better*.

²⁵¹ The same is said about “violence and crime” in the 6th section, on *Prevention of Violence* in Ch. 3 (*Justice, Rule of Law and Security of the Individual*). But also of such areas as “education” in the introductory para. of Ch. 13 (*Education*); “health” in the introductory para. of Ch. 14 (*Health*); “women’s empowerment” in the introductory para. of Ch. 15 (*Gender Equality*); the “inclusion” of indigenous peoples in the introductory para. of Ch. 16 (*Indigenous Peoples*; respect for “cultural diversity” in the introductory para. to Ch. 17 (*Cultural Diversity*).

²⁵² Dealing with *Empowering Local Governments*.

²⁵³ Entitled *Making Democracy Work Better*.

- Introd. para. to Ch.2²⁵⁴: **Recognizing that the universal protection and promotion of *human rights, including civil, cultural, economic, political and social rights*, as well as respect for the norms and principles of international humanitarian law based on the principles of universality, indivisibility and interdependence are fundamental to the functioning of democratic society, (...)**

Comment: → This assertion that for democracy to function there must be respect for human rights, and that amongst those must be included ‘*civil, cultural, economic, political and social rights*’, is not new either. Should one come to the conclusion that the “right to democracy” as proclaimed in the subsequent Inter-American Democratic Charter and Declaration of Nuevo León can be considered as a ‘political’ right, then this paragraph would in fact proclaim that the right to democracy is included in the notion of “human rights” on the same footing as ‘economic’ and ‘social’ rights.

Text:

- Introd. para. to Ch.3²⁵⁵: **Recognizing that equal access to independent, impartial and timely justice is a cornerstone of democracy and economic and social development, (...)**

Comment: → Again, democracy and development are intimately associated, this time as both closely related to the existence of an adequate justice system.

Text:

- Introd. para. to Ch. 4²⁵⁶: **Recognizing that *democracy is essential for peace, development and security in the Hemisphere which, in turn, are the best basis for furthering the welfare of our people, (...)***

Comment: → This familiar language once again indicates that there cannot be development if there is no democracy. It could be, and has been, argued by various scholars that such a statement would appear to proclaim that democracy is a prerequisite to development, that it must come first if there is to be development. Others have refuted that interpretation, limiting its purview to the assertion that development is not possible without democracy, that one cannot exist or endure and prosper without the other.

Text:

- Introd. para. to Ch. 5²⁵⁷: **Recognizing the important role of participation by civil society in the consolidation of democracy and that this participation constitutes one of the vital elements for the success of development policies, (...)**

Comment: → Again, a consolidated, well-working democracy is considered as fundamental to development goals being achieved²⁵⁸.

Text:

- Introd. para. to Ch. 12²⁵⁹: **Recognizing that *economic growth is fundamental to overcoming economic disparities and strengthening democracy in the Hemisphere, and that in order to achieve sustained economic growth and political and social stability, it is necessary to face the primary challenge that confronts the Hemisphere - the eradication of poverty and inequity – (...)***

²⁵⁴ Entitled *Human Rights and Fundamental Freedoms*.

²⁵⁵ Entitled *Justice, Rule of Law and Security of the Individual*.

²⁵⁶ Entitled *Hemispheric Security*.

²⁵⁷ Entitled *Civil Society*.

²⁵⁸ That notion is further developed in the 2nd para. of the 1st section (*Strengthening Participation in Hemispheric and National Processes*) of the same chapter: “Develop strategies at the national level and through the OAS, other multilateral organizations and MDBs to increase the capacity of civil society to participate more fully in the inter-American system, as well as in the political, economic and social development of their communities and countries, fostering representativeness and facilitating the participation of all sectors of society”.

²⁵⁹ Entitled *Growth and Equity*.

Comment: → We have here an interesting variance: a strong democracy requires economic growth, but it is not possible to achieve it while poverty and iniquity persist; *ergo* achieving and maintaining a strong democracy requires the eradication of poverty and iniquity.

Annex 12

INTER-AMERICAN DEMOCRATIC CHARTER²⁶⁰

(Adopted at the Special Session of the OAS General Assembly
Lima, Peru, September 11, 2001)

Introductory Note: As stated in the 18th para. of the preamble to this *Declaration*, its adoption in Lima is “in keeping with express instructions from the Heads of State and Government gathered at the Third Summit of the Americas, in Quebec City”. Furthermore, the 20th para. of the preamble states that it is being adopted “BEARING IN MIND the progressive development of international law and the advisability of clarifying the provisions set forth in the OAS Charter and related basic instruments on the preservation and defense of democratic institutions, according to established practice”.

In the Declaration of Nuevo León adopted at the Special Summit held in January 2004, it is stated that the Inter-American Democratic Charter “constitutes an element of regional identity, and, **projected internationally, is a hemispheric contribution to the community of nations**”.

Such statements can be considered an interesting factor in the most interesting debate as to **whether, or to what extent, evolving international law may harbour an “obligation to democracy”**.

Democracy

Text:

- Preamble, 1st para.: ***CONSIDERING that the Charter of the Organization of American States recognizes that representative democracy is indispensable for the stability, peace, and development of the region, and that one of the purposes of the OAS is to promote and consolidate representative democracy, with due respect for the principle of non-intervention; ...***

Comment: → This repeats language found in Art. 2 (b) of the OAS Charter.

Text:

- Preamble, 3rd para.: ***RECALLING that the Heads of State and Government of the Americas, gathered at the Third Summit of the Americas, held from April 20 to 22, 2001 in Quebec City, adopted a democracy clause which establishes that any unconstitutional alteration or interruption of the democratic order in a state of the Hemisphere constitutes an insurmountable obstacle to the participation of that state's government in the Summits of the Americas process; (...)***

Comment: → This reference to democracy as a precondition for participation in the Summits of the Americas is no doubt directly inspired from Art. 9 of the OAS Charter, which asserts that “representative democracy” is the norm expected of members of the Organization.

Text:

- Preamble, 14th para.: ***TAKING INTO ACCOUNT that, in the Santiago Commitment to Democracy and the Renewal of the Inter-American System, the ministers of foreign affairs expressed their determination to adopt a series of effective, timely, and expeditious procedures to ensure the***

²⁶⁰ Full text at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/consejo>.

promotion and defense of representative democracy, with due respect for the principle of non-intervention; and that resolution AG/RES.1080 (XXI-O/91) therefore established a mechanism for collective action in the case of a sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically-elected government in any of the Organization's member states, thereby fulfilling a long-standing aspiration of the Hemisphere to be able to respond rapidly and collectively in defense of democracy; (...)

Comment: → Most students of the evolution of the Inter-American System consider the Santiago Commitment to Democracy and the Renewal of the Inter-American System²⁶¹ as a true landmark in the defense and promotion of democracy in the Americas, which would later lead to further developments by the OAS and the Summits of the Americas (notably the Quebec City Summit in 2001).²⁶² The whole Chapter IV of the Inter-American Democratic Charter is entirely devoted such a “series of effective, timely, and expeditious procedures to ensure the promotion and defense of representative democracy, with due respect for the principle of non-intervention”.²⁶³

Text:

- Chapter I, Title: ***Democracy and the Inter-American System.***²⁶⁴

Text:

- Art. 1: ***The peoples of the Americas have a right to democracy***²⁶⁵ and their governments have an obligation to promote and defend it. (...)

Comment: → This clear affirmation that there is such a thing as a “right to democracy”, that such a right belongs to “the peoples”, and that the governments of the Americas have an “obligation” to promote and defend such a right, is of course of prime significance. Indeed, that part of Art. 1 of the Inter-American Democratic Charter has been said to be at the very center of what one might refer to as the inter-American democracy ‘architecture’. The emphatic recognition of the existence of a “right to democracy” is at the heart of the entire instrumentation that the OAS and its members have developed over time in order to fulfill the ‘obligation’ to promote and defend democracy.²⁶⁶

Text:

- Art. 2: ***The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States. Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.***

Comment: → What is of potential significant relevance here is that democracy is considered to be “the basis for the rule of law”. Since Art. 1 of the same Charter proclaims that democracy is essential to development, then it follows that the rule of law is also a requirement for development.

Text:

²⁶¹ Both adopted at the 1991 OAS General Assembly.

²⁶² See also, in the same vein, the Declaration of Nassau [AG/DEC. 1 (XXII-O/92)], mentioned in the next (15th) para. of the preamble, not quoted here.

²⁶³ See also Art. 9 of the OAS Charter.

²⁶⁴ This Chapter in the Inter-American Democratic Charter encompasses its first 6 Articles, all of which could be expanded upon in this part of the study of the said Charter. But the author will limit himself to only those found to be of more immediate relevance for the purposes of this report. Articles 3 to 6 are useful tools to arrive at a description of what would be a description of ‘democracy’.

²⁶⁵ This “right to democracy” will be reaffirmed later in the Declaration of Nuevo León adopted at the 2004 Special Summit of the Americas in Monterrey, Mexico.

²⁶⁶ It is noteworthy, and - as some would argue - significant, that the above-quoted text is not, though, the only basic statement or affirmation made in this important initial article of the Charter. Indeed, the next phrase in this same Article reads: “Democracy is essential for the social, political, and economic development of the peoples of the Americas”. For more on this, see, below, “Text: Art. 1” in the “Democracy & Social and Democratic Development Interrelated” sub-chapter of the present Annex.

- Chapter IV, Title: **Strengthening and Preservation of Democratic Institutions**

Comment: → This Chapter (Arts 17-22) is of course a key part of this Charter. The author sees no need to develop it further within the purview of this report, except as was done in the body of the report, above. Some would say it is its “teeth”. It enunciates specific action which member States or the OAS itself are empowered to take and implement in the promotion, defense and restoration of democracy in the Americas. It would seem that it is the lack of any similar, or, more appropriately, parallel avenues in the promotion of that ‘social and economic development’ which is otherwise so closely and so often linked to democracy, that has led to the request for the present report to be undertaken.

In that context, Article 17 raises an interesting question.

Found at the very beginning of Chapter IV it reads: “*When the government of a member state considers that its democratic political institutional process or its legitimate exercise of power is at risk, it may request assistance from the Secretary General or the Permanent Council for the strengthening and preservation of its democratic system*”. The questions that arise are: (a) In light of the broadly recognized and often proclaimed interdependence between democracy and economic and social development, does this article open the door for a member State which would consider its lack of economic and social development to put at risk its “democratic political institutional process” or “its legitimate exercise of power” to request assistance from the Secretary General or the Permanent Council? And if so, what would be the measures expected from those? And of the member States? Or (b), in light of the remainder of the language in Chapter IV of the Inter-American Democratic Charter, could one argue that Article 17 was not, and is not, meant to offer the remedy to such a situation, and that the answer to such a situation is to be found in other instruments of the OAS?

Social and Economic Development

Text:

- *Nil.*

Democracy and Social and Democratic Development Interrelated

Text:

- Preamble, 1st para.: ***CONSIDERING that the Charter of the Organization of American States recognizes that representative democracy is indispensable for the stability, peace, and development of the region, (...)***²⁶⁷

Comment: → That language is taken directly from the 3rd paragraph of the preamble to the OAS Charter. ‘Democracy’ is posited here as a going hand-in-hand with ‘development’.²⁶⁸ Some would resist the argument that this formulation means that one is a pre-condition to the other in the sense that ‘democracy’ must come first if there is to be ‘development’. A debate which probably can be considered as without any *raison d’être*.

²⁶⁷ The full text of that paragraph reads: “*CONSIDERING that the Charter of the Organization of American States recognizes that representative democracy is indispensable for the stability, peace, and development of the region, and that one of the purposes of the OAS is to promote and consolidate representative democracy, with due respect for the principle of non-intervention; ...*”. Note that the Inter-American Democratic Charter devotes an entire chapter to the subject of “Democracy, Integral Development, and Combating Poverty” (Arts.11-16); more below.

²⁶⁸ Using pretty much the same language, the Declaration of Principles adopted at the Miami Summit earlier in 1994 adds: “*Democracy and development reinforce one another*” (see 1st para. of initial chapter, on “To Preserve and Strengthen the Community of Democracies of the Americas”).

Text:

- Preamble, 5th para.: **REAFFIRMING that the participatory nature of democracy in our countries in different aspects of public life contributes to the consolidation of democratic values and to freedom and solidarity in the Hemisphere;**

Comment: → To the extent that it can be argued that development in the Americas requires solidarity, considering participatory democracy as a source of solidarity is yet another way of linking the two concepts. The above language directly flows from the OAS Charter.²⁶⁹

Text:

- Preamble, 6th para.: **CONSIDERING that solidarity among and cooperation between American states require the political organization of those states based on the effective exercise of representative democracy, and that economic growth and social development based on justice and equity, and democracy are interdependent and mutually reinforcing;**

Comment: → There cannot be any clearer statement of the interdependence between democracy and development.

Text:

- Preamble, 7th para.: **REAFFIRMING that the fight against poverty, and especially the elimination of extreme poverty, is essential to the promotion and consolidation of democracy and constitutes a common and shared responsibility of the American states;**

Comment: → Taken directly from Art. 3 (f) of the OAS Charter.

Text:

- Preamble, 8th and 9th paras: **BEARING IN MIND that the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights contain the values and principles of liberty, equality, and social justice that are intrinsic to democracy; REAFFIRMING that the promotion and protection of human rights is a basic prerequisite for the existence of a democratic society, and recognizing the importance of the continuous development and strengthening of the inter-American human rights system for the consolidation of democracy;**

Comment: → Given this relationship between “social justice” and human rights, and since social justice requires development, it could easily be argued that the obligation to promote and respects Human Rights as enshrined both in the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights, equally applies to the promotion of democracy.

Text:

- Preamble, 12th para.: **BEARING IN MIND that the Protocol of San Salvador on Economic, Social, and Cultural Rights emphasizes the great importance of the reaffirmation, development, improvement, and protection of those rights in order to consolidate the system of representative democratic government,**²⁷⁰

Comment: → Again, a direct linkage between economic and social rights and democracy.

Text:

- Preamble, 16th para.: **BEARING IN MIND that, in the Declaration of Managua for the Promotion of Democracy and Development [AG/DEC.4 (XXIII-O/93)], the member states expressed their firm belief that democracy, peace, and development are inseparable and indivisible parts of a renewed and integral vision of solidarity in the Americas; and that the ability of the Organization to help preserve and strengthen democratic structures in the region will depend on the implementation of a strategy based on the interdependence and complementarity of those values;**

²⁶⁹ Notably from the 3rd para. of the preamble to the Charter, and its Art. 3 (d).

²⁷⁰ Adopted in 1988.

Comment: → Same basic principles as those enunciated in the 6th para. of the preamble, above.

Text:

- Preamble, 17th para.: ***CONSIDERING that, in the Declaration of Managua for the Promotion of Democracy and Development, the member states expressed their conviction that the Organization's mission is not limited to the defense of democracy wherever its fundamental values and principles have collapsed, but also calls for ongoing and creative work to consolidate democracy as well as a continuing effort to prevent and anticipate the very causes of the problems that affect the democratic system of government***

Comment: → There is a recognition here, directly borrowed from the 1993 Declaration of Managua, that the OAS's 'mission' to defend democracy is accompanied by that of preventing and anticipating the 'causes' that affect democracy. It is generally recognized throughout many texts, Declarations and Resolutions adopted by the OAS, that amongst such causes one finds poverty, lack of development, corruption, etc.

Text:

- Art. 1: (...) ***Democracy is essential for the social, political, and economic development of the peoples of the Americas.***

Comment: → This renewed statement on the inter-relationship between democracy and development²⁷¹ is of course nothing new. But what draws one's attention here is that it comes in an article which, in its entirety, reads: "*The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. Democracy is essential for the social, political, and economic development of the peoples of the Americas.*"

What can be significant is that to the notion of a 'right to democracy' does not correspond, at least in this language here, a parallel notion of a 'right to development'. Some would thus argue that what this article seems to limit itself to say, is that while democracy is a right, development is not possible without it. The counterargument, and of course that is the essence of what this report endeavors to deal with, would be that if, on one hand, the peoples of the Americas have a 'right to democracy', and if, on the other hand, there cannot be democracy without social, political and economic development, then they also have a 'right to development'.

That brings us back to the comments, above²⁷², on the inter-relationship between democracy and the rule of law, the former being considered as the basis for the latter. If, as this Charter proclaims, democracy is "the basis for the rule of law", and if, as also proclaimed by the present Charter, democracy is essential to development, then it follows that the rule of law is also a pre-requisite to development. And that, irrespective of whether or not the right to democracy entails a right to development.

Text:

- Art. 3: ***Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms (...)***

Comment: → By making 'respect for human rights and fundamental freedoms' an essential element of 'representative democracy', this article would seem to proclaim that any system which does not respect such rights and freedoms could not be considered to be a true 'representative democracy'. By extrapolation, and to the extent that social and economic rights can be considered as included in the notion of human rights and fundamental freedoms, then a system which does not promote and implement social and economic rights likewise could not be considered to be a true 'representative democracy'.

Text:

²⁷¹ See also under Art. 11, below.

²⁷² Under Art. 2 in the Democracy sub-chapter, above.

- Art. 7: **Democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence, embodied in the respective constitutions of states and in inter-American and international human rights instruments.**

Comment: → See the comment immediately above.

Text:

- Chapter III, Title: **Democracy, Integral Development, and Combating Poverty**²⁷³

Text:

- Art. 11: **Democracy and social and economic development are interdependent and are mutually reinforcing.**

Comment: → A simple repetition of what the Preamble announced. This interdependence between democracy and development permeates a vast number of OAS documents, as seen throughout this report.

This Democratic Charter proclaims a “right to democracy”²⁷⁴, while at the same time repeatedly stating that democracy is essential to development²⁷⁵, and that democracy and development are “interdependent”, “mutually reinforcing”²⁷⁶,. On the other hand, fighting extreme poverty is also said to be “essential to the promotion and consolidation of democracy”.²⁷⁷

So, again, proximate linkages are clearly established²⁷⁸. But the question as to whether there is a “legal” element in those linkages remains to be answered.

Text:

- Art. 12: **Poverty, illiteracy, and low levels of human development are factors that adversely affect the consolidation of democracy. The OAS member states are committed to adopting and implementing all those actions required to (...) eradicate extreme poverty, taking into account the different economic realities and conditions of the countries of the Hemisphere. This shared commitment regarding the problems associated with development and poverty also underscores the importance of maintaining macroeconomic equilibria and the obligation to strengthen social cohesion and democracy.**

- Art. 13: **The promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Hemisphere.**

Comment: → More language linking democracy and development.

Text:

- Art. 26: **The OAS will continue to carry out programs and activities designed to promote democratic principles and practices and strengthen a democratic culture in the Hemisphere, bearing in mind that democracy is a way of life based on liberty and enhancement of economic, social, and cultural conditions for the peoples of the Americas. The OAS will consult and cooperate on an ongoing basis with member states and take into account the contributions of civil society organizations working in those fields.**

Comment: → Coming as it does, together with Art. 27 below, within a short Chapter devoted to “Promotion of a Democratic Culture” that description of democracy as “a way of life based on liberty

²⁷³ This Chapter in the Inter-American Democratic Charter incorporates its Articles 11 to 16, all of which could be expanded upon in this part of the study of the said *Charter*. But the author will limit himself to only those found to be of more immediate relevance for the purposes of this report.

²⁷⁴ Art.1.

²⁷⁵ Art. 1.

²⁷⁶ Art .1.

²⁷⁷ 7th para. of the preamble.

²⁷⁸ See also Arts.12 and 13.

and enhancement of economic, social, and cultural conditions for the peoples of the Americas” is yet another form, rather novel, of expressing anew the relationship between democracy and development. OAS programs and activities aimed at promoting democracy are an indirect form of also promoting or enhancing, by the same token, economic development. That this could, and can, also be a “two-way street” should leave little doubt.

Text:

- Art 27: *The objectives of the programs and activities will be to promote good governance, sound administration, democratic values, and the strengthening of political institutions and civil society organizations. Special attention shall be given to the development of programs and activities for the education of children and youth as a means of ensuring the continuance of democratic values, including liberty and social justice*²⁷⁹.

Annex 13

THE MONTERREY CONSENSUS²⁸⁰
International Conference on Financing for Development,
 (Monterrey, Mexico, March 18-22, 2002)

Introductory Note: The opening paragraph of the Monterrey Consensus describes its content and purview: “1. We the heads of State and Government, gathered in Monterrey, Mexico, on 21 and 22 March 2002, have resolved **to address the challenges of financing for development around the world, particularly in developing countries.** Our goal is **to eradicate poverty, achieve sustained economic growth and promote sustainable development** as we advance to a fully inclusive and equitable global economic system”.

Democracy

Text:

- *Nil.*

Comment: → The word “democracy” or derivatives thereof only appears three times in this 73-paragraph UN document, but never in a “stand-alone” fashion: we find “democracy” in para. 9, and “democratic institutions” and “democratic societies” in para. 11. As stated earlier in this report, the UN Charter itself makes no direct mention of “democracy”, though many have convincingly argued that the very concept of democracy permeates it²⁸¹.

Social and Economic Development

General comment: → As clearly stated in the initial paragraph of the Monterrey Consensus, that document was meant to express and reflect the “*resolve*” of the high-level participants at that UN conference to “*address the challenges of financing for development around the world, particularly in developing countries*” and to affirm that their “*goal is to eradicate poverty, achieve sustained economic growth and promote sustainable development as we advance to a fully inclusive and equitable global economic system*”. Its clear and entire focus is therefore on “development”.²⁸² Hence its very

²⁷⁹ See above comment, on Art. 26.

²⁸⁰ Adopted on March 22, 2002. Full text can be found at <http://www.un.org/esa/ffd/0302finalMonterreyConsensus.pdf> and <http://www.un.org/esa/ffd/aconf198-11.pdf>

²⁸¹ See the review of the UN Charter earlier in this report.

²⁸² In his analysis of the Monterrey Consensus made in the course of his previously quoted lecture Dr. Jonathan Fried said: “The Monterrey Consensus is a watershed in policy foundation of globalization: (i) it emphasizes

numerous references to the notion of development in all of its forms, which need not be all quoted in this part of the present report. All the more so that, given the general purview of this report, “democracy” and “development” are mentioned together and in an inter-related fashion only twice in the document, as will be seen below. Only a few of the large number of mentions of “development” will appear immediately below.²⁸³

Text:

- Part I, 2nd para.: *We note with concern current estimates of dramatic shortfalls in resources required to achieve the internationally agreed development goals, including those contained in the United Nations Millennium*

Text:

- Part I 3rd para.: ***Mobilizing and increasing the effective use of financial resources and achieving the national and international economic conditions needed to fulfill internationally agreed development goals, including those contained in the Millennium Declaration, to eliminate poverty, improve social conditions and raise living standards, and protect our environment, will be our first step to ensuring that the twenty-first century becomes the century of development for all.***

Text:

- Part I 4th para.: ***Achieving the internationally agreed development goals, including those contained in the Millennium Declaration, demand a new partnership between developed and developing countries. We commit ourselves to sound policies, good governance at all levels and the rule of law. (...)***

Comment: → Some would argue that by committing to “good governance” and “the rule of law” in the context of reaching development goals, the Heads of State and Government who approved that document were in fact committing to democratic rule. In that context, one can refer to Art. 2 of the Inter-American Democratic Charter, which reads in part: “*The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States*”.

Text:

- Part 1, 6th para.: ***Each country has primary responsibility for its own economic and social development, and the role of national policies and development strategies cannot be overemphasized. At the same time, domestic economies are now interwoven with the global economic system and, inter alia, the effective use of trade and investment opportunities can help countries to fight poverty. National development efforts need to be supported by an enabling international economic environment.***

Comment: → Worthy of note: how the interdependence between domestic and world economies and the resulting need for a favourable international economic environment mitigates in a way the recognition that each country remains primarily responsible for its own development.

Text:

- Part I, 8th para.: ***In the increasingly globalizing interdependent world economy, a holistic approach to the interconnected national, international and systemic challenges of financing for development — sustainable, gender-sensitive, people-centred development — in all parts of the globe is essential. Such an approach must open up opportunities for all and help to ensure that***

that developing countries are primarily responsible for their own development, (ii) it reconfirms that the path of development must be sustained and coherent, and (iii) it makes clear that mobilizing resources for development is not primarily about ODA, and that resources must come from a wide variety of sources”. And he describes the Monterrey Consensus’ recommendations for mobilizing the domestic resources essential for development as resting on three pillars, namely “Strengthening the foundation for democracy”, “Good economic governance”, and “Moral and legal values”; (underlining provided; *op. cit.* at pp. 298-299, and 300).

²⁸³ Necessarily chosen, the author will admit, on a somewhat subjective basis.

resources are created and used effectively and that strong, accountable institutions are established at all levels. To that end, collective and coherent action is needed in each interrelated area of our agenda, involving all stakeholders in active partnership.

Comment: → Aiming for “people-centered development” and calling for “accountable institutions” could also be interpreted as a tacit acknowledgement that development can better flourish under democratic systems.

Text:

• Part II²⁸⁴, section (A)²⁸⁵, 10th para: (...) **An enabling domestic environment is vital for mobilizing domestic resources, increasing productivity, reducing capital flight, encouraging the private sector, and attracting and making effective use of international investment and assistance. Efforts to create such an environment should be supported by the international community.**

Comment: → One could find here in this call for “enabling domestic environment” another argument in favour of a political environment governed under fair, just, predictable rules, in other words a ‘democratic’ one.

Text:

• Part II, section (A), 13th para: **Fighting corruption at all levels is a priority. Corruption is a serious barrier to effective resource mobilization and allocation, and diverts resources away from activities that are vital for poverty eradication and economic and sustainable development.**

Comment: → As seen earlier, several texts adopted at high-level hemispheric gatherings have proclaimed that corruption equally and simultaneously affects democracy (not mentioned here) and economic development.²⁸⁶

Text:

• Part II, section (B)²⁸⁷, 20th para.: (...) **A central challenge, therefore, is to create the necessary domestic and international conditions to facilitate direct investment flows, conducive to achieving national development priorities, to developing countries (...), least developed countries, small island developing States, and landlocked developing countries, and also to countries with economies in transition. (...)**²⁸⁸

Comment: → Same as under para. 10, *supra*.

Text:

• Part II, section (B), 23rd para.: **While Governments provide the framework for their operation, businesses, for their part, are expected to engage as reliable and consistent partners in the development process. We urge businesses to take into account not only the economic and financial but also the developmental, social, gender and environmental implications of their undertakings. (...). We welcome all efforts to encourage good corporate citizenship (...).**

Comment: → One can see here a reference to the concept of the “social responsibilities” of the corporate sector.

²⁸⁴ Part II is entitled *Leading actions*.

²⁸⁵ Dealing with *Mobilizing domestic financial resources for development*.

²⁸⁶ See for ex. Art.1 sec.4, Intro. para. of the Plan of Action adopted at the Quebec Summit, where it is said “*that corruption gravely affects democratic political institutions and the private sector, weakens economic growth and jeopardizes the basic needs and interests of a country’s most underprivileged groups (...).*”

²⁸⁷ Dealing with *Mobilizing international resources for development: foreign direct investment and other private flow*.

²⁸⁸ See also para. 21 of the same section: “*To attract and enhance inflows of productive capital, countries need to continue their efforts to achieve a transparent, stable and predictable investment climate, with proper contract enforcement and respect for property rights, embedded in sound macroeconomic policies and institutions that allow businesses, both domestic and international, to operate efficiently and profitably and with maximum development impact*”.

Text:

- Part II, section (C)²⁸⁹, 26th para.: A universal, rule-based, open, non-discriminatory and equitable multilateral trading system, as well as meaningful trade liberalization, can substantially stimulate development worldwide, benefiting countries at all stages of development.

Comment: → This is seen by some as an appeal for democracy to also be instituted and respected within international organizations themselves, a very actual debate.²⁹⁰

Text:

- Part II, section (C), 27th para.: **To benefit fully from trade, which in many cases is the single most important external source of development financing, the establishment or enhancement of appropriate institutions and policies in developing countries, as well as in countries with economies in transition, is needed. Meaningful trade liberalization is an important element in the sustainable development strategy of a country.**

Comment: → See under 10th para., *supra*.

Text:

- Part II, section (D)²⁹¹, 39th para.: **Official development assistance (ODA) plays an essential role as a complement to other sources of financing for development, especially in those countries with the least capacity to attract private direct investment. (...). ODA can be critical for improving the environment for private sector activity and can thus pave the way for robust growth. ODA is also a crucial instrument for supporting education, health, public infrastructure development, agriculture and rural development, and to enhance food security. For many countries in Africa, least developed countries, small island developing States and landlocked developing countries, ODA is still the largest source of external financing and is critical to the achievement of the development goals and targets of the Millennium Declaration and other internationally agreed development targets.**

Comment: → To the extent that ODA promotes growth and development²⁹², and that development and democracy are recognized as interrelated and mutually supportive, then ODA can also be presented as supportive of democratic development.

Text:

- Part II, section (D), 40th para.: **Effective partnerships among donors and recipients are based on the recognition of national leadership and ownership of development plans and, within that framework, sound policies and good governance at all levels are necessary to ensure ODA effectiveness.**

Comment: → See under 10th para., *supra*.

Text:

- Part II, section (D), 41st para.: **We recognize that a substantial increase in ODA and other resources will be required if developing countries are to achieve the internationally agreed development goals and objectives, including those contained in the Millennium Declaration. To build support for ODA, we will cooperate to, to enhance aid effectiveness, further improve policies and development strategies, both nationally and internationally**

²⁸⁹ Dealing with *International trade as an engine for development*.

²⁹⁰ In the same vein, *see* para. 30: "We also undertake to facilitate the accession of all developing countries, particularly the least developed countries, as well as countries with economies in transition, that apply for membership of the World Trade Organization". And also para. 38: "In support of the process launched in Doha, immediate attention should go to strengthening and ensuring the meaningful and full participation of developing countries, especially the least developed countries, in multilateral trade negotiations".

²⁹¹ Dealing with *Increasing international financial and technical cooperation for development*.

²⁹² In that context, *see also*, in para. 40: "The goals, targets and commitments of the Millennium Declaration and other internationally agreed development targets can help countries to set short- and medium-term national priorities as the foundation for building partnerships for external support".

Comment: → This recognition of a need to improve national – as well as international – development strategies to render ODA more effective, brings us back to the comment under para. 39, *supra*.

Text:

• Part II, section (D), 46th para.: ***We will ensure that the long-term resources at the disposal of the international financial system, including regional and subregional institutions and funds, allow them to adequately support sustained economic and social development, technical assistance for capacity-building, and social and environmental protection schemes.***

Text:

• Part II, section (E)²⁹³, 48th para.: ***External debt relief²⁹⁴ can play a key role in liberating resources that can then be directed towards activities consistent with attaining sustainable growth and development, and therefore, debt relief measures should, where appropriate, be pursued vigorously and expeditiously, including within the Paris and London Clubs and other relevant forums.***

Text:

• Part II, section (F)²⁹⁵, 52nd para.: ***In order to complement national development efforts, we recognize the urgent need to enhance coherence, governance, and consistency of the international monetary, financial and trading systems. To contribute to that end, we underline the importance of continuing to improve global economic governance and to strengthen the United Nations leadership role in promoting development. With the same purpose, efforts should be strengthened at the national level to enhance coordination among all relevant ministries and institutions.***

Text:

• Part II, section (F), 53rd para.: ***Important international efforts are under way to reform the international financial architecture. Those efforts need to be sustained with greater transparency and the effective participation of developing countries and countries with economies in transition. One major objective of the reform is to enhance financing for development and poverty eradication. We also underscore our commitment to sound domestic financial sectors, which make a vital contribution to national development efforts, as an important component of an international financial architecture that is supportive of development.***

Comment: → Once more one can see in the above two paragraphs – as well as in the next one, *infra* - implicit calls and support for more ‘democracy’ at both national and international levels, all for the sake of better, and more effectively, satisfying development needs²⁹⁶.

Text:

• Part II, section (F), 61st para.: ***Good governance at all levels is also essential for sustained economic growth, poverty eradication and sustainable development worldwide. To better reflect the growth of interdependence and enhance legitimacy, economic governance needs to develop in two areas: broadening the base for decision-making on issues of development concern and filling organizational gaps.*** (...).

²⁹³ Dealing with *External debt*.

²⁹⁴ In that context, *see also*, in para. 51: “(...) We encourage donor countries to take steps to ensure that resources provided for debt relief do not detract from ODA resources intended to be available for developing countries. (...)”

²⁹⁵ Dealing with *Addressing systemic issues: enhancing the coherence and consistency of the international monetary, financial and trading systems in support of development*.

²⁹⁶ In the same context, *see also*, in para. 57: “It is essential to ensure the effective and equitable participation of developing countries in the formulation of financial standards and codes”. And, in para. 62, “We stress the need to broaden and strengthen the participation of developing countries and countries with economies in transition in international economic decision-making and norm-setting”.

Democracy and Social and Democratic Development Interrelated

Text:

- Part I²⁹⁷, 9th para.: ***Recognizing that peace and development are mutually reinforcing, we are determined to pursue our shared vision for a better future, through our individual efforts combined with vigorous multilateral action. Upholding the Charter of the United Nations and building upon the values of the Millennium Declaration, we commit ourselves to promoting national and global economic systems based on the principles of justice, equity, democracy, participation, transparency, accountability and inclusion.***

Comment: → What is noteworthy here is that in this - the first - mention of “democracy” in that UN consensus document, it is considered one amongst a series of ‘principles’ on the basis of which “national and global economic systems” are to be promoted. That being said, and looking closely at the principles enunciated above, could not one consider that “*justice, equity, democracy, participation, transparency, accountability and inclusion*” taken all together all add up to ‘democracy’ in its widest acceptance?

Unlike what is repeatedly proclaimed in hemispheric documents, *i.e.* that democracy and development are mutually reinforcing, here «peace» replaces “democracy”. But see immediately below.

Text:

- Part II²⁹⁸, section (A), 11th para.²⁹⁹: ***Good governance is essential for sustainable development. Sound economic policies, solid democratic institutions responsive to the needs of the people and improved infrastructure are the basis for sustained economic growth, poverty eradication and employment creation. Freedom, peace and security, domestic stability, respect for human rights, including the right to development, and the rule of law, gender equality, market-oriented policies, and an overall commitment to just and democratic societies are also essential and mutually reinforcing.***

Comment: → Compared to the language above in para. 9, the notion of what is “mutually reinforcing” becomes much more holistic here. Of interest of course is the mention of “the right to development” as part of “human right”³⁰⁰.

As one final note, it is worth quoting one more paragraph from the Monterrey Consensus, found in its last Part (III)³⁰¹: “To build a global alliance for development will require an unremitting effort. We thus commit ourselves to keeping fully engaged, **nationally, regionally and internationally**, to ensuring proper follow-up to the implementation of agreements and commitments reached at the present Conference, and to continuing to build bridges between development, finance, and trade organizations and initiatives, within the framework of the holistic agenda of the Conference”.

²⁹⁷ Part I is entitled *Confronting the challenges of financing for development: a global response*.

²⁹⁸ Entitled *Leading Actions*.

²⁹⁹ Dealing with *Mobilizing domestic financial resources for development*.

³⁰⁰ The *Millennium Declaration*, adopted in 2000, also mentions a “right to development”.

³⁰¹ Entitled *Staying Engaged*.

DECLARATION OF MARGARITA³⁰²
High-Level Meeting on Poverty, Equity, and Social Inclusion
 (Isla of Margarita, Venezuela, October 8-10, 2003)

Democracy

Text:

- *Nil.*

Comment: → There is no “stand alone” reference to democracy in the Declaration of Margarita.

Social and Economic Development

Text:

- Preamble, 4th para.: ***Considering that (...) The Millennium Declaration, in which Heads of State and Government of the world declared that they would “spare no efforts to liberate men, women, and children from the abject, dehumanizing conditions of extreme poverty”, the Monterrey Consensus³⁰³ on financing for development, as well as the commitments on sustainable development and other international agreements on social development issues agreed upon at the hemispheric level, the United Nations and other multilateral forums.***

Comment: → This, taken together with the following extract, clearly sets ‘development’ as the overall focus of the Declaration of Margarita.

Text:

- 1st para.: ***We declare (...) Our determination and our commitment to urgently combat the serious problems of poverty, social exclusion and inequity that affect, in varying degrees, the countries of the hemisphere; and to face the causes that generate them and its consequences, and create favorable conditions for socio-economic development with equity to promote more just societies.***³⁰⁴

³⁰² Full text at http://www.oas.org/documents/ConferenciaPobrezaVenezuela/Declaracion_Margarita_spa.pdf It was endorsed at the OAS General Assembly in Quito on June 8, 2004 by resolution AG/RES. 1983 (XXXIV-O/04) on *Poverty, Equity, and Social Inclusion*. That resolution resolved, amongst other things: “1. To instruct the Permanent Council and the Inter-American Council for Integral Development (CIDI) to consider carefully the recommendations issued at the High-Level Meeting on Poverty, Equity, and Social Inclusion”, and “5. To endorse the proposal, made by the High-Level Meeting on Poverty, Equity, and Social Inclusion, to consider the need to deepen the commitments undertaken in the OAS Charter, the Inter-American Democratic Charter, and other international instruments on social matters in relation to the advancement and observance of economic, social, and cultural rights, and explore the possibility of having an instrument and mechanisms that respond to this aim; and to instruct the Permanent Council and CIDI to proceed accordingly”.

³⁰³ See the analysis on those two documents in earlier parts of this report.

³⁰⁴ That was summed up in the following manner up by the representative of the Government of Venezuela during the closing ceremony of the meeting: “Without any doubt, we’ve given renewed impulse to the social issues on the inter-American agenda, and we have agreed on concrete and creative actions which we will be responsible for carrying out, in an environment of cooperation and continental solidarity and above all, with the conviction that poverty and social exclusion are threats that generate an endless list of problems and calamities that are linked together”, (As quoted in an OAS Press Release dated Oct. 10, 2003: http://www.oas.org/OASpage/press_releases/press_release.asp?sCodigo=E-197/03)

Text:

- 4th para.: ***We declare (...) Our interest in advancing the development of an open and transparent international trade system through bilateral, regional and global negotiations, that promotes economic and social development that, contributes to the fight against poverty, improved living standards and enhanced trade opportunities for all. Accordingly, we call for a constructive dialogue within the appropriate fora on topics such as access to markets, subsidies and protectionism.***

Comment: → This is yet another restatement of the recognition that a better trade system would enhance and promote development.

Text:

- 5th para.: ***We declare (...) That among other factors mentioned in the Monterrey Consensus, official development assistance³⁰⁵ and external debt relief as appropriate may help to improve the capacities of some countries to promote social and economic development, and that this should be accompanied by sound domestic macro-economic policies. Therefore, it is necessary to keep working towards new financial and economic domestic and international policies, taking into account the social dimension and the principle of shared responsibility.***

Comment: → The reference to the need for “sound domestic macro-economic policies” to accompany the ‘external’ factors that development assistance and debt relief are, and hence to the “*principle of shared responsibility*”³⁰⁶, is to be noted. It has often been argued that a true participatory democracy offers the best possibilities for the elaboration and application of such “sound domestic macro-economic policies”.

Text:

- 7th para.: ***We declare (...) Our readiness to promote and strengthen cooperation initiatives in areas relating to poverty, social exclusion, and inequity, in support of national efforts based on the principle of partnership for development. (...)***

<h3>Democracy and Social and Democratic Development Interrelated</h3>

Text:

- Preamble, 1st para.: ***Considering that the Charter of the Organization of American States establishes as one of its central purposes the eradication of critical poverty, which represents an obstacle to the full democratic development of the peoples of the hemisphere, commitment ratified by the Resolutions AG/RES.1854 (XXXII-O/02) AG/RES.1962 (XXXIII-O/03), priority that it is inspired in the principles of inter-American solidarity and cooperation in the search for equity and social justice and the integral development of its peoples.***

Comment: → Certainly a most oft-repeated and key reference to the inter-relationship between democracy and development so very largely recognized in Hemispheric texts.

Text:

- Preamble, 2nd para.: ***Considering (...) That The Inter-American Democratic Charter reaffirms “that the fight against poverty, and especially the elimination of extreme poverty, is essential to the promotion and consolidation of democracy and constitutes a common and shared responsibility of the American states”; (...)***

³⁰⁵ See also para. 8 of the Declaration: “We declare (...) That official development assistance plays an essential role as a complement to other sources of financing for development, especially in those low and middle income countries with the least capacity to attract private direct investment”.

³⁰⁶ Para. 7 of the Declaration speaks of *Partnership for development*.

Comment: → Same as above.

Text:

- Preamble, 3rd para.: ***Considering (...) That The Declaration of Santiago on Democracy and Public Trust: A New commitment to good governance for the Americas states that Strengthening democratic governance calls for the elimination of poverty and social exclusion and the promotion of equitable economic growth by means of sound public policies and practices that promote equal opportunity, education health and full employment.***

Comment: → The texts found in the above two paragraphs and extracted from the preamble of the Declaration are simple restatements of the linkages between democracy and development found in the referenced documents³⁰⁷.

Text

- Preamble, 6th para.: ***Considering (...) That The Special Summit of the Americas to be held in Mexico will address the issues of economic growth with equity, social development y democratic governance.***

Text:

- 2nd para.: ***We declare (...) Our commitment to strengthen the policies and programs intended to facilitate processes of social inclusion that allow the creation of integrated societies; as well as our special obligation towards people, families - as the nucleus of society –, communities, groups that live in poverty and those that are in a situation of vulnerability, disadvantage and marginalization.***

Comment: → The comment immediately below (para. 3) equally applies to this paragraph, in that social inclusion and the creation of integrated societies can be said to be much better facilitated and achieved under a democratic system of government.

Text:

- 3rd para.: ***We declare (...) Our commitment to promote greater cooperation and coordination between or among national sectors which have a role in determining economic and social policies, which must be mutually complementary.***

Comment: → Though there are no specific references here to democracy, it could possibly be argued such a reference is implied, a truly democratic system having often been recognized in hemispheric texts as offering the best guarantees for the hoped-for “greater cooperation and coordination between or among the national sectors”.³⁰⁸

Text:

- 6th para.: ***We declare (...) Our commitment to strengthen our efforts at the national level, to work in conjunction with municipal and regional administrations, private sector and other actors of civil society, to achieve a more equitable distribution of income and increase economic opportunities of our people. Accordingly, we acknowledge the potential of local and regional economies as engines for growth.***

Comment: → The comment immediately above equally applies here.

Text:

- 9th para.: ***We declare (...) That good governance, transparency and accountability are some of the essential elements to make an efficient use of official development assistance and other available resources.***

³⁰⁷ See the analysis made on those two documents in earlier parts of this report.

³⁰⁸ See also paras. 2 and 6 of the Declaration.

Comment: → We can see another link being made here between development and democracy, insofar as “good governance, transparency and accountability” are generally acknowledged as the attributes of an effective democracy.

Text:

- 16th para.: ***We declare (...) The need to deepen the commitments undertaken in the OAS Charter, the Inter-American Democratic Charter and other international commitments on social matters in relation to the advancement and observance of economic, social, and cultural rights. Accordingly, we propose that the Permanent Council and the Inter-American Council for Integral Development take up this matter, and explore the possibility of having and instrument and mechanisms that respond to this end.***

Comment: → Not surprisingly, the authors of the Declaration of Margarita have thus chosen to recall that commitments relating to development are to be found amongst those undertaken under the Inter-American Democratic Charter.

Annex 15

DECLARATION ON SECURITY IN THE AMERICAS³⁰⁹ Special Conference on Security,

(Mexico City, Mexico, October 27-28, 2003)

Introductory Note: The opening paragraph (Preamble) of the Declaration on Security states the principal goal of the Conference: “***We, the States of the Americas represented at the Special Conference on Security, in Mexico City, committed to promoting and strengthening peace and security in the Hemisphere, (...)***”.

Democracy

Text:

- Preamble, 3rd para.: ***Bearing in mind that the 1991 Santiago Commitment to Democracy and the Renewal of the Inter-American System decided to initiate a process of consultation on hemispheric security, from an updated and comprehensive perspective, in light of the new conditions in the region and the world.***

Comment: → That paragraph thus links ‘democracy’ and ‘security’; this is of importance, especially in light of the evolving concept of security as amply developed in this Declaration³¹⁰.

Text:

- Para. 32nd, Ch. III³¹¹: ***We underscore the role of education for peace and the strengthening of democracy in our Hemisphere as a region where tolerance, dialogue, and mutual respect prevail as peaceful forms of coexistence. We recommend that both in each state and in the corresponding inter-American instances, particularly the Inter-American Education Committee, actions be taken to promote democratic culture in keeping with the provisions of the Inter-American Democratic Charter.***

³⁰⁹ Adopted on October 28, 2003. Full text at http://www.oas.org/documents/eng/DeclaracionSecurity_102803.asp

³¹⁰ With, as shall be seen below, development considered to be an important element of security.

³¹¹ Entitled *Commitments and Cooperation Measures*.

Comment: → Note the reference to the Inter-American Democratic Charter.

Social and Economic Development

Text:

- Para 4.g, Ch. II³¹²: **Social justice and human development are necessary for the stability of each state in the Hemisphere. Fostering friendly relations and inter-American cooperation for integral development strengthens security of the states of the Hemisphere.**

Text:

- Para 35th, Ch. III³¹³: **We shall strengthen cooperation mechanisms and actions to address extreme poverty, inequality, and social exclusion on an urgent basis. Overcoming these unacceptable conditions is a primary task of the states of the Hemisphere, which requires continued commitment and actions to promote economic and social development, and education, and should be complemented with coordination, cooperation, and solidarity among states, and action by international financial institutions, including innovative financial mechanisms that emerge in the competent fora. We also reaffirm our commitment to combating extreme poverty within our states by adopting and implementing actions in accordance with the Millennium Development Goals, the Monterrey Consensus, and the Declaration of Margarita, inter alia, promoting development through economic cooperation of the Hemisphere, and fully utilizing national, regional, and international development agencies.**

Comment: → Note the references to the Millennium Development Goals, the Monterrey Consensus, and the Declaration of Margarita.

Democracy and Social and Democratic Development Interrelated

Text:

- Para. 2nd, Ch. II³¹⁴: **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.**

Comment: → This paragraph and many of those that follow and are quoted below, develop a very holistic – one is tempted to add “modern” or “modernized” – approach to peace, democracy, development, security etc, all seen as closely inter-related and mutually supportive.

Text:

- Para. 3rd, Ch II: **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.**

Comment: → We are quite far, here, from one of the traditional definitions of peace as “an absence of war”. Seen as both a ‘value’ and a ‘principle’, it is presented as encompassing – some would say as necessitating or requiring – a series of self-supporting elements, amongst which one finds democracy, justice, and human rights (including development?).

Text:

³¹² Entitled *Shared Values and Common Approaches*.

³¹³ Entitled *Commitments and Cooperation Measures*.

³¹⁴ Entitled *Shared Values and Common Approaches*.

- Para. 4.b, Ch. II: ***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. Salient among them are: (...) representative democracy is an indispensable condition for the stability, peace, and development of the states of the Hemisphere. In particular, we reaffirm our commitment to the full observance of the Inter-American Democratic Charter and to its values, principles, and mechanisms. (...)***

Comment: → It is noteworthy that representative democracy not only is presented here as an “indispensable condition” for peace and development (an oft-repeated concept), but, and that is a somewhat newer formulation or earlier statements dating back to the OAS Charter itself, as one of “shared values” and “common approaches” recognized in the Americas.

Text:

- Para. 4.c, Ch. II: ***Respect for human rights and fundamental freedoms, and good governance are essential for the stability, peace, and political, economic, social development of the states of the Hemisphere.***

Text:

- Para. 4.e, Ch. II: ***In our Hemisphere, as democratic states committed to the principles of the Charter of the United Nations and the OAS, we reaffirm that the basis and purpose of security is the protection of human beings. Security is strengthened when we deepen its human dimension. Conditions for human security are improved through full respect for people's dignity, human rights, and fundamental freedoms, as well as the promotion of social and economic development, social inclusion, and education and the fight against poverty, disease, and hunger.***

Comment: → In other words, democracy breeds security in its new, broadened conception, and the conditions needed to achieve it.

Text:

- Para. 4.f, Ch. II: ***Education for peace and the promotion of a democratic culture play a key role in the development of states, the strengthening of stability, and the consolidation of our Hemisphere as a region where understanding and mutual respect, dialogue, and cooperation prevail.***

Text:

- Para. 4.k, Ch. II: ***The new threats, concerns, and other challenges are cross-cutting problems that require multifaceted responses by different national organizations and in some cases partnerships between governments, the private sector, and civil society all acting appropriately in accordance with democratic norms and principles, and constitutional provisions of each state.***

Comment: → It is interesting to see that democratic norms and principles are presented as some sort of safeguards when it comes to respond to today’s “new threats”.

Text:

- Para. 4.m, Ch. II: ***The security of states of the Hemisphere is affected, in different ways, by traditional threats and the following new threats, concerns, and other challenges of a diverse nature: (...) extreme poverty and social exclusion of broad sectors of the population, which also affect stability and democracy. Extreme poverty erodes social cohesion and undermines the security of states.***

Comment: → A very clear statement to the effect that extreme poverty (a consequence of lack of ‘development’) is to be considered as one of the “new threats” challenging today’s societies, and as such, undermining democracy.

Text:

- Para. 5, Ch. III³¹⁵: ***We reaffirm that democracy is a right and an essential shared value that contributes to the stability, peace, and development of the states of the Hemisphere, and its full exercise is vital to enhancing the rule of law and the political, economic, and social development of peoples. We will promote and defend democracy through implementation of the OAS Charter and the Inter-American Democratic Charter and by strengthening the inter-American system for the protection of human rights.***

Comment: → A very all-encompassing description of ‘democracy’ as a “right” and an “essential shared value”, and of its close relationship to such a wide range of objectives long-established in various hemispheric instruments of diverse legal hierarchy.

Text:

- Para. 33rd, Ch. III: ***We agree, in the context of our commitment to a democratic culture, to strengthen civil society participation in considering, developing, and implementing multidimensional approaches to security.***

Text:

- Para. 36th, Ch. III: ***We affirm our decision to collaborate, at the request of the state that so requires, in the search for urgent solutions to financial crises that may affect the political, economic, or social stability of the member state.***

Annex 16

DECLARATION OF NUEVO LEÓN³¹⁶ Special Summit of the Americas (Monterrey, Mexico, January 12-13, 2004)

Introductory Note: Here is the aim of that “Special Summit” as enunciated in the opening paragraph of the Declaration of Nuevo León: “*Our purpose is to advance implementation of measures to **combat poverty, to promote social development, to achieve economic growth with equity, and to strengthen governance** in our democracies. With a renewed and strengthened vision of cooperation, solidarity, and integration, we will confront the continuing and growing challenges in the Hemisphere.*”

Democracy

Text:

- 2nd para. of 3rd Ch.³¹⁷: ***We reiterate our commitment to the full application of the Inter-American Democratic Charter, which constitutes an element of regional identity, and, projected internationally, is a hemispheric contribution to the community of nations. We reaffirm our decision to coordinate immediate action whenever democracy is threatened in any of our countries. In addition, we will continue our efforts to strengthen mechanisms for the defense of democracy and to develop and promote a culture and education for democracy.***

Comment: → As shall be seen elsewhere in this report, this reference to the Inter-American Democratic Charter as an “*element of regional identity*” and, if projected internationally, a “*hemispheric contribution to the community of nations*” constitutes an interesting factor in the debate as to whether, or to what extent, evolving international law may harbor an “obligation to democracy”.

Text:

- 8th para. of 3rd Ch.: ***The Inter-American Democratic Charter states that the peoples of the Americas have the right to democracy and that their governments have the obligation to promote and defend it, and it establishes that transparency in government activities, probity,***

³¹⁵ Entitled *Commitments and Cooperation Measures*.

³¹⁶ Full text at http://www.summit-americas.org/SpecialSummit/declaration_monterrey-eng.htm

³¹⁷ Entitled *Democratic governance*.

and responsibility in public management are key components of the exercise of democracy.
(...)

Comment: → As commented before under the review of the Inter-American Democratic Charter, this clear reaffirmation of a “right to democracy”, that such a right belongs to “the peoples”, and that their governments have an “obligation” to promote and defend it, is of prime significance. It can be said to be at the very center of what one might refer to as the Inter-American Democracy ‘architecture’. The emphatic recognition of the existence of such a right is at the heart of the entire instrumentation that the OAS and its members have developed over time in order to fulfill the ‘obligation’ to promote and defend democracy.

Text:

- 14th para. of 3rd Ch.: ***We recognize that political pluralism and sound political parties are essential elements of democracy.***

Social and Economic Development

Text:

- 7th para. of 1st Ch.³¹⁸: ***We recognize the important role that trade plays in promoting sustained growth and economic development. We affirm our commitment to advance the Doha Agenda in order to benefit all our economies, particularly developing economies, by promoting, among other measures, better access to markets and by eliminating export subsidies and by substantially reducing trade-distorting domestic support.***

Comment: → As stated in its first paragraph (see *supra*) the Declaration of Nuevo León is for a large part aimed at advancing the “implementation of measures to combat poverty, to promote social development, to achieve economic growth with equity”.³¹⁹ So much of its content relating to development could have been repeated in this part of the present report. Only some of it has been retained. For example, the one above, making the traditional link between trade and development.

Text:

- 14th para. of 1st Ch.: ***Moreover, we recognize the responsibility of each country for its own economic development, but also that there is a link of interdependence between domestic economies and the international economic system.***

Comment: → This is the same type of language as found, for example, in the Declaration of Margarita.

Text:

- 1st para. of 2nd Ch.³²⁰: ***We recognize that overcoming poverty, hunger, and social inequality are major challenges facing many countries of the Hemisphere in the twenty-first century. We are convinced that coordinated and integrated economic and social policies are a prerequisite for success in combating inequality of opportunity and marginalization.***

Comment: → See above comment.

Text:

- 3rd para. of 2nd Ch.: ***We recognize the urgency of strengthening the mechanisms of the Organization of American States for fighting poverty, such as the Inter-American Council for Integral Development, the Inter-American Committee on Social Development, and the Inter-American Program to Combat Poverty and Discrimination. We also recognize the importance of the promotion and observance of economic, social, and cultural rights. We urge the Organization of American States to carefully consider the recommendations approved at the***

³¹⁸ Entitled *Economic Growth with Equity to Reduce Poverty*.

³¹⁹ For ex. one of its 3 chapters, with 21 paras, is entirely devoted to *Social Development*.

³²⁰ Entitled *Social development*.

High-Level Meeting on Poverty, Equity, and Social Inclusion, held on Isla of Margarita, Venezuela, to strengthen the hemispheric social agenda.

Comment: → There would seem to be recognition in the above language that the OAS already disposes of the “mechanisms” needed “for fighting poverty”, and that all that is required is to strengthen them. What remains too be seen, of course, is how to best reinforce such existing mechanisms as are identified above, and whether new texts and/or instruments are needed, and what form they should take.

Democracy and Social and Democratic Development Interrelated

Text:

- Preamble, 2nd para.: ***Guided by the need to work together to stimulate prosperity, promote social inclusion and a more equitable distribution of economic growth, eliminate hunger, raise living standards, generate new employment and investment opportunities, and promote decent work as well as confront the new threats to security, such as terrorism, organized crime, and illicit trafficking in arms, we reaffirm our commitment to the Inter-American Democratic Charter and we reiterate our firm intention to continue implementing the mandates of the Summits of the Americas, as well as the commitments made at the Millennium Summit, the International Conference on Financing for Development (the Monterrey Consensus) and the World Summit on Sustainable Development, held in Johannesburg.***

Comment: → In the overall context of the present *Declaration*, this reaffirmation of the commitment enunciated in the Inter-American Democratic Charter was to be expected, for it proclaims in its Art. 1 that “*Democracy is essential for the social, political, and economic development of the peoples of the Americas*”.

Text:

- Preamble, 3rd para.: ***We affirm that the well-being of our people requires the achievement of three closely linked and interdependent objectives: economic growth with equity to reduce poverty, social development, and democratic governance.***

Comment: → As has been seen in relation to other Hemispheric documents, and as shall be seen further below, “democratic governance” and development are commonly associated. For example, see the immediately following comment.

Text:

- 2nd para. of 1st Ch.³²¹: ***We reaffirm our commitment to the Monterrey Consensus, adopted at the International Conference on Financing for Development in 2002, that each country has primary responsibility for its own economic and social development through sound policies, good governance, and the rule of law. Fulfillment of this responsibility enables effective use of domestic and international resources for development, economic growth, and poverty reduction. In this context, we reaffirm the imperative for the international community to support national development efforts. In accordance with the recommendations of the Monterrey Consensus, we will seek to coordinate international efforts with a view to mobilizing resources for sustainable economic development and for combating poverty and hunger in all countries of the Hemisphere. In particular, we will continue our efforts with a view to identifying secure sources of financing to meet the needs of developing countries, and to opening markets for their products***

³²¹ Entitled *Economic Growth with Equity to Reduce Poverty*.

Comment: → To the extent that one can recognize that “good governance” at its best implies participatory democracy³²², then this type of language closely links democracy and development.

Text:

- 10th para. of 1st Ch.: ***We will continue working to reform the international financial architecture with the following objectives, among others: to contribute to the prevention and rapid resolution of financial crises, which particularly harm developing countries in the region; to enhance financing for development; to combat poverty; and to strengthen democratic governance. (...)***

Comment: → It is noteworthy that better financing for development, fighting poverty and strengthening democratic governance find themselves grouped together as part of the same efforts undertaken by the Summit participants.

Text:

- 10th para. of 2nd Ch.³²³: ***Education is a decisive factor for human development, because of its impact on the political, social, cultural, economic, and democratic life of our societies. (...)***

Text:

- 1st para. of 3rd Ch.³²⁴: ***We express our support for the Declaration of Santiago on Democracy and Public Trust to define an agenda for good governance in the Hemisphere that enables us to address political, economic, and social challenges in order to foster credibility and public trust in democratic institutions.***

Comment: → This notion of a need for “public trust in democratic institutions” is important, the implication being that a ‘democracy’ in which there is no public trust would be condemned to disintegrate and disappear. Even more so the affirmation that for such a trust to develop, “political, economic, and social challenges” must be confronted, and that for such a challenge to be met there must be “good governance”.

Text:

- 4th para. of 3rd Ch.: ***The strengthening of and respect for the rule of law, the defense of human rights and fundamental freedoms, economic progress, well-being and social justice, transparency and accountability in public affairs, the promotion of diverse forms of participation by our citizens, and the development of opportunities for all are fundamental to promote and consolidate representative democracy.***

Comment: → Once more, the close, even “fundamental” as it is called here, relationship between various factors immediately related to the general notion of development and representative democracy is reiterated and underlined.

Text:

- 5th para of 3rd Ch.: ***Democratic governance is strengthened through dialogue among all sectors of society. We will continue to foster a culture of democracy and development based on pluralism and the acceptance of social and cultural diversity.***

Comment: → This joint fostering of a “culture of democracy” and of a “culture of development” is yet another illustration of the immediate association between the two concepts.

Text:

³²² In the 16th para. of the 3rd Ch. of the Declaration, which is devoted to *Democratic Governance*, one finds: “We will encourage the modernization of the State as an important element for strengthening democratic and good governance”. And in the 22nd para. of the same Ch., one finds another association between “good governance” and development: “The progress made in economic and social development and in attaining a higher standard of equity through good governance will contribute to the advancement of stability in the Hemisphere and deepen the human dimension of security”.

³²³ Entitled *Social development*.

³²⁴ Entitled *Democratic governance*.

- 15th para. of 3rd Ch: ***We agree that, through citizen participation, civil society organizations should contribute to the design, implementation, and evaluation of public policies adopted by different orders or levels of government. We recognize the role of civil society and its contribution to sound public administration and we reaffirm the importance of continuing to forge new partnerships that will enable constructive ties to be built between governments, nongovernmental organizations, international organizations, and the diverse sectors of civil society to work in favor of development and democracy.***

Comment: → While the essential role of civil society in participatory democracy is often repeated, what is of particular interest here is that such a role goes hand-in-hand with the furthering of development.

Text:

- 19th para. of 3rd Ch.: ***We take note with satisfaction that governments in the Hemisphere are implementing the Monterrey Consensus by exploring innovative ways to mobilize financing for private and public investment and to strengthen debt management, by considering financial instruments, such as growth-indexed bonds and others, to promote macroeconomic stability and reduce financial vulnerability. The implementation of such measures would be aimed at accelerating growth, reducing poverty, and strengthening democratic governance. We also note the efforts of governments in the region to promote discussion in this area.***

Comment: → That, again, is like saying “more growth = less poverty = stronger democracy”.

Text:

- 21st para. of 3rd Ch.: ***Social justice and the reduction of poverty contribute to the stability, democracy, and security of our States and the region. We reiterate that among the principal causes of instability in the region are poverty, inequality, and social exclusion, which we must confront comprehensively and urgently.***

Comment: → A clear statement from Hemispheric leaders that stability, democracy and security, three most desired attributes for America’s societies which we find increasingly interwoven in hemispheric documents, cannot be attained or retained unless accompanied by development.

Annex 17

DECLARATION OF FLORIDA Delivering the Benefits of Democracy³²⁵

(Adopted at 35th Regular Session of the OAS General Assembly
Fort Lauderdale, USA, June 7, 2005)

Democracy

Text:

- Preamble. 3rd para.: ***DETERMINED to promote and defend democracy on the basis of the commitments arising from the OAS Charter and the Inter-American Democratic Charter;***

Comment: → A recognition that both the OAS Charter and the Inter-American Democratic Charter spell out ‘commitments’ to promote and defend democracy.

Text:

- Preamble, 5th para.: ***CONSIDERING that adherence to the Inter-American Democratic Charter, as the standard that enables observance and defence of democratic values and principles,***

³²⁵ Full text at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/juridico/english/regeneas.html>

strengthens and is a key element for member states' full participation in the inter-American system, pursuant to the principles of the OAS Charter;

Comment: → A restatement of the central place that both the Inter-American Democratic Charter and the “standards” it sets in relation to democracy, now occupies a central place in the Hemispheric system.

Text:

- Preamble, para. 17th: **CONVINCED that countries must be governed democratically, with full respect for human rights and fundamental freedoms, the rule of law, the separation of powers and independence of the judiciary, and democratic institutions– and that the governments of the Americas have an obligation under the OAS Charter and the Inter-American Democratic Charter to promote and defend democracy and must be answerable to their peoples;**

Comment: → To be seen in conjunction with the 3rd paragraph of the Preamble, above: democracy is a “must”, and the governments of the Americas have an obligation to promote and defend it under both Charters. This reinforces the argument that in relation to democracy the Inter-American Democratic Charter simply mirrors the obligations spelled out in the OAS Charter.

Social and Economic Development

Text:

- *Nil*

Comment: → (Very few references to development that could not be incorporated on the next category of “Democracy and Social and Democratic Development Interrelated”)

Text:

- Preamble, 2nd para.: **BEARING IN MIND that the Inter-American Democratic Charter establishes that the peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it, and that democracy is essential for the social, political, and economic development of the peoples of the Americas;**

Comment: → A clear and unequivocal restatement of what can now be considered to be unchallengeable in the Americas.

Text:

- Preamble, 7th para.: (...) **taking into account (...) that the elimination of extreme poverty is essential to the promotion and consolidation of democracy and constitutes a common and shared responsibility of the American states;**

Comment: → Besides repeating the linkage between development and democracy, the former being “essential” to the latter, this once again underlines that development is a “shared” responsibility.

Text:

- Preamble, 11th para.: **AWARE that democracy and social and economic development are interdependent and are mutually reinforcing;**

Comment: → This is now consecrated language.

Text:

- Preamble, 12th para.: ***CONSIDERING that our citizens embrace democracy as the form of government that should deliver a better quality of life***;

Comment: → To the extent that one can equate a good quality of life to development, this reaffirms that democracy is considered to be the best system of governance to achieve development.

Text:

- Preamble, 13th para.: ***AWARE that each of the sectors of society can contribute to attaining the benefits of democracy through equitable economic growth that fosters social inclusion and social mobility, integral development, and income distribution***;

Comment: → So, economic growth, by bringing about integral development, is expected to facilitate reaping the full benefits of democracy by the whole of society.

Text:

- Preamble, para. 18th: ***EMPHASIZING that, for democracy to prosper, governments must be responsive to the legitimate aspirations of their people and must work to provide their people with the tools and opportunities to improve their lives***;

Comment: → See immediately preceding comment, above.

Text:

- Preamble, para. 20th: ***CONVINCED ALSO that multilateralism and cooperation among sovereign states play an important role in supporting national efforts to consolidate democracy, promote social development, and fight corruption***;

Comment: → To the extent that democracy and development are intimately linked, and that they form part of “a common and shared responsibility of the American states”³²⁶, it is only natural that such responsibility would call for cooperation among them, on a multilateral basis.³²⁷

Text:

- Preamble, 22nd para.: ***RECOGNIZING that in the Declaration on Security in the Americas we reaffirmed that representative democracy is an indispensable condition for the stability, peace, and development of the states of the Hemisphere (...)***;

Comment: → That it is democracy which is “an indispensable condition” for development, and not the other way around could lead to infer that a lack of development would be no excuse for absence (or curtailment) of democracy.

Text:

- Article 3: ***The Secretary General shall be instructed, (...) taking into account the purposes and principles of the OAS Charter, in particular that of promoting and consolidating representative democracy, to devise proposals for timely, effective, balanced, and gradual initiatives for cooperation, as appropriate, in addressing situations that might affect the workings of the political process of democratic institutions or the legitimate exercise of power, in keeping with the provisions of Chapter IV of the Inter-American Democratic Charter, (...)***

³²⁶ See Preamble, 7th para., *supra*.

³²⁷ Hence the 28th para. of the Preamble, which reads in part: “RECOGNIZING FURTHER the need to work together to better deliver the benefits of democracy to the citizens of the Hemisphere (...). Reference can also be made here to several other paras. of the Preamble to the Florida Declaration which emphasize Hemispheric commitments to cooperative action, amongst them those that mention the United Nations’ Millennium Declaration, and the Declaration of Margarita on poverty, equity, and social inclusion. And to the last para. of the Preamble, which reads: “RECOGNIZING FURTHER the need to work together to better deliver the benefits of democracy to the citizens of the Hemisphere and, to that end”.

Comment → In the context of the present Report and the precise wording of its mandate, in particular in that such mandate relates to the application of Chapter IV of the Inter-American Democratic Charter, this language offers interesting perspectives.

Art. 18 of that Charter reads: “When situations arise in a member state that may affect the development of its democratic political institutional process or the legitimate exercise of power, the Secretary General or the Permanent Council may, with prior consent of the government concerned, arrange for visits or other actions in order to analyze the situation. The Secretary General will submit a report to the Permanent Council, which will undertake a collective assessment of the situation and, where necessary, may adopt decisions for the preservation of the democratic system and its strengthening.” If one recognizes that lack of development can imperil democracy, as is being reaffirmed in many Hemispheric documents, Article 3 of the *Declaration of Florida* would indeed seem to confirm unequivocally that in a situation where lack of development runs the risk of adversely affecting democracy the Secretary General has indeed the duty or obligation to take action³²⁸.

(Following the same ‘logic’, one might also conclude that Art. 17 of the Inter-American Democratic Charter would also justify that a member state could have recourse to that Charter to seek assistance from the Organization should it consider that lack of development imperils its democracy.)³²⁹

Text:

- Article 6: ***Encouragement is given to the Working Group to Negotiate the Social Charter of the Americas and a Plan of Action, so that its work may serve effectively to strengthen existing OAS instruments on democracy, integral development, and the fight against poverty.***

Comment: → A link is thus established between a future “Social Charter” and the existing Inter-American Democratic Charter, under the understanding that one of the aims of such a social charter would be to encourage and foster development, thus helping to create conditions favorable to the preservation of democracy.

Text:

- Article 9: ***CIDI shall convoke a special meeting of that body in the second half of 2005 to adopt a Strategic Plan for Partnership for Development 2006-2009, as envisaged in Article 95 of the OAS Charter, taking into account the interdependent relationship of democracy and social and economic development.***

Comment: → In light of the precise mandate conferred upon the Inter-American Council for Integral Development (CIDI) by the OAS Charter, as well as of the immediately preceding Article in the Florida Declaration which calls upon CIDI to “formulate strategies to combat poverty, illiteracy, low levels of human development, social problems, and environmental degradation”³³⁰, it would seem only natural that the Inter-American System, which repeatedly proclaims the “*interdependent relationship of democracy and social and economic development*”, would consider that a series of rights and obligations follow from such interrelationship.

³²⁸ In that light, it would seem that Art. 4 of the Florida Declaration is almost superfluous; it reads: “It is reaffirmed that the Secretary General may bring to the attention of the Permanent Council, in the exercise of the authority conferred on him by the OAS Charter and pursuant to the Inter-American Democratic Charter, those situations likely to lead to action under the said Charters”.

³²⁹ Art. 17 reads: “When the government of a member state considers that its democratic political institutional process or its legitimate exercise of power is at risk, it may request assistance from the Secretary General or the Permanent Council for the strengthening and preservation of its democratic system”.

³³⁰ Art. 8.

SOME RELEVANT OPINIONS ON THE INTER-AMERICAN DEMOCRATIC CHARTER IN RELATION TO DEMOCRACY AND ECONOMIC AND SOCIAL DEVELOPMENT

Much of what follows is taken from a book entitled *Carta Democrática Interamericana: Documentos e Interpretaciones*, edited by Ambassador Humberto De la Calle, and available in full on-line³³¹. We have focused on (a) opinions expressed principally (with very few exceptions) by representatives of the member States³³², and (b) in relation to the interrelationship between democracy and economic and social development (again with a few exceptions).

Having reviewed the full reports of the five OAS meetings most closely associated with the discussions at the level of member States regarding the Inter-American Democratic Charter, namely the XXXI Regular Session of the General Assembly of June 2001³³³, the Regular Session of the Permanent Council of September 6, 2001, the XXVIII Special Session of the General Assembly of 10-11 September 2001³³⁴, the XXXII Regular Session of the General Assembly of June 2002³³⁵, and the Protocolar Session of the Permanent Council of September 2002³³⁶, De la Calle offers the following general overview of the Charter:

*The Charter is a landmark in the democratic history of the Hemisphere. First, from a political perspective it implies a serious commitment on the part of the leader's vis-à-vis democracy not any more from its minimalist electoral angle, but henceforth as a wide-ranging concept which touches upon all aspects of human dignity seen as the central focus of its content. (...) From a social angle, it expresses a profound reality: the peoples of the Americas feel they have a right to democracy, though some believe that "their" democracy has yet to bring about a solution to the problems related to basic needs.*³³⁷

Now, some relevant views as expressed in the documents identified above and transcribed by De la Calle.

- i. Venezuela at the 2001 Costa Rica General Assembly³³⁸:

Representative democracy (...) encompasses inescapable principles and values without the compliance of which democracy would be a fiction: popular vote, alternatives, autonomy of public powers, political and cultural pluralism, and respect for human rights and fundamental freedoms". (...) A democracy which (...) does not satisfy the social demands of the populations is condemned, sooner or later, to meet with an irreversible crisis of legitimacy (...) or, and that would be equally deplorable, it would be condemned to discredit the very concept of representative democracy

³³¹ Again, the full reference is: *Carta Democrática Interamericana: Documentos e Interpretaciones*; Consejo Permanente, Organización de los Estados Americanos; Columbus Memorial Library, Washington; 2003; 347 p., to be found on-line at http://www.oas.org/OASpage/esp/Publicaciones/CartaDemocratica_spa.pdf. Note that all quotations that follow and that are not originally in English in that book, have been translated by the Rapporteur, to the best of his capacity, and may therefore at times not perfectly reflect the precise meaning intended in the original language. For which the Rapporteur apologizes in advance.

³³² Again, what follows is but a sample of views expressed, as it has not been possible, without unduly prolonging the length of this report, to incorporate all those that could have been found as relevant.

³³³ More precisely, report of the 4th Plenary Session, June 5, 2001, in San José, Costa Rica.

³³⁴ More precisely, reports on its Inaugural, two Plenary, and Closing Sessions, 10-11 September 2001, in Lima, Peru, where the Inter-American Democratic Charter was adopted.

³³⁵ More precisely, transcription report of the Informal Dialogue of Heads of Delegations on the theme "Application and Development of the Democratic Charter," 4 June, 2002, in Bridgetown, Barbados.

³³⁶ Held in Washington on 16 September 2002, to commemorate the first anniversary of the adoption of the Inter-American Democratic Charter.

³³⁷ DE LA CALLE, p. viii; underlining provided.

³³⁸ Min. Luis Alfonso Dávila, Head of the Venezuelan delegation during the discussions on a draft of the Democratic Charter; De la Calle, p. 38 and 40; underlining provided.

- ii. Costa Rica, at the September 2001 Regular Session of the Permanent Council³³⁹

*(...) the Inter-American Democratic Charter, which encompasses the many and various aspects essential to a democratic system (...) interrelating democracy and the Inter-American System; democracy and human rights; democracy, integral development and the fight against poverty; (...)*³⁴⁰

- iii. Colombia, at the September 2001 Regular Session of the Permanent Council

*The draft of the Democratic Charter (...) aims at converting itself into a guide for political action in the Hemisphere when it points out that the effective exercise of representative democracy (...) is essential for the social, political and economic development of our peoples.*³⁴¹

- iv. Chile, at the September 2001 Regular Session of the Permanent Council

*(...) for the purpose of contributing to the history of (our) negotiations: in the course of our deliberations the theme of poverty and under-development repeatedly arose, i.e. of injustice on the national and international planes, as true breeding grounds for the menaces that can be faced by democracy and human rights.*³⁴²

- v. Panama, at the September 2001 Regular Session of the Permanent Council

*It was opportune that we incorporated in the Democratic Charter chapter III, which underlines the interdependence between democracy and development and poverty. We have there a magnificent starting point. The important thing is that we not be satisfied with the declaration, but that we act on it.*³⁴³

- vi. Venezuela, at the September 2001 Regular Session of the Permanent Council

*For democracy to be authentic it must guarantee not only civil and political rights, but also the economic, social and cultural ones. Hence the importance of the Democratic Charter, which encompasses those principle in their integrity. (...) Democracy without justice is no democracy. Democracy and poverty are at the opposite of each other.*³⁴⁴

- vii. Peru, at the September 2001 Regular session of the Permanent Council

*(...) in its final version [the Charter] was right in recognizing emphatically the links that exist between democracy and poverty. Poverty and extreme poverty take viability away from democracy.*³⁴⁵

- viii. The Dominican Republic, at the September 2001 Regular session of the Permanent Council

*In the Inter-American Democratic Charter (...) the fight against poverty, the strengthening of the human rights system, the preservation of the institution of democracy and the promotion of a democratic culture have been consecrated as essential for the consolidation of democracy.*³⁴⁶

³³⁹ Which adopted the draft of the Inter-American Democratic Charter later to be submitted to final approval at the XXVIII special session of the General Assembly (Lima) only a few days later.

³⁴⁰ Amb. Hernán R. Castro, then President of the Permanent Council; in De la Calle, p. 62; underlining provided.

³⁴¹ Amb. Humberto De la Calle Lombana, who presided the Working Group on the *Charter*, and editor of this book; at p. 54; underlining provided.

³⁴² Amb. Esteban Tomic Errázuriz, in De la Calle, p. 60; underlining provided.

³⁴³ Amb. Juan Manuel Castulovich, in De la Calle, p. 62; underlining provided.

³⁴⁴ Amb. Jorge Valero Briceño, in De la Calle, p. 68-69; underlining provided.

³⁴⁵ Amb. Manuel Rodríguez Cuadros, Vice-Minister and Secretary General for External Affairs, in De la Calle, p. 79; underlining provided.

³⁴⁶ Couns. José Elías Ramírez, in De la Calle, p. 84.

- ix. Secretary General Cesar Gaviria at the XXVIII Special Session of the General Assembly of 10-11 September 2001

*The Democratic Charter (...) incorporates the Protocol of Managua on Fight against Poverty (...) the provisions of which underline the close link between democracy and economic development (...). Without growth and prosperity democracies are incapable of providing the goods citizens are hoping for.*³⁴⁷

- x. Mexico, at the XXVIII Special Session of the General Assembly of 10-11 September 2001

*Mexico considers that the adoption of the Inter-American Democratic Charter represents a fundamental progress in the articulation of a new international architecture. (...) The OAS will have to insure that that document, which is in consonance with its essential aims, effectively contribute in the expansion of democracy (...) and the promotion of the integral development of our nations.*³⁴⁸

- xi. Venezuela, at the XXVIII Special Session of the General Assembly of 10-11 September 2001

*The OAS has earned for itself a much more relevant space within the Hemispheric community. The Inter-American Democratic Charter (...) creates a clear symbiosis between democracy and human rights. The fight against poverty, especially extreme poverty, has now become a strategic and imperative objective of all the governments of the Hemisphere.*³⁴⁹

- xii. Colombia, at the XXVIII Special Session of the General Assembly of 10-11 September 2001

*The Charter enriches the concept [of democracy] with the principles that must guide governmental action towards the attainment of a just and sustainable economic and social development within the ambit of fight against poverty.*³⁵⁰

- xiii. Costa Rica, at the XXVIII Special Session of the General Assembly of 10-11 September 2001

*The Inter-American Democratic Charter is an instrument of utmost importance which put forwards an extremely complete definition of democracy: together with its traditional elements such as the rule of law and periodic elections, it incorporates new components such as fight against poverty, (...). Above all, that is most transcendental that the Charter dedicates entire chapters not only to human rights but also to integral development and the fight against poverty (...).*³⁵¹

- xiv. Panama, at the XXVIII Special Session of the General Assembly of 10-11 September 2001

*(...) The chapters devoted to human rights and the elimination of all inequalities are important. We are particularly pleased with the way in which the Charter underlines the linkage between democracy, integral development and poverty. We all know that democracy is the form of government which offers the best possibilities to arrive at development. But if democratic regimes do not bring about results that devolve their hopes to those who until now have been mere bystanders to progress, its stability and consolidation could be at risk.*³⁵²

³⁴⁷ DE LA CALLE, p. 107; underlining provided.

³⁴⁸ Min. Jorge Castañeda, Secretary for External Relations, In De la Calle, p. 127 and 138; underlining provided.

³⁴⁹ Min. Luis Alfonso Dávila, Foreign Minister; In De la Calle, p. 130; underlining provided.

³⁵⁰ Min. Guillermo Fernández de Soto, Foreign Minister; In De la Calle, p. 135; underlining provided.

³⁵¹ Min. Roberto Rojas, Foreign Minister; In De la Calle, p. 138; underlining provided.

³⁵² Min. José Miguel Alemán, Foreign Minister; In De la Calle, p. 142; underlining provided.

- xv. Ecuador, at the XXVIII Special Session of the General Assembly of 10-11 September 2001

*(...) we must (...), as accompanying measures, create the indispensable conditions for the peoples of our Hemisphere to receive the benefits of life under democracies, expressed not only in the form of increased opportunities for political liberty, but also in practical realities of progress and well-being.*³⁵³

- xvi. The Bahamas, at the XXVIII Special Session of the General Assembly of 10-11 September 2001

*The Charter addresses critical socioeconomic issues, such as poverty (...). The interconnection between such issues and democracy cannot and must not be ignored. (...) The prosperity and the viability of the countries of the Hemisphere require that all of us redouble our efforts to maintain and strengthen our existing democracy.*³⁵⁴

- xvii. El Salvador, at the XXVIII Special Session of the General Assembly of 10-11 September 2001

*We must be clear about the fact that concrete actions will be required to accompany the integral development of our peoples, and for which we all have a common and shared responsibility. That is why the Democratic Charter consecrates democracy and economic and social development and interdependent and mutually reinforcing.*³⁵⁵

- xviii. Peru at the "Informal Dialogue", XXXII Ordinary Session of the General Assembly of 4 June 2002

*The Democratic Charter affirms (...) that democracy and economic development are interdependent and mutually reinforcing. Extreme poverty constitutes a menace of a new order to Hemispheric and world stability, and for that reason it propagates instability in democracies.*³⁵⁶

- xix. Argentina at the "Informal Dialogue", XXXII Regular session of the General Assembly of 4 June 2002

*(...) the Democratic Charter affirms that democracy is a way of life based on better economic and social conditions of the people.*³⁵⁷

- xx. Antigua and Barbuda at the "Informal Dialogue", XXXII Regular session of the General Assembly of 4 June 2002

*(...) the soul of the Inter-American Democratic Charter is not contained in its often-stated objective to promote and defend democracy (...) the soul of the Charter lies in its recognition that the consolidation of democracy in the Hemisphere is inextricably linked to the social and economic development of every man, woman, boy and girl (...).*³⁵⁸

- xxi. Saint Kitts and Nevis at the "Informal Dialogue", XXXII Regular Session of the General Assembly of 4 June 2002

*Our call for the consolidation of democracies throughout the Hemisphere must be synchronous with a call for the reduction of poverty and the eradication of extreme poverty.*³⁵⁹

³⁵³ Min. Heinz Moeller Freile, Foreign Minister; In De la Calle, p. 148; underling provided.

³⁵⁴ Min. Janet G. Bostwick, Foreign Minister; In De la Calle, p. 150; underling provided; underling provided.

³⁵⁵ Min. Maria Eugenia Brizuela of Ávila, Foreign Minister; In De la Calle, p. 154; underling provided.

³⁵⁶ Amb. Eduardo Ferrero Costa, Head of Delegation, In De la Calle, p. 190; underling provided.

³⁵⁷ Amb. Domingo Santiago Cullen, Head of Delegation, In De la Calle, p. 198; underling provided.

³⁵⁸ Min. Gaston Brown, Head of Delegation, In De la Calle, p. 200-1; underling provided.

³⁵⁹ Dr. Hon. Timothy Harris, Head of Delegation, In De la Calle, p. 206; underling provided.

- xxii. Uruguay at the “Informal Dialogue”, XXXII Regular Session of the General Assembly of 4 June 2002

*Democracy does not, by itself, create economic recourses. (...) Democracy is only an instrument, a tool (...).*³⁶⁰

- xxiii. Bolivia at the “Informal Dialogue”, XXXII Regular Session of the General Assembly of 4 June 2002

*If that [i.e. defending democracy] is the region’s first commitment, I believe it is fitting to also say that (...) democracy cannot sustain itself through internal support only (...). That is where this other undertaking found in the Democratic Charter (...) begins to make sense: the commitment by all Members States to adopt and execute the measures necessary for the reduction and eradication of poverty (...).*³⁶¹

- xxiv. Costa Rica at the “Informal Dialogue”, XXXII Regular Session of the General Assembly of 4 June 2002

*(...) in order to make maximum use of the potential of the Inter-American Democratic Charter, it would seem appropriate to establish an inter-connected axis in relation to the actuation of the OAS as well as of the States themselves, with three fundamental components: first, the constant strengthening of democracy and liberty (...) as fundamental pillars (...) to achieve the transformations and structural changes necessary to encourage economic progress (...); second, sustainable development and the fight against poverty, as an integral condition for the strengthening of democracy (...). Third, Hemispheric security as an indication of commitment for the defence of the values of liberty (...).*³⁶²

- xxv. Peru (Pres. Alejandro Toledo) at the Protocolar Session of the Permanent Council of 16 September 2002

*The Charter puts forwards a modern and integral concept of democracy, proclaimed to be a right. (...) The challenge which the Charter confronts the Hemisphere with: (...) good governance, (...) frontal attack on poverty, especially extreme poverty. (...) The Charter points out that democracy and economic and social development are interdependent and mutually reinforcing. In our view, that theme must constitute a fundamental axis in the process of political dialogue and consensus that the adoption of the Democratic Charter has generated within the OAS (...).*³⁶³

- xxvi. Uruguay at the Protocolar Session of the Permanent Council of 16 September 2002

*Democracy will not defend itself alone, (...). Democracy will defend itself if we can obtain that our citizens perceive it as the most appropriate means for their necessities to be met, as the most adequate means to their demands to be looked after, (...).*³⁶⁴

- xxvii. Guyana at the Protocolar Session of the Permanent Council of 16 September 2002

*The Inter-American Democratic Charter underlines the essence of the Organization of American States by incorporating, as it does, key elements of the nature and purpose of the OAS Charter in respect to (...): 1. Strengthening the peace and security of the continent. 2. Promoting and consolidating representative democracy (...); and 3. Eradicating extreme poverty, which constitutes an obstacle to the full democratic development of the peoples of the Hemisphere.*³⁶⁵

³⁶⁰ Min. Didier Operti Badán, Head of Delegation, In De la Calle, p. 214; underling provided.

³⁶¹ Min. Gustavo Fernández Saavedra, Head of Delegation, In De la Calle, p. 217; underling provided.

³⁶² Amb. Hernán R. Castro H., Head of Delegation, In De la Calle, p. 220-1; underling provided.

³⁶³ In De la Calle, p. 229.

³⁶⁴ See De la Calle, p. 234; underlining provided. On that occasion, Minister Operti, as we will see later, developed at length the idea that the Inter-American Democratic Charter must be seen within the general context of the progressive development of international law.

³⁶⁵ Amb. M. A. Odeen Ishmael, in De la Calle, p. 238, underlining provided.

AG/DEC. 49 (XXXV-O/05)**DECLARATION ON THE CENTENNIAL OF
THE INTER-AMERICAN JURIDICAL COMMITTEE:**

(Adopted by the Plenary at its fourth session, held on June 6, 2006)

THE GENERAL ASSEMBLY,

CONSIDERING:

That the origins of the Inter-American Juridical Committee go back to the Third International American Conference when, on 23 August 1906, the International Commission of Jurists was created, a body of the Inter-American System that was substituted by the Inter-American Committee of Neutrality, constituted by the First Consultative Meeting of Ministers of Foreign Affairs in September-October 1939, and which, by a 1942 resolution of the Third Consultative Meeting of Ministers of Foreign Affairs adopted the name of Inter-American Juridical Committee, and was thereby incorporated in 1945 to the Charter of the Organization as the Permanent Committee of the Inter-American Council of Jurisconsults and later as the principal body of the OAS, by means of the Buenos Aires Protocol of 1967;

That, pursuant to its mandates, the Inter-American Juridical Committee and its predecessors, in consultative bodies of the inter-American system on legal affairs, did important work on the codification and progressive development of international law in the Hemisphere, thereby contributing to the unique legal tradition that distinguishes the Americas in the international community;

That the unique legal tradition of the Americas is reflected in the Declaration of Panama on the inter-American contribution to the development and codification of international law, adopted by the OAS General Assembly on 5 June 1996; and

That, for the same reason, the centennial commemoration of the work of the Inter-American Juridical Committee is an opportunity to highlight the leading role it has played in international law,

DECLARES:

FIRST: That 2006 will be the year for commemorating the Centennial of the Inter-American Juridical Committee.

SECOND: Its satisfaction at the efforts carried out by the Inter-American Juridical Committee in the sphere of private international law, which, through the codification of international juridical norms and harmonization of the legislations, have culminated in the signing of treaties and adoption of model laws on a wide variety of topics.

THIRD: Its satisfaction at the valuable contribution of the Inter-American Juridical Committee to the progressive development and codification of international law in fields such as the right to asylum, human rights, indigenous peoples, peaceful settlement of disputes, collective security, the law of the sea, the struggle against terrorism, corruption and the illicit traffic of narcotics and drugs.

FOURTH: Its recognition of the century of work of the Inter-American Juridical Committee as a consultative organ of the OAS in preparing draft conventions and proposing model laws, which are reflected in resolutions, legal opinions, reports and other documents, including its annual reports and, in particular, the Annual Report it submitted to the General Assembly on activities carried out in 2005 (CP/doc.4080/06).

FIFTH: That it invites the Inter-American Juridical Committee to present its points of view before the Permanent Council of the Organization on the general principles of law that form the legal basis of the inter-American system.

CENTENNIAL OF THE INTER-AMERICAN JURÍDICAL COMMITTEE
AUTHORITIES PRESENT AT THE
ACTOS SOLEMNES

Members of the Inter-American Juridical Committee

Dr. Mauricio Herdocia Sacasa – Chairman	(Nicaragua)
Dr. Jean-Paul Hubert – Vice-Chairman	(Canada)
Dr. João Grandino Rodas	(Brazil)
Dr. Ana Elizabeth Villalta Vizcarra	(El Salvador)
Dr. Eduardo Vio Grossi	(Chile)
Dr. Galo Leoro Franco	(Ecuador)
Dr. Antonio Fidel Pérez	(United States of America)
Dr. Jaime Aparicio	(Bolivia)

Former Members of the Inter-American Juridical Committee

Ambassador Ramiro Saraiva Guerreiro, former Chairman	(Brazil),
Ambassador Sergio González-Gálvez	(Mexico)
Ambassador C. A. Cuthbert Joseph	(Trinidad and Tobago)
Dr. Jorge Reinaldo A. Vanossi, former Chairman	(Argentina)
Dr. Brynmor T. Pollard, former Chairman	(Guyana)

Members of the Inter-American Juridical Committee with mandate beginning in 2007

Ambassador Jorge Palacios Treviño	(Mexico)
Prof. Ricardo Antonio Silva Seitenfus	(Brazil)

Permanent Representatives to the Organization of American States

Ambassador Osmar Chohfi, Permanent Representative of Brazil, Chairman of the Committee on Juridical and Political Affairs of the Permanent Council- CAJP

Organization of American States

Dr. Dante Caputo, Assistant Secretary of Political Affairs, representing the OAS Secretary General, Dr. José Miguel Insulza
 Dr. Jean-Michel Arrighi, Director, Department of International Legal Affairs
 Dr. Dante Negro, Director, Office of International Law
 Dr. Enrique Lagos, Principal Legal Officer, Department of International Legal Affairs
 Dr. John Wilson, Legal Officer, Department of International Legal Affairs
 Dr. Pablo Gutiérrez, Advisor to the Assistant Secretary of Political Affairs

Ministry of Foreign Affairs of the OAS Member States

Lic. Norman Caldera Cardenal, Minister of Foreign Relations of Nicaragua

Ministry of Foreign Affairs of Brazil

Ambassador Maria Luiza Ribeiro Viotti, Director, Department of International Organizations-DOI, representing the Minister of Foreign Affairs, Ambassador Celso Amorim
 Ambassador Virgílio Moretzsohn de Andrade, Chief, Representation Office of the Ministry of Foreign Affairs in Rio de Janeiro-ERERIO
 Ambassador Álvaro da Costa Franco Filho, General Director, Center of Diplomatic History and Documentation (CHDD), Alexandre de Gusmão Foundation -FUNAG
 Ambassador Alexandre Addor
 Ambassador Carlos Alberto Ferreira Guimarães-ERERIO
 Ambassador Paulo Pires do Rio, former Chief of ERERIO
 Ambassador Jorge Ronaldo Barbosa
 Ambassador Sérgio Seabra de Noronha
 Minister Luiz Dilermando de Castello Cruz
 Minister Carlos Middeldorf
 Counselor Isis Martins Ribeiro de Andrade-ERERIO

Counselor Márcio Fagundes do Nascimento, Chief, Division of the Organization of American States-DEA

Ms Aurea Domenech Bussons, Chancellery Official- ERERIO

Mr. Luiz Antonio Macedo Ewbank, Historic and Diplomatic Museum- ERERIO

Government of the Rio de Janeiro State

Professor Jorge da Silva, State Secretary of Human Rights, representing the Governor of the Rio de Janeiro State, Mrs. Rosângela Rosinha Garotinho B. A. Matheus de Oliveira

Tenant Janaína Reis Nogueira, representing Major Brigadier of the Air Force Paulo Hortensio Albuquerque e Silva, Commander of the III Regional Air Command

Ms. Ana Luíza Gayos Paraíso, Legal Advisor of the State Secretariat for Environment and Urban Development, representing the Vice-Governor of the Rio de Janeiro State, Dr. Luiz Paulo Fernandes Conde

Embassies in Brazil

Ambassador Eduardo Mora Anda, Embassy of Ecuador, representing the Minister of Foreign Affairs, Francisco Carrión Mena

Ambassador Winston Moore, Embassy of Trinidad y Tobago

Ambassador Víctor Manuel Lozano Urbina, Embassy of Honduras, representing the Secretary of Foreign Affairs, Milton Danilo Jiménez Puerto

Ambassador Guillermo E. Rishchynski, Embassy of Canada

Ambassador Manuel Morales Lama, Embassy of the Dominican Republic

Ambassador Suyapa Indiana Tercero, Embassy of Nicaragua

Ambassador Juan Pablo Lohlé, Embassy of Argentina

Minister Lisa Tucker, *Chargé d'Affairs*, Embassy of Nicaragua

General Consulates in Rio de Janeiro

Ambassador Rafael Fernández Pita González, General Consul of Spain

Minister Marco Carreón Velarde, General Consul of Peru

Minister Alberto A. Guani, General Consul of Uruguay

Minister-Counselor Horacio del Valle, General Consul of Chile

Dr. Glorissabel Garrido Thompson-Flores, General Consul of Panama

Dr. Roberto Kattán Arita, Trade Attaché, General Consulate of Honduras

Mr. Mario Guglielmelli Vera, General Consul of Venezuela

Mr. Daniel Haar, General Consul Ad Honorem of Nicaragua

Sra. Elizabeth Lee Martínez, General Consul of the United States of America

Mr. Juan Andrés Ordóñez Gómez, General Consul of Mexico

Mr. Luis Eugenio Bellando, General Consul of Argentina

International Organizations

Ambassador João Clemente Baena Soares, member of the International Law Commission of the United Nations, former Secretary General of the OAS

Dr. Luiz Alberto Lemos Sampaio, Chairman, Brazilian Red Cross

Dr. Alejandro Daniel Perotti, Legal Advisor, MERCOSUR Secretariat, representing the Director of the Secretariat, Dr. José Ernesto Büttner

Ambassador Dr. Julio Barboza, Chairman, Administrative Tribunal of the United Nations

Legal Advisors

Dr. Hector Adolfo Sintura Varela, Chief, Legal Affairs, Ministry of Foreign Affairs of Colombia

Lic. Shara Duncan Villalobos, Legal Advisor, Ministry of Foreign Affairs and Worship of Costa Rica

Dr. Mirna Mas y Rubí Spósito, Legal Advisor, Ministry of Foreign Affairs of Venezuela

Universities

Prof. Antonio Remiro Brotóns, Cathedric of International Law, Universidad Autónoma de Madrid

Dr. Gustavo Senechal de Goffredo, Legal Advisor of the Dean of the Pontifícia Universidade Católica do Rio de Janeiro-PUC, representing the Dean Reverend Father Jesus Hortal

Dr. Nádia Araújo, Professor of Private International Law, Pontifícia Universidade Católica do Rio de Janeiro-PUC

Dr. Daniela Trejos Vargas, representing the Director of the Department of Law, Pontifícia Universidade Católica do Rio de Janeiro-PUC

Dr. Lauro da Gama e Souza Júnior, Lawyer, expert in international law and commercial arbitration

Dr. Jacob Dolinger, Professor of Private International Law, Universidade do Estado do Rio de Janeiro-UERJ

Institutions

Father Sergio Couto, representing the Cardenal Archbishop of Rio de Janeiro, Dom Eusébio Oscar Scheid

Prof. Beatriz Ramaciotti, former Permanent Representative Peru to the OAS

Dr. Ronald Cardoso Alexandrino, representing Dr. Roberto Antonio Busatto, Chairman, Ordem dos Advogados do Brasil -OAB (Brazilian Bar Association)

Dr. Alberto Venâncio Filho, member, Academia Brasileira de Letras

Dr. Juarez Ferreira Clemente, Legal Advisor, Academia Brasileira de Letras, representing the Chairman Minister Marcos Vinícios Rodrigues Vilaça

Dr. Adherbal Meira Mattos, professor of international law and member of the Instituto dos Advogados Brasileiros

CENTENNIAL OF THE INTER-AMERICAN JURÍDICAL COMMITTEE

MESSAGES OF CONGRATULATIONS

Organization of American States - OAS

Dr. José Miguel Insulza, Secretary General

Dr. César Gaviria Trujillo, former Secretary General

Ambassador Luigi Einaudi, former Secretary General

Dr. Sergio García Ramírez, Chairman, Inter-American Court of Human Rights

Dr. Santiago Cantón, Secretary, Inter-American Commission of Human Rights

Former and future members of the IAJC

Ms. Hyacinth Evadne Lindsay (Jamaica) Chief Parliamentary Council of Jamaica, whose mandate begins January 1st, 2007

Ambassador Felipe Paolillo (Uruguay), former member

Dr. Jonathan T. Fried (Canadá), former member

Dr. Stephen C. Vasciannie (Jamaica), former member

Dr. José Luis Siqueiros (México), former member

Permanent Missions to the OAS

Ambassador Javier Sancho Bonilla, Permanent Representative of Costa Rica

Ministry of Foreign Affairs of the Member States

Dr. Eduardo Cálix, Vice-Minister of Foreign Affairs of El Salvador

Dr. Luis Ernesto Derbez Bautista, Secretary of Foreign Affairs of Mexico

Ms. Ana Teresa Aranda, Secretary of Social Development of Mexico

Mr. Peter Gordon MacKay, Minister of Foreign affairs and the Atlantic Canada Opportunities Agency

Dr. Brian Serville, Permanent Secretary, Minister of Foreign Affairs of the Bahamas

Legal Advisors

Dr. Garry Merveille, Second Advisor, Division of Legal Affairs, Ministry of Foreign Affairs of Haiti

Lic. Vanessa Videche Muñoz, Legal Advisor, Ministry of Foreign Affairs and Worship of Costa Rica

Dr. Gioconda Ubeda, Legal Director, Ministry of Foreign Affairs and Worship of Costa Rica

Dr. Hector Adolfo Sintura Varela, Legal Advisor, Ministry of Foreign Affairs of Colombia

Dr. Mirna Mas y Rubí Spósito, General Director, Legal Consultative Dept., Ministry of Foreign Affairs of Venezuela

Dr. Ariel Rivera Miranda, Legal Director, Secretariat of Foreign Affairs of Honduras.

Lic. Ernesto Velázquez Argaña, Legal Advisor, Ministry of Foreign Affairs of Paraguay

International Organizations

Ambassador Juan Antonio Yáñez-Barnuevo, Chairman of the 6^a Commission of the United Nations General Assembly, Permanent Representative of Spain to the UN
 Dr. José Ernesto Büttner, Director, Secretariat of MERCOSUR
 Dr. Waldemar Wirsig, Representative of Brazil to the Inter-American Development Bank-IDB
 Ambassador Hugo Caminos, Judge, International Tribunal for the Law of the Sea and former Assistant Secretary of Legal Affairs of the OAS
 Dr. Luis Alberto Moreno, Chairman, Inter.-American Development Bank -IADB
 Dr. Allan Wagner Tizón, Secretary General of the Andean Community
 Dr. Eduardo Valencia-Ospina, Member, International Law Commission of the UN
 Judge Raymond Ranjeva, International Court of Justice
 Ambassador Roberto Guarnieri, Permanent Secretary, Latin-American and Caribbean Economic System - SELA
 Judge Bernardo Sepúlveda, International Court of Justice
 Judge Meter Tomka, International Court of Justice
 Dr. Philippe Couvreur, Secretary, International Court of Justice
 Judge Awn Shawkat Al-Khasawneh, Vice-Chairman, International Court of Justice
 Judge Kenneth Keith, International Court of Justice
 Judge Mohamed Bennouna, International Court of Justice
 Judge Rony Abraham, International Court of Justice
 Dr. Vacláv Mikulka, Director, Division of Codification, Office of Legal Affairs of the United Nations; Executive Secretary, International Law Commission of the United Nations
 Dr. Juan Manuel Jiménez, Official in charge of the Office of the Inter.-American Children's Institute - IIN
 Ambassador Didier Operti Badán, Secretary General, Latin-Americana Integration Association-ALADI
 Judge Bruno Simma, International Court of Justice
 Judge Abdul G. Koroma, International Court of Justice
 Dr. Orlando Guerrero Mayorga, General Secretary, Central American Court of Justice
 Dr. Enrique Candioti, Member, International Law Commission of the United Nations
 Dr. Edwin Carrington, Secretary General, Caribbean Community - CARICOM
 Dr. Guillaume Pambou-Tchivounda, Chairman, International Law Commission of the United Nations
 Dr. Anibal Quiñónez Abarca, Secretary General, Central-American Integration System - SICA

Government of the Rio de Janeiro State

Mrs. Rosângela Rosinha Garotinho B. A. Matheus de Oliveira, Governor of the Rio de Janeiro State
 Dr. Luiz Paulo Fernandes Conde, Vice-Governor of the Rio de Janeiro State

Ministry of Foreign Affairs of Brazil

Ambassador Luiz Felipe de Seixas Corrêa, Ambassador of Brazil in Germany
 Ambassador João Carlos de Souza-Gomes, Ambassador of Brazil in Venezuela
 Ambassador Mauro Luiz Iecker Vieira, Ambassador of Brazil in Argentina
 Ambassador Luiz Augusto de Araújo Castro, Ambassador of Brazil in Peru
 Ambassador Júlio Cesar Gomes dos Santos, Ambassador of Brazil in Colombia
 Ambassador José Maurício de Figueiredo Bustani, Ambassador of Brazil in England
 Ambassador Cláudio Garcia de Souza
 Minister Carlos Middeldorf

Judicial Power

Justice Paulo Roberto Leite Ventura, General Director, Escola da Magistratura do Estado do Rio de Janeiro- EMERJ

Embassys in Brazil

Ambassador Guillermo E. Rishchynski, Embassy of Canada
 Ambassador Eduardo Mora Anda, Embassy of Ecuador
 Ambassador Víctor Manuel Lozano Urbina, Embassy of Honduras
 Ambassador Manuel Estuardo Roldán Barillas, Embassy of Guatemala

Legal and Academic Institutions

Dr. Octávio Augusto Brandão Gomes, Chairman, Ordem dos Advogados do Brasil, Regional do Estado do Rio de Janeiro– OAB-RJ
 Dra Maria Adélia Campello, Chairman, Instituto dos Advogados Brasileiros - IAB
 Dr. Fábio Barbosa, Executive Financial Director, Companhia Vale do Rio Doce
 Dr. Tatiana Maekelt, professor of the Universidad Central of Venezuela and former Assistant Secretary of Legal Affairs of the OAS
 Professor Vicente Marotta Rangel, Judge, International Tribunal for the Law of the Sea and professor *emeritus*, Faculty of Law, Universidade do Estado de São Paulo - USP
 Dr. Marilena Lazzarini, Institutional Coordinator, Instituto Brasileiro de Defesa do Consumidor - IDEC
 Dr. Alberto Rodríguez Galán, Chairman, Academia Nacional de Derecho y Ciencias Sociales de Buenos Aires
 Professor Nival Nunes de Almeida, Dean, Universidade do Estado do Rio de Janeiro
 Dr. Charlotte Ku, Executive Director, American Society of International Law - ASIL

**DISCURSO DA EMBAIXADORA MARIA LUIZA RIBEIRO VIOTTI¹,
 DIRETORA GERAL DO DEPARTAMENTO DE ORGANISMOS INTERNACIONAIS
 DO MINISTÉRIO DAS RELAÇÕES EXTERIORES DO BRASIL,
 REPRESENTANDO O MINISTRO DE ESTADO DAS RELAÇÕES EXTERIORES,
 EMBAIXADOR CELSO AMORIM,
 NA CERIMÔNIA DE COMEMORAÇÃO DO
 CENTENÁRIO DA COMISSÃO JURÍDICA INTERAMERICANA**

(Palácio Itamaraty, Rio de Janeiro, 16 de agosto de 2006)

Senhor Ministro de Estado das Relações Exteriores da Nicarágua,
 Senhor Secretário para Assuntos Políticos da Organização dos Estados Americanos,
 Senhor Secretário de Direitos Humanos do Governo do Estado do Rio de Janeiro,
 Senhor Representante Permanente do Brasil junto à OEA,
 Senhor Chefe do Escritório de Representação do Ministério das Relações Exteriores no Rio de Janeiro,
 Senhor Presidente da Comissão Jurídica Interamericana,
 Senhores Membros da Comissão Jurídica Interamericana,
 Senhores Embaixadores,
 Senhoras e Senhores,

Em nome do Ministro de Estado das Relações Exteriores, Embaixador Celso Amorim, a quem tenho a honra de representar nesta tarde, desejo expressar a grande satisfação do Governo brasileiro e do Itamaraty pelo privilégio de acolher a cerimônia de celebração do centenário da Comissão Jurídica Interamericana.

Senhor Presidente,

Com o mandato que lhe confere a Carta da OEA para promover o desenvolvimento progressivo e a codificação do Direito Internacional, bem como estudar os problemas jurídicos relativos à integração dos países em desenvolvimento do continente, a Comissão Jurídica Interamericana vem atuando como valiosa promotora na consolidação do Direito Internacional Público e do Direito Internacional Privado em nossa região.

Suas prerrogativas, que se confundem com os primórdios do próprio sistema interamericano, foram fundamentais no processo histórico de consolidação da paz e do Estado de Direito no

¹ Original version in Portuguese.

Hemisfério. Desde o início do século XX, a Comissão tem sido protagonista no processo de elaboração de convenções e tem ocupado a vanguarda no exercício de reflexão destinado a aperfeiçoar a cooperação jurídica entre nossos países.

Ao comemorarmos o centenário da Comissão Jurídica Interamericana, é de justiça prestar tributo à contribuição dos juristas eminentes desta Comissão ao aperfeiçoamento do sistema jurídico no Hemisfério.

A memória da Comissão permanece viva com a presença, nesta tarde, de alguns de seus ex-membros ilustres, como o Embaixador Ramiro Saraiva Guerreiro, o Doutor Jorge Reinaldo Vanossi, o Doutor Brynmor Pollard, o Embaixador Sergio González-Gálvez e o Doutor Cuthbert Joseph. Da mesma forma, merece todo o reconhecimento do Governo brasileiro e de seus pares a atuação do Doutor João Grandino Rodas, cuja trajetória profissional será enriquecida como diretor da Faculdade de Direito da Universidade de São Paulo. Saúdo, também, a presença do Professor Ricardo Seitenfus, que possui as necessárias credenciais para honrar a longa linhagem dos juristas brasileiros na CJI.

O pioneirismo da Comissão Internacional de Jurisconsultos Americanos, criada em 1906, deu corpo e alma às aspirações dos homens da época pelo fortalecimento dos mecanismos de manutenção da paz, assim como pela consolidação dos princípios do Direito Internacional na região.

Tal como a conhecemos hoje, a Comissão Jurídica Interamericana foi criada neste Palácio, em 1942, durante a Terceira Reunião de Consultas dos Ministros de Relações Exteriores, adquirindo atribuições mais amplas como instância consultiva capaz de examinar questões de relevância e atualidade para a OEA.

Ao longo desses anos, o Brasil tem favorecido o fortalecimento da CJI como *locus* altamente qualificado para aprofundar a análise de itens da agenda da Organização – temas que envolvem aspectos tão complexos como direitos humanos, democracia, racismo, segurança hemisférica, aperfeiçoamento da administração da justiça, solução pacífica de controvérsias, combate à corrupção e cooperação contra o terrorismo.

Atualmente, o exercício da presidência pelo Doutor Mauricio Herdocia Sacasa tem servido de balizamento seguro para a atuação da Comissão. A condução inspirada e segura do Doutor Herdocia Sacasa não apenas condiz com a tradição de ponderação e equilíbrio que a Nicarágua adota em foros internacionais, senão também galvaniza o esforço dos membros da CJI em prol do desenvolvimento das questões jurídicas no Hemisfério.

O trabalho da Comissão é, portanto, matriz importante de idéias para o esforço coletivo de responder às novas demandas que impõe a realidade mundial. Nesse contexto, os relatórios anuais que a Comissão submete à consideração da Assembléia Geral são o testemunho do espírito crítico com que seus membros desempenham suas atribuições, além de constituírem prova da vitalidade dos debates que a CJI mantém.

Senhor Presidente,

Vivemos sob o signo das transformações. Nos últimos anos, o delineamento da cena internacional adquiriu contornos mais nítidos com a afirmação dos ideais democráticos, sobretudo como contraponto ao paroxismo de violência desencadeada, muita vez, pela intolerância política, étnica, racial e religiosa.

Era previsível, portanto, que do dinamismo dessas mudanças se forjasse uma consciência interessada em assegurar a prevalência dos princípios universais da justiça e da democracia.

A diplomacia brasileira tem-se pautado também pelo princípio de que a consolidação da democracia é tarefa permanente de todos os povos. Sabemos que não há alternativas viáveis ao Estado de Direito. Devemos promover ações que se apóiam na paz e na justiça social.

Os regimes democráticos não são construídos sem o concurso da cidadania plena, sem instituições públicas capazes de promover a justiça, os direitos sociais e civis. Para criarmos uma cultura democrática no Hemisfério, como define a Carta Democrática Interamericana, precisamos

trabalhar pelo aperfeiçoamento de instituições que respondam às aspirações cotidianas de nossas sociedades.

Ao mencionar o fortalecimento da democracia, devemos ter presente a situação do Haiti. A OEA, que desempenhou papel inestimável para a realização das eleições presidenciais e legislativas naquele país, reafirmou, nesse capítulo da história haitiana, sua vocação para sopesar deveres mútuos e responsabilidades compartilhadas.

Todos na região acompanhamos os esforços de normalização da vida no Haiti. O povo haitiano tem dado mostras diárias de sua fibra ao procurar conduzir o seu próprio destino, ao qual, por dever de solidariedade regional, estamos fraternalmente vinculados.

Dessa forma, a convicção do Governo brasileiro é que a atuação da CJI se inscreve na melhor categoria dos esforços destinados ao fortalecimento da moldura jurídica do sistema interamericano, permitindo, assim, a consolidação dos valores democráticos. Este será, certamente, o legado da Comissão às futuras gerações.

Eis, portanto, o destino para cuja realização a Comissão vem trabalhando operosamente nesses cem anos: a promoção de uma identidade de convicções e uma convergência de princípios em nome da solidariedade dos povos do Continente.

Ao abrigar a Comissão Jurídica Interamericana nesta Casa, o Governo brasileiro reafirmou seu compromisso com a vocação dos países hemisféricos para o diálogo e o entendimento. Também renovamos nossa confiança nos valores permanentes do sentimento americano de defesa do primado do Direito – único instrumento capaz de conservar padrões de convivência mais justos e democráticos para as nossas sociedades.

Muito obrigada.

**DISCURSO DEL DOCTOR DANTE CAPUTO²,
SUBSECRETARIO DE ASUNTOS POLÍTICOS DE LA
ORGANIZACIÓN DE LOS ESTADOS AMERICANOS,
EN LA SESIÓN SOLEMNE DE CONMEMORACIÓN DEL
CENTENARIO DEL COMITÉ JURÍDICO INTERAMERICANO**

Excelencias, colegas, señoras, señores,

Ante todo decir que es un honor y un placer estar aquí – honor por poder compartir con ustedes el Centenario del Comité Jurídico Interamericano, representando al Secretario General de la Organización. Y ciertamente un placer por estar en Brasil y reencontrar queridos amigos.

El tema que nos reúne es conmemorar la perseverancia y la constancia – excepcional en América Latina – de este órgano que en sucesivas reencarnaciones con distintos nombres ha recorrido la mitad de nuestra historia. La mayoría de nuestros países – no todos – la mayoría – pronto cumplen doscientos años de vida independiente. Pues bien, cien años han sido compartidos con la historia de este Comité que trata de uno de los temas más complejos de resolver en la materia política.

Entonces para dar mi homenaje a quienes integraron y quienes integran este órgano, brevísimas reflexiones sobre la naturaleza del desafío que implica el derecho internacional y la aspiración de normar las relaciones internacionales.

No se asusten, por favor, por la fecha que voy a dar – no voy a retrasar la historia desde entonces hasta ahora, pero hace 2422 años, los embajadores de Atenas trataban de convencer a los habitantes de la Isla de Melos – los melios – de la conveniencia de convertirse en súbditos del imperio ateniense. Los melios encararon diversos métodos de negociación con los señores del mar – así se llamaba Atenas – al imperio ateniense – Tucidies lo recoge con precisión en la historia de la guerra del Peloponesio – y es notable porque en ese diálogo – que seguramente ustedes conocen, quienes

² Original version in Spanish.

no lo conozcan – por Dios – no lo pierdan porque es de una actualidad inmensa – en ese diálogo, por supuesto que los melios intentaron una sucesión de argumentos racionales para evitar caer bajo la esclavitud de los atenienses. Recuerdo uno de los argumentos que era decir algo así como “somos neutrales” y la respuesta ateniense diciendo “eso es un peligro”, porque la neutralidad implicaría mostrar que nuestro imperio es débil. Pero esta historia del 416 antes de Cristo viene a propósito del último recurso denegado al cual apelan los embajadores melios, cuando habiendo votado toda la discusión y viendo que todos los atenienses – subordinación o muerte – viendo que los atenienses no aflojaban dicen – “pero, finalmente esto es injusto, que nosotros seamos esclavos de ustedes” y la respuesta del jefe de los embajadores atenienses fue “la justicia es una cuestión entre iguales, nunca entre desiguales”.

Desde entonces hasta ahora, no hemos podido resolver el tema de este triángulo singular del poder de la justicia y de la desigualdad. No lo hemos podido resolver adentro de nuestras sociedades, aunque la democracia es un esfuerzo considerable, quizás el mejor, en la historia de la humanidad para regular y armar una estructura de organización del poder, a pesar de la desigualdad y tampoco lo hemos resuelto en la relaciones interestatales, tema que este Comité aborda.

¿Cómo resolver el dilema de la desigualdad del poder? ¿Cómo resolver esta situación y esta realidad tan grave que es que la *ultima ratio* en política internacional no es la *ratio*, que la última razón no es la razón. No es que a mí me guste esto, yo cuando a veces doy clase y digo eso a veces mis alumnos se confunden y piensan que yo sostengo eso. No, yo no sostengo esto. Yo sostengo lo contrario, pero el dato es que desafortunadamente son las correlaciones en el mundo las que conforman esencialmente las relaciones internacionales.

¿Cómo lograr que la norma se imponga al poder? ¿Cómo lograr que en definitiva esta aspiración que en buena medida hemos conquistado adentro de nuestros países, que es el estado democrático de derecho pueda algún día tener que ver con la manera de regular las relaciones mundiales, algo al cual llamaríamos el estado internacional democrático de derecho. ¿Es una quimera o es sólo una utopía? Si es una utopía es alcanzable. Yo no creo que sea una quimera.

Y esta evocación – amigas y amigos – es porque no quiero para nada ser formal al saludar a este Comité, porque quiero rendirle todo el homenaje que se le debe a las mujeres y hombres que a lo largo de cien años intentaron y con bastante éxito normar la desigualdad del poder.

Mi estimado amigo y colega Jean-Michel Arrighi resumió muy bien en un trabajo de él en un párrafo, las conquistas de este Comité. Dice Jean-Michel Arrighi: “la solución de las controversias, el no uso de la fuerza como medio de resolver conflictos internacionales – uno lo dice al pasar, pero “el no uso de la fuerza para resolver conflictos internacionales”. Leamos los diarios de ayer, de hoy, del mes pasado, del año pasado. El principio de no intervención, su defensa de la igualdad soberana de los Estados, la institución del asilo diplomático y territorial, en el recurso al *uti possidetis* para la delimitación de fronteras, la contribución a la evolución del derecho del mar, las normas relativas a las reservas a los tratados, el no reconocimiento a los extranjeros de más derechos que aquellos que sean acordados a los nacionales, los esfuerzos para lograr la codificación del derecho internacional privado, son algunos de los aportes más destacados de este Comité”, dice Jean-Michel Arrighi.

En 1945, cuando nacía Naciones Unidas, la mitad de los países que creaban la Organización eran latinoamericanos y en la creación, en la Carta, en el espíritu del 45 y de San Francisco, las ideas que maduraron a lo largo de las diversas encarnaciones del Comité tuvieron mucha influencia.

Yo no quiero clausurar este homenaje sin apelar al Comité a que a pesar de la realidad que nos rodea, a pesar de un mundo en el cual el recurso a la fuerza, en lugar de dejar lugar a la aplicación de la norma, retoma cada vez más presencia y parece ser el único instrumento de regulación de las relaciones entre los Estados.

A pesar de todo esto, sigan en esta pelea exitosa de los últimos cien años. Es la pelea de los políticos. Es la pelea contra los avatares de las dificultades. Cuando vemos los titulares de los diarios, cuando vemos que las principales potencias – una principal potencia – quiere denunciar el artículo 3º de la Convención de Ginebra sobre el tratamiento a los prisioneros de guerra – a pesar de todo eso, hay que insistir porque ustedes tuvieron un enorme éxito en el trabajo que encararon. Y cuando la cosa sea difícil, por favor, recuerden aquella frase hermosa de Max Weber en ese pequeño libro “El

Científico y la Política” en el cual dice – al tratar de definir lo que es hombre político – dice que es aquél que a pesar de sentirse solo, a pesar de encontrar que la realidad va en contra de lo que cree, que las mayorías muchas veces le tornan la espalda, a pesar de que siente que predica en el desierto, se dice asimismo: “Sin embargo, vale a pena seguir peleando”. Sin embargo, señores miembros del Comité, vale la pena seguir peleando porque ustedes en cien años han contribuido a que América Latina no fuera un paraíso pero por lo menos no fuera el lugar más cruel del mundo.

Muchas gracias.

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