PERMANENT COUNCIL

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ANNUAL REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE TO THE FORTY-FOURTH REGULAR SESSION OF THE GENERAL ASSEMBLY

COMISSÃO JURÍDICA INTERAMERICANA
COMITÉ JURÍDICO INTERAMERICANO
INTER-AMERICAN JURIDICAL COMMITTEE
COMITÉ JURIDIQUE INTERAMÉRICAIN

ORGANIZATION OF AMERICAN STATES
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Rio de Janeiro, December 17, 2013

Excellency,

I have the honor to address Your Excellency to request you kindly forward to the Permanent Council of the Organization of American States the attached annual report of the Inter-American Juridical Committee (document OEA/Ser. Q /CJI/doc.443/13) regarding the activities of the Committee during the year 2013.

Accept, Excellency, the renewed assurances of my highest considerations.

João Clemente Baena Soares
President
Inter-American Juridical Committee

His Excellency
José Miguel Insulza
Secretary General
Organization of American States
Washington, DC.- USA

ORGANIZATION OF AMERICAN STATES

INTER-AMERICAN JURIDICAL COMMITTEE

CJI

83rd REGULAR SESSION
August 5 to 9, 2013
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ANNUAL REPORT

OF THE INTER-AMERICAN JURIDICAL COMMITTEE TO THE GENERAL ASSEMBLY

2013

General Secretariat
Organization of the American States
www.oas.org/cji
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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 Department of International Law of the Secretariat for Legal Affairs 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 submit to the General Assembly of the Organization of American States its Annual Report on the activities carried out during the year 2013, in accordance with the terms of Article 91.f of the Charter of the Organization of American States and Article 13 of its Statutes, and with the instructions contained in General Assembly Resolutions AG/RES. 1452 (XXVII-O/97), AG/RES. 1586 (XXVIII-O/98), AG/RES. 1669 (XXIX-O/99), AG/RES. 1735 (XXX-O/00), AG/RES. 1839 (XXXI-O/01), AG/RES. 1787 (XXXI-O/01), AG/RES. 1853 (XXXII-O/02), AG/RES. 1883 (XXXII-O/02), AG/RES. 1909 (XXXII-O/02), AG/RES. 1952 (XXXIII-O/03), AG/RES. 1974 (XXXIII-O/03), AG/RES. 2025 (XXXIV-O/04), AG/RES. 2042 (XXXIV-O/04), AG/RES. 2136 (XXXV-O/05), AG/RES. 2197 (XXXVI-O/06), AG/RES. 2484 (XXXIX-O/09), and CP/RES. 847 (1373/03), dealing with the preparation of annual reports to the General Assembly by the organs, agencies, and entities of the Organization.

In 2013, the Inter-American Juridical Committee held two sessions. The first, its Eighty-Second Regular Session, took place from March 11 to 14; the second, Eighty-Third Regular Session, from August 5 to 9. Both were held at the Committee's headquarters in Rio de Janeiro, Brazil.

During this year, the Committee adopted three reports, two of which give effect to General Assembly requirements, "Sexual orientation, gender identity and expression" (CJI/doc.417/12 rev. 2 corr. 1); and "Protection of cultural property in the event of armed conflict" (CJI/doc.403/12 rev. 5). The Committee also approved one report that corresponds to a mandate established by its members, "Inter-American Judicial Cooperation" (CJI/doc.428/13 rev. 1).

Four rapporteurships were established to keep track of new mandates: drafting of a Model Law regarding access to public information and protection of personal data (mandate established by Resolution AG/RES. 2811 (XLIII-O/13) of the General Assembly); corporate social responsibility in the field of human rights and the environment in the Americas; alternatives for regulating the use substances and preventing drug addiction of narcotic psychotropic substances and preventing drug addiction; and, guidelines for migration management in bilateral relations. Finally, the Judicial Committee plenary s decided to continue its work on sexual orientation, gender identity and expression; general guidelines for border integration; immunity of States and international organizations; electronic warehouse receipts for agricultural products; and inter-American judicial cooperation.

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 describes all sessions held during the present year. The second chapter describes the issues that the Inter-American Juridical Committee discussed at its regular sessions and contains the texts of the resolutions adopted and specific documents. Lastly, the third chapter concerns other activities developed by the Juridical Committee and its members during the year. As it is customary, annexed to the Annual Report there is a lists of the resolutions and documents adopted, as well as thematic and keyword indexes to help the reader locate documents in this Report.

Dr. João Clemente Baena Soares, Chairman of the Inter-American Juridical Committee, approved the language of this Annual Report.

All this information may be accessed at the webpage of the Inter-American Juridical Committee at: http://www.oas.org/en/sla/iajc/default.asp.

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, it may meet elsewhere 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 by the Annual Report of the Inter-American Juridical Committee

A. Eighty-Second regular session

The 82nd regular session of the Inter-American Juridical Committee took place on March 11 to 14, 2013, in Rio de Janeiro, Brazil.

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

Dr. Fabián Novak Talavera
Dr. Ana Elizabeth Villalta Vizcarra
Dr. Hyacinth Evadne Lindsay
Dr. João Clemente Baena Soares
Dr. Freddy Castillo Castellanos
Dr. Miguel A. Pichardo Olivier
Dr. José Luis Moreno Guerra
Dr. Gélin Imanès Collot
Dr. David P. Stewart
Dr. Carlos Mata Prates

Dr. Fernando Gómez-Mont Urueta was not present during this session.

Representing the General Secretariat, technical and administrative support was provided by Dr. Jean-Michel Arrighi, Secretary for Legal Affairs; Dante M. Negro, Director of the Department of International Law; Luis Toro Utillano, Principal Legal Officer; Maria Lúcia Iecker Vieira and Maria C. de Souza Gomes of the Secretariat of the Inter-American Juridical Committee.

During the first session, the Chairman of the Inter-American Juridical Committee congratulated Dr. David Stewart from the United States and Dr. Fabián Novak from Peru, who began their mandates on January 1 of this year, having been re-elected during the forty-second regular session of the General Assembly of the OAS in Cochabamba, Bolivia. Moreover, the Chairman welcomed Dr. Gélin Imanès Collot from Haiti, who was appearing before the Committee plenary for the first time.

The Director of the Department of International Law, Dr. Dante Negro, then mentioned the mandates envisaged for this session of the Inter-American Juridical Committee.

The Inter-American Juridical Committee had before it the following agenda, adopted by means of Resolution CJI/RES. 196 (LXXXI-O/12), "Agenda for the Eighty-Second Regular Session of the Inter-American Juridical Committee":

CJI/RES. 196 (LXXXI-O/12)

AGENDA FOR THE EIGHTY-SECOND REGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE
(Rio de Janeiro, Brazil, March 11- 15, 2013)

Topics under consideration:

1. Sexual orientation and gender identity
   Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and Freddy Castillo Castellanos
2. Model legislation on protection of cultural property in the event of armed conflict
   Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and Freddy Castillo Castellanos
3. General guidelines for border integration
   Rapporteur: Dr. José Luis Moreno Guerra
4. Inmunity of States
   Rapporteur: Dr. Carlos Mata Prates
5. Electronic warehouse receipts for agricultural products
   Rapporteur: Dr. David P. Stewart
6. Inter-American legal cooperation
   Rapporteurs: Drs. Fernando Gómez Mont Urueta and Ana Elizabeth Villalta Vizcarra

This resolution was approved unanimously at the meeting held on August 9, 2012, by the following members: Drs. José Luis Moreno Guerra, Hyacinth Evadne Lindsay, Ana Elizabeth Villalta Vizcarra, Fabián Novak Talavera, João Clemente Baena Soares, David P. Stewart, Jean-Paul Hubert, Miguel A. Pichardo Olivier, Carlos Mata Prates and Freddy Castillo Castellanos.

The Inter-American Juridical Committee had before it the following agenda, adopted by means of resolution CJI/RES. 199 (LXXXII-O/13), "Date and Venue of the Eighty-Third Regular Session of the Inter-American Juridical Committee":

CJI/RES. 199 (LXXXII-O/13)

DATE AND VENUE OF THE EIGHTY-THIRD REGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that article 15 of its Statutes provides for two annual regular sessions;

BEARING IN MIND that article 14 of its Statutes states that the Inter-American Juridical Committee has its headquarters in the city of Rio de Janeiro, Brazil;

RESOLVES to hold its 83nd regular session in Rio de Janeiro, Brazil, on August 5, 2013.

This resolution was approved unanimously at the meeting held on March 15, 2013, by the following members: Drs. Fabián Novak Talavera, Ana Elizabeth Villalta Vizcarra, Hyacinth Evadne Lindsay, João Clemente Baena Soares, Freddy Castillo Castellanos, Miguel Aníbal Pichardo Olivier, José Luis Moreno Guerra, Gélin Imanès Collot, David P. Stewart and Carlos Mata Prates.

B. Eighty-Third regular session

The 83rd regular session of the Inter-American Juridical Committee took place on August 5 to 9, 2013, at its headquarters in the city of Rio de Janeiro, Brazil.

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

Dr. Miguel Aníbal Pichardo Olivier
Dr. Fernando Gómez Mont Urueta
Dr. David P. Stewart
Dr. Fabián Novak Talavera
Dr. Freddy Castillo Castellanos
Dr. Hyacinth Evadne Lindsay
Dr. Ana Elizabeth Villalta Vizcarra
Dr. José Luis Moreno Guerra
Dr. João Clemente Baena Soares
Dr. Gélin Imanès Collot

Dr. Carlos Mata was not present during this session.

Representing the General Secretariat, technical and administrative support was provided by Dr. Jean-Michel Arrighi, Secretary for Legal Affairs; Dante Negro, Director of the Department of International Law; Luis Toro Utillano, Principal Legal Officer with that same Department; Christian A. Slomp Perrone de Oliveira, Legal Officer, and Maria Lúcia Iecker Vieira and Maria C. de Souza Gomes from the Secretariat of the Inter-American Juridical Committee.

The Chairman of the Committee, Ambassador Baena Soares congratulated the members of the Inter-American Juridical Committee re-elected in the XLIII regular session of the OAS General Assembly (La Antigua, Guatemala, from June 4-6, 2013), Drs. Ana Elizabeth Villalta Vizcarra and Miguel A. Pichardo Olivier. The Chairman explained that as there had not been a candidate for the third vacancy available, the General Assembly had asked the Permanent Council to proceed to elect that member in September. On September 6, 2013, the Permanent Council elected Dr. Hernán Salinas Burgos from Chile for a four-year term, from January 1, 2014, to December 31, 2017.

The Director of the Department of International Law, Dr. Dante Negro, then mentioned the mandates envisaged for this session of the Inter-American Juridical Committee. Furthermore, he has informed the Committee there would be 11 visitors during this session.

At its 83rd regular session, the Inter-American Juridical Committee had before it the following agenda, which was adopted by means of resolution CJI/RES. 198 (LXXXII-O/13) "Agenda for the Eighty-Third Regular Session of the Inter-American Juridical Committee":

CJI/RES. 198 (LXXXII-O/13)

AGENDA FOR THE EIGHTY-THIRD REGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE
(Rio de Janeiro, Brazil, from August 5-9, 2013**)**

Topics under consideration:

1. Sexual orientation and gender identity
   Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and Freddy Castillo Castellanos
2. General guidelines for border integration
   Rapporteur: Dr. José Luis Moreno Guerra
3. Immunity of States and international organizations
   Rapporteur: Dr. Carlos Mata Prates
4. Electronic warehouse receipts for agricultural products
   Rapporteur: Dr. David P. Stewart
5. Inter-American legal cooperation
   Rapporteurs: Drs. Fernando Gómez Mont Urueta and Ana Elizabeth Villalta Vizcarra
6. Social responsibility of companies in the field of human rights and the environment in the Americas
   Rapporteur: Dr. Fabián Novak Talavera

This resolution was approved unanimously at the meeting held on March 15, 2013, by the following members: Drs. Fabián Novak Talavera, Ana Elizabeth Villalta Vizcarra, Hyacinth Evadne Lindsay, João Clemente Baena Soares, Freddy Castillo Castellanos, Miguel Aníbal Pichardo Olivier, José Luis Moreno Guerra, Gélin Imanès Collot, David P. Stewart and Carlos Mata Prates.

* * *

CJI/RES. 201 (LXXXIII-O/13)

DATE AND VENUE OF THE EIGHTY-FOURTH REGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that article 15 of its Statutes provides for two annual regular sessions;

BEARING IN MIND that article 14 of its Statutes states that the Inter-American Juridical Committee has its headquarters in the city of Rio de Janeiro, Brazil;

RESOLVES to hold its 84rd regular session from March 10 to14, 2014.

This resolution was approved unanimously at the meeting held on August 9, 2013, by the following members: Drs. Miguel Anibal Pichardo Olivier, Fernando Gómez Mont Urueta, David P. Stewart, Fabián Novak Talavera, Freddy Castillo Castellanos, Hyacinth Evadne Lindsay, Ana Elizabeth Villalta Vizcarra, José Luis Moreno Guerra, João Clemente Baena Soares and Gélin Imanès Collot.

* * *

CJI/RES. 200 (LXXXIII-O/13)

AGENDA FOR THE EIGHTY-FOURTH REGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE
(From March 10 to 14, 2014**)**

Topics under consideration:

1. Sexual orientation and gender identity and expression
   Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and Freddy Castillo Castellanos
2. General guidelines for border integration
   Rapporteur: Dr. José Luis Moreno Guerra
3. Immunity of States and international organizations
   Rapporteur: Dr. Carlos Mata Prates
4. Electronic warehouse receipts for agricultural products
   Rapporteur: Dr. David P. Stewart
5. Inter-American legal cooperation
   Rapporteurs: Drs. Fernando Gómez Mont Urueta and Ana Elizabeth Villalta Vizcarra
6. Social responsibility of companies in the area of human rights and the environment in the Americas
   Rapporteur: Dr. Fabián Novak Talavera
7. Alternative for the regulation of the use of psychotropic substances, as well as for the prevention of pharmacodependency
   Rapporteur: Dr. Fernando Gómez Mont Urueta
8. Guidelines for migratory management in bilateral relationships
   Rapporteur: Dr. José Luis Moreno Guerra
9. Access to public information and protection of personal data
   Rapporteur: Dr. David P. Stewart

This resolution was approved unanimously at the meeting held on August 9, 2013, by the following members: Drs. Miguel Aníbal Pichardo Olivier, Fernando Gómez Mont Urueta, David P. Stewart, Fabián Novak Talavera, Freddy Castillo Castellanos, Hyacinth Evadne Lindsay, Ana Elizabeth Villalta Vizcarra, José Luis Moreno Guerra, João Clemente Baena Soares and Gélin Imanès Collot.

CHAPTER II

TOPICS DISCUSSED BY THE INTER-AMERICAN JURIDICAL COMMITTEE AT THE REGULAR SESSIONS HELD IN 2013

I. THEMES UNDER CONSIDERATION

In 2013, the Inter-American Juridical Committee held two regular sessions. At these sessions, the Committee adopted three reports, two of which give effect to General Assembly mandates on "Sexual orientation, gender identity and expression" and "Protection of cultural property in the event of armed conflict." The Committee also approved a report that corresponded to a mandate established by its members, entitled "Inter-American Judicial Cooperation." Furthermore, at the request of the General Assembly, the Committee's agenda included a study regarding the possibility of drafting a model law on access to public information and protection of personal data. In addition, three rapporteurships were established to consider new mandates: Corporate social responsibility in the field of human rights and the environment in the Americas; Alternatives for regulating the use of narcotic psychotropic substances and preventing drug addiction; and Guidelines for migration management in bilateral relations. Finally, the Committee plenary decided to continue addressing the subjects of Sexual orientation, gender identity and gender expression; General guidelines for border integration; Immunity of States and international organizations; Electronic warehouse receipts for agricultural products; and, Inter-American judicial cooperation.

Following there is a presentation of the aforementioned topics, along with, where applicable, the documents on those topics prepared and approved by the Inter-American Juridical Committee.

* * *

1. Sexual orientation, gender identity and expression

Documents

CJI/doc.417/12 rev.2 corr.1	Report of the Inter-American Juridical Committee. Sexual orientation, gender identity and gender expression
CJI/doc. 440/13	Sexual Orientation, gender identity and gender expression (presented by Dr. Freddy Castillo Castellanos)

During the forty-first regular session of the OAS General Assembly (El Salvador, June 2011), the IACHR and the Inter-American Juridical Committee were requested to do separate studies on the legal implications and conceptual and terminological developments related to sexual orientation, gender identity, and gender expression, and the Committee on Juridical and Political Affairs was instructed to include on its agenda consideration of the results of these studies, with the participation of interested civil society organizations, prior to the forty-second regular session of the General Assembly, AG/RES. 2653 (XLI-O/11).

At the 80th regular session of the Inter-American Juridical Committee (Mexico City, March 2012) the rapporteurs for the topic, Dr. Freddy Castillo Castellanos and Dr. Elizabeth Villalta announced their intention to present a document to the next session of the Committee, in August.

Besides reiterating how complex the issue was, particularly with respect to the terminology of the contents, they expressed an interest in confining things to the legal dimension of the issue, sticking to existing laws and the recommendations of United Nations-related institutions involved in the field. He referred to the expression LGBTT, which encompassed the concepts of "lesbians, gays, bisexuals, transsexuals, and transgender people." He further requested the Secretariat to forward any information on cases that have been settled by the Inter-American Commission on Human Rights (IAComHR) and the Inter-American Court of Human Right (IACtHR) in this area. The rapporteur also expressed an interest in establishing a definition of the concepts and in determining the specific type of protection that should be applied in each case.

Chairman Novak stressed the importance of the issue and the need to address the mandate in a clear manner in the report to be submitted in August and to point to protection measures that states should have in place so as to protect these groups, taking into account each group's characteristics.

Dr. Ana Elizabeth Villalta explained efforts being made in her country's public service, noting as well the discrimination faced by people in terms of access to employment.

Dr. Luis Moreno Guerra, meanwhile, cited studies relating to the process of separation of the sexes, noting that 30% of all living species have presented homosexual behavior. He said this was therefore not a matter of choice. He said that the studies showed that there were elements that altered genes differently for each case. Finally, he noted that most sexual-orientation-based intolerance was religious in nature as a matter of reality.

Dr. David Stewart agreed that the rapporteurs had adopted a valid point in taking a legal approach, and suggested that they should not draw strict limits to each category as they have evolving elements. Certain elements may be more difficult to define; thus, he proposed that a simple guide should be drawn up to identify the principles and categories that are recognized today.

Rapporteur Dr. Freddy Castillo Castellanos thanked Dr. Luis Moreno Guerra and Dr. David Stewart for their proposals, noting his intention to produce a report that was legal in nature and based on the issues under purview of the Committee.

Dr. Fernando Gomez Mont acknowledged that the rapporteurs' work could be easier if efforts were made to define the freedoms and determine conflicts, where applicable. He suggested that, for all of the cases, the obligations of States should be spelled out along with the limits on those freedoms with respect to third parties. Dr. Castillo Castellanos expressed appreciation for all of this.

The forty-second regular session of the OAS General Assembly (Cochabamba, June 2012) requested the Inter-American Juridical Committee "to report on progress made on the study of the legal implications and conceptual and terminological developments related to sexual orientation, gender identity, and gender expression" AG/RES. 2722 (XLII-O/12).

At the 81st regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August, 2012) each of the rapporteurs presented a separate written document pursuant to the General Assembly mandate. Dr. Villalta's report on this topic, document CJI/doc.417/12, contains a definition of the concepts used in this area. It also makes some recommendations that are part of the case law developed by the Inter-American Court of Human Rights and the report prepared by the Inter-American Commission on Human Rights, such as the drafting of an American convention on the subject matter or training for public officials. Dr. Freddy Castillo Castellanos' report, document CJI/doc.421/12, meanwhile, addresses elements that should be included in the study highlighting, among others, the inclusion of principles of non-discrimination and respect for human beings.

Dr. Fabián Novak Talavera called for a review of the General Assembly mandate and for the Committee's work to focus on preparing a study on the legal implications and conceptual developments on which doctrinal and jurisprudential work on the subject is predicated. The result of this study could be sent to the States and could serve as material for training courses conducted in the inter-American system.

Dr. Jean-Paul Hubert asked the Secretariat about the draft Convention on racism, discrimination, and intolerance, recalling that the Committee had an opportunity to comment on the matters related to how this subject is handled, in "The Struggle Against Discrimination and Intolerance in the Americas " (CJI/RES. 124 (LXX-O/07).

Dr. Dante Negro clarified the situation regarding the treatment of the Draft Convention that Dr. Hubert mentioned, asserting that said issue is now divided into two drafts – one on racial discrimination and the other on all forms of discrimination and intolerance.

Dr. Carlos Mata Prates referred to training being conducted at the Foreign Ministry of Uruguay and to administrative and judicial developments that have taken place in his country, with respect to marriages between persons of the same sex or the granting of child custody to same-sex couples. Following Dr. Novak's suggestion, he urged the rapporteurs to do an objective job.

Dr. Hyacinth Evadne Lindsay said she was interested in sending a copy of this report to her government to facilitate the drafting of a bill on the subject that will be the focus of discussions.

At the end of the discussion the rapporteurs were requested to present at the next session a document incorporating the suggestions made.

At the 82nd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2013), the co-rapporteur for the topic, Dr. Elizabeth Villalta Vizcarra, presented her report: "Sexual orientation, gender identity, and gender expression" (document CJI/doc.417/12 rev. 1 of March 4, 2013). The report refers to the concepts of sexual orientation, gender identity and gender expression and dwells upon the legal implications of each of these terms. Among her recommendations, Ms. Villalta Vizcarra proposed that the various categories be dealt with for the time being under the headings of "non-discrimination by reason of sex" and "any other social status," as established in universal and regional international instruments and following inter-American case-law on the matter. She also stressed the importance of the draft conventions being drafted in the OAS framework and recommended promoting training in those fields.

The co-rapporteur for the topic, Dr. Freddy Castillo Castellanos, meanwhile, made some additional comments regarding the ruling in the Inter-American Court of Human Rights Case of Atala Riffo and Daughters vs. Chile, which under a broad interpretation of the prohibition of discrimination based on "any social status", clearly establishes the duty of States to promote a policy and culture of protection for these minorities. In that regard, he made the following recommendations:

- That countries harmonize their national laws with international law and, as soon as possible, guarantee respect for civil rights regardless of sexual orientation, including parental rights, name, and recognition of marriage.
- That States be urged to promote social integration policies among government officials.

Dr. Fabián Novak Talavera consulted the plenary about the next steps. He noted that this was a new issue, which has involved just one case before the Inter-American Court of Human Rights and it gives no general sense of the actual status of International Law in this area. He therefore urged caution and suggested this report be expanded with a clear objective that takes into account factors other than those cited, such as domestic law in OAS Member States (the aim being not to criticize but rather to determine what progress has been made on this topic). He further suggested checking developments within the European Court of Human Rights. Thirdly, he proposed analyzing and including work done in this field by the UN International Law Commission. He felt that the Juridical Committee should submit a document stating the minimum international standard to provide guidance to states and explain legal support in the field without any special need to include recommendations.

Dr. David P. Stewart suggested checking the definition of "sexual identity" if the aim is to use the concept put forward by the Inter-American Commission on Human Rights. Mindful that International Law prohibits discrimination based on status, condition, or other reasons, he noted that there was no need to define new terms but rather to present the existing obligations. He supported Dr. Novak's suggestion to verify the status of domestic laws in Member States and in Europe.

Dr. Dante Negro, Director of the International Law Department, explained the evolution of the issue of discrimination with respect to the two draft Inter-American conventions against discrimination. At the outset the draft convention was on racism and intolerance, but in 2011, at the request of the delegation of Antigua and Barbuda, two separate draft conventions were created – one on racism and another on all forms of discrimination and intolerance. Progress was also made on the two instruments, and in terms of possibly presenting them to the General Assembly in June this year.

Dr. José Luis Moreno urged the co-rapporteurs to do the consultations they were asked to do regarding the difference or nuance established between sex and gender. He also urged the rapporteurs to work mainly on drafting a study on the legal implications, among other things, of the damage done to people who are victims. Co-rapporteur Elizabeth Villalta Vizcarra observed that the definitions of sex and gender take into consideration the progress of international law on the subject area.

The Chairman noted that the General Assembly Resolution had requested the Juridical Committee to report "on progress made on the study of the legal implications and conceptual and terminological developments related to sexual orientation, gender identity, and gender expression" AG/RES. 2722 (XLII-O/12). In that regard, he asked the co-rapporteurs to present a cleaned up document to include an explanatory note on the Committee's commitment to present an additional document.

Both co-rapporteurs for the issue endorsed that proposal and committed to submitting a new document, taking into consideration UN efforts and European case-law, in addition to domestic laws. On the latter point, they proposed that a questionnaire for States be drawn up, so as to find out about domestic laws in the subject area

Dr. Dante Negro shared about the General Assembly mandate on this issue and asked the plenary whether the status of the work allowed for the query to be answered.

Co-rapporteur Freddy Castillo Castellanos, for his part, said there was no inconsistency, since a document would be presented to the General Assembly in June 2013, after which work on the issue would continue, via a comparative study. Co-rapporteur Ana Elizabeth Villalta Vizcarra said that the Committee's preliminary study would include non-discrimination elements and would be supplemented with an analysis on the universal situation in this area.

Against this backdrop, the plenary approved the document entitled “Sexual orientation, gender identity, and gender expression” (document CJI/doc.417/12 rev.1) for referral to the Permanent Council. The document contains an explanatory note stating that it was a preliminary document, which would be further developed.

Document CJI/doc.417/12 rev.1was referred to the Permanent Council on March 8, 2013.

At the 83rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2013), the co-rapporteur for the topic, Dr. Elizabeth Villalta Vizcarra, presented a revised version of the document “Sexual orientation, gender identity, and gender expression” (document CJI/doc.417/12 rev. 2, August, 2013). The report refers to recent developments within the OAS through the adoption of two binding instruments of the 2013 OAS General Assembly (the Inter-American Convention against All Forms of Discrimination and Intolerance and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance). She also mentioned Resolution AG/RES. 2807 (XLIII-O/13) under the title “Human Rights, Sexual Orientation and Gender Expression”. Thereafter she mentioned the norms of European Union. Finally, she referred to the domestic legislation and to the case-law forwarded by the governments of Bolivia, Ecuador, El Salvador, Peru and Argentina.

In the light of the Inter-American Convention Against all Forms of Discrimination and Intolerance, she stated that discrimination in the area of “sexual orientation” is expressly featured as a specific source of discrimination, and she urged Member States of the Organization to ratify the aforementioned Convention, and to provide for the setting-up of the Inter-American Committee for the Prevention and Elimination of Racism, Racial Discrimination and all Forms of Discrimination and Intolerance. Similarly, she urged States to include in their national legislation the fundamental rights of persons that are discriminated against in view of their sexual orientation. Finally, she suggested encouraging exchange of experiences, legislation and case-law with other international and regional organizations, with the aim of improving legislation, sentencing and opinions of specialists. In this regard, she said it would be convenient to analyze the norms of the European Union, both involving their case-law and its directives in order to potentially include these norms in the case-law of the Members States of the inter-American system, in order to reinforce and strengthen it.

In turn, Dr. Freddy Castillo Castellanos presented document CJI/doc.440/13, which complements Dr. Villalta’s report. In his presentation he also mentioned the Argentine legislation that had been submitted in response to a request from the Committee. He suggested urging Member States to ratify the conventions adopted by the General Assembly in Guatemala and referred to the legal protection granted to same-sex couples. Finally, he mentioned the importance of adopting educational policies that foster a culture of tolerance and respect.

Dr. Fabián Novak congratulated Dr. Elizabeth Villalta on her efforts in compiling the legislation that the Committee has been receiving on the issue, in addition to the inclusion of European cases. As regards the problem of the sluggish response from States, he suggested that the rapporteur consider NGO databases on the legislation of the countries in the Hemisphere. He noted that it was not necessary to offer recommendations, but to take stock of the situation. He suggested that the conclusions could be based on a combined review of domestic legislation and case-law. That would make it possible to analyze trends, in order to determine how things stand and in what direction they are headed (forward-looking legislation and norms that have been kept on the statute books). He also suggested that recommendations should be preceded by such review-based conclusions. In addition, he recommended incorporating Dr. Castillo’s presentation, in order to have a single document. In this regard, the Chairman considered that the work should proceed without waiting for a response from the countries that not yet forwarded any comments.

Dr. Dante Negro then requested the rapporteurs to take into consideration the resolutions of the OAS General Assembly.

The President requested both rapporteurs to finish the topic for the next session, considering that there is enough material to consider the judicial repercussions of the matter.

The texts of the aforementioned reports are as follows:

CJI/doc.417/12 rev.2 corr.1

REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE.
SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION

I. MANDATE

During its forty-first regular session, held in San Salvador, El Salvador, in June 2011, the General Assembly of the Organization of American States adopted Resolution AG/RES. 2653 (XLI-O/11) in which it asked the Inter-American Commission on Human Rights (IACHR) and the Inter-American Juridical Committee (IAJC):

> each to prepare a study on the legal implications and conceptual and terminological developments as regards sexual orientation, gender identity and gender expression. It also instructed the Committee on Juridical and Political Affairs to include on its agenda an examination of the results of the requested studies, with interested civil society organizations participating. This review was to take place prior to the forty-second regular session of the OAS General Assembly.

At the 79th regular session of the Inter-American Juridical Committee, held in Rio de Janeiro, Brazil, in August 2011, Dr. Freddy Castillo Castellanos and Dr. Ana Elizabeth Villalta Vizcarra were designated as the rapporteurs for this topic.

During the 80th regular session of the Inter-American Juridical Committee, held in Mexico City in March 2012, the rapporteurs presented some initial observations on how the topic would be addressed. Some members of the Juridical Committee thought that the best course of action would be to define the mandate and limit it to international norms intended to put an end to manifestations of violence or discrimination, and that the topic should be approached from a legal perspective.

At its forty-second regular session, held in Cochabamba, Bolivia, in June 2012, the General Assembly adopted AG/RES. 2722 (XLII-O/12), in which it asked the Inter-American Juridical Committee "to report on progress made on the study of the legal implications and conceptual and terminological developments related to sexual orientation, gender identity and gender expression."

During the 81st regular session of the Inter-American Juridical Committee, held in the city of Rio de Janeiro, Brazil, from August 6 to 11, 2012, the rapporteur presented a first report on the concepts that come into play in connection with this topic; the meeting also saw a related study by the Inter-American Commission on Human Rights and a judgment issued by the Inter-American Court of Human Rights in a case involving sexual orientation. The report (CJI/doc.417/12) was discussed by the members of the Juridical Committee, and they decided that the study would be limited to the legal implications and conceptual developments, and that the relevant works in the areas of doctrine and jurisprudence would be cited.

During the 82nd of the Inter-American Juridical Committee held in Rio de Janeiro on 11-15 March 2013, a second report was presented (CJI/doc.417/12 rev.1) with the inclusions requested by the members of the Juridical Committee, on which occasion it was decided that the report will be sent to the Permanent Council of the Organization of the American States, in compliance with the mandate of the General Assembly at its 42rd Regular Session; at the same time, the members of the Committee asked that a new report on the theme should show the progress made on the matter, as well as asking the Member States of the Organization of the American States about their legislation on Sexual Orientation and Gender Identity and Expression, together with a study of the European norms on the question.

Accordingly, the following report of the Rapporteur was hereby presented at this, the 83rd Regular Session of the Inter-American Juridical Committee held in the city of Rio de Janeiro on 5-9 August 2013.

I. REPORT

A) Concerning the progress made on the matter, we present:

That the General Assembly of the Organization of the American States, at its forty-third regular session held in La Antigua, Guatemala, on 4-6 June 2013, approved Resolutions AG/RES. 2804 (XLIII-O/13), denominated "Inter-American Convention against All Forms of Discrimination and Intolerance", and AG/RES. 2805 (XLIII-O/13), denominated "Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance", both dated 5 June 2013, in which the principles of equality and non-discrimination are reaffirmed, as well as the recognition human diversity is a valuable element for the development and welfare of humankind in general.

Likewise, both resolutions reiterates the firmest commitment of the Organization of the American States (OAS) toward eradicating all forms of discrimination and intolerance, and the conviction that such discriminatory attitudes represent a denial of universal values such as the inalienable and inviolable rights of human beings and the purposes, principles and guarantees provided in the Charter of the Organization of the American States, in the American Declaration of the Rights and Duties of Man, in the American Convention on Human Rights, in the Universal Declaration of Human Rights, in the Social Charter of the Americas, in the Inter-American Democratic Charter, in the International Convention on the Elimination of All Forms of Racial Discrimination, and in the Universal Declaration on the Human Genome and Human Rights.

Both resolutions take into special consideration the report of the President of the Working Group assigned to prepare Draft Legally Binding Inter-American Instruments against Racism and Racial Discrimination and Intolerance. Particularly important for this report is the "Inter-American Convention against All Forms of Discrimination and Intolerance" approved by the above-mentioned Resolution AG/RES. 2804 (XLIII-O/13) of the General Assembly of the OAS.

The recital of this Convention established that certain persons and groups are liable to multiple or aggravated forms of discrimination and intolerance motivated by a combination of factors such as sex, age, "sexual orientation", language, religion, political or any other opinions, social origin, economic position, migrant, refugee or displaced status, birth, stigmatized infecto-contagious condition, genetic characteristic, disability, incapacitating psychic suffering or any other social condition, as well as other conditions recognized in international instruments. It has express its alarm is expressed at the increase in crimes of hatred committed due to sex, religion, "sexual orientation", deficiency and other social conditions.

Along the same lines, Chapter I of the body of the Convention refers to the Definitions of Discrimination, Indirect Discrimination and Multiple or Aggravated Discrimination, expressing that

discrimination may be based on reasons of nationality, age, sex, 'sexual orientation and gender identity and expression', language, religion, cultural identity, political or other opinions, social origin, socioeconomic states, educational level, migrant, refugee, repatriated, stateless or internally displaced status, disability, genetic trait, mental or physical health condition, including infectious-contagious, debilitating psychological condition.

How can sexual orientation and gender identity and expression be reasons for discrimination?

Chapter II refers to Protected Rights, stating that all human beings are equal before the law and are entitled to the same protection against all forms of discrimination and intolerance in any sphere whatsoever of public or private life.

Chapter III involves the Duties of the States, determining that these should commit themselves "to prevent, eliminate, prohibit and sanction, in accordance with their constitutional rules and the provisions of the Convention, all acts and manifestations of discrimination and intolerance". The Member States thus pledge to adopt the special policies and affirmative actions to ensure the exercise of the fundamental rights and freedom of persons and groups liable to discrimination or intolerance for the purpose of promoting equal conditions of opportunities, inclusion and progress for those persons or groups. The Party States pledge to adopt the legislation that clearly defines and prohibits discrimination and intolerance and applicable to all public authorities as well as to all individuals and corporations, both in the public and private sector, in

particular in the areas of employment, participation in professional organizations, education, professional training, housing, health, social protection, exercise of economic activity, access to public services, among others, and to amend or change any legislation that constitutes or allows discrimination and intolerance.

Party States also commit themselves to ensure that the victims of discrimination and intolerance are treated equally, with equal access to the system of justice, agile and effective legal process and fair reparation in the civil or penal sphere, as is the case. Another commitment is to ensure conformity with their internal rues, to establish or designate a national institution to be responsible for following up on compliance of this Convention, to be communicated to the Secretary General of the OAS.

Chapter IV refers to the mechanisms to protect and monitor the Convention in order to set up an Inter-American Committee for the Prevention and Elimination of Racism, Racial Discrimination and All Forms of Discrimination and Intolerance, which will be prepared by a specialist appointed by each Party State to exercise such functions independently and for the purpose of monitoring the commitments assumed in this Convention.

Such Committee will be set up when the first Convention comes into force and its first meeting will be convoked by the Secretary General of the OAS as soon as the tenth instrument of ratification of any of the Conventions has been received. The Committee will be the forum for exchanging ideas and experiences, as well as to examine the progress made by the Party States in applying same and any circumstance or problem that affects the extent to which the Convention has been complied with.

With this new Convention we now have a specific regulation of the categories “Sexual Orientation and Gender Identity and Expression” within the grounds for non-discrimination, thus rising above their being treated under the grounds of “sex” or “any other social condition”.

It is also appropriate to mention that during the 43rd Regular Session of the General Assembly of the OAS held in La Antigua, Guatemala, Resolution AG/RES. 2807 (XLIII-O/13), denominated “Human Rights, Sexual Orientation and Gender Identity and Expression” was approved on 6 June 2013, resolving, among other matters, the following:

> 1. To condemn all forms of discrimination against persons by reason of their sexual orientation and gender identity or expression, and to urge the states within the parameters of the legal institutions of their domestic systems to eliminate, where they exist, barriers faced by lesbians, gays, and bisexual, transsexual, and intersex (LGBTI) persons in equal access to political participation and in other areas of public life, and to avoid interferences in their private life.
>
> 2. To encourage Member States to consider, within the parameters of the legal institutions of their domestic systems, adopting public policies against discrimination by reason of sexual orientation and gender identity or expression.
>
> 3. To condemn acts of violence and human rights violations committed against persons by reason of their sexual orientation and gender identity or expression; and to urge states to strengthen their national institutions with a view to preventing and investigating these acts and violations and ensuring due judicial protection for victims on an equal footing and that the perpetrators are brought to justice.
>
> 4. In addition, to encourage states, within their institutional capacities, to produce data on homophobic and transphobic violence, with a view to fostering public policies that protect the human rights of lesbians, gays, and bisexual, transsexual, and intersex people (LGBTI).
>
> 5. To urge Member States to ensure adequate protection for human rights defenders who work on the issue of acts of violence, discrimination, and human rights violations committed against individuals on the basis of their sexual orientation and gender identity or expression.

B) With regard to how the norms of the European Union offer protection against discrimination due to sexual orientation, we present the following:

Article 21 of the Charter of Fundamental Rights of the European Union contemplates general prohibition of discrimination for an extensive list of reasons, including sexual orientation, when it states that: “Any discrimination based on any ground such as sex (...) or sexual orientation shall be prohibited”.

Article 13 of the Treaty establishing the European Community permits the European Union (EU) to approve laws opposing discrimination for reasons of sexual orientation. The European Union has legislated a great deal against discrimination for sexual orientation, especially in the sphere of labor. The Directive of Equality in Employment prohibits discrimination in access to and conditions of employment, self-employment and professional training, as well as in orientation and participation in organizations of workers and trade associations. This Directive is to be applied both in the public and private sector.

This new juridical framework created by these instruments is fundamental since of discrimination on account of sexual orientation, including as an independent category of discrimination on account of sex.

In this sense, many Member States of the European Union have decided to move beyond what the Directive of Equality in Employment sets forth and extend protection beyond the work place. In this way, it offers to lesbians, gays, bisexuals and transsexuals protection in a wider range of social spheres, such as education, social protection, social security and sanitary attention, as well as access to goods and services, including housing.

Along the same lines of ideas, we see that in eight Member States of the European Union (Belgium, Bulgaria, Germany, Spain, Austria, Romania, Slovenia and Slovakia) the legislation against discrimination on account of sexual orientation addresses not only the area of labor but also the other areas specified in the Directive of Racial Equality.

Likewise, we see that in ten Member States of the European Union (The Czech Republic, Ireland, Latvia, Lithuania, Luxembourg, Hungary, the Netherlands, Finland, Sweden and the United Kingdom) the legislation against discrimination on account of sexual orientation has partially expanded to address other spheres besides labor.

In the rest of the Member States of the European Union, legislation against discrimination on account of sexual orientation covers only the areas mentioned in the Directive of Equality in Employment. Notwithstanding of the above, we note that in Estonia, France, Greece and Poland, debate is ongoing as regards expanding the legislation.

What is being established in the European Union is an Equal Right to Equal Treatment, that is, people have a right equal to equality of treatment, so that prohibiting discrimination on account of sexual orientation has to be broadened to offer protection outside the labor sphere so as to include goods and services, like people discriminated against because of race or ethnic origin.

C) Concerning the Internal Legislation of the Member States of the Organization of the American States, legislation has been sent by Ecuador, Peru, Bolivia and El Salvador

With regard to Ecuador, the legislation was sent through the Ministry of Justice, Human Rights and Cults, particularly the Sub-Secretariat of Human Rights and Cults, Department of Human Rights, denominated “Normative Recompilation and Jurisprudence on the theme of LGBTTI (Spanish Acronym) in Ecuador”.

Article 11, item 2 of the constitutional rules states that:

> All people are equal to enjoy the same rights and opportunities.
>
> No-one can be discriminated against for reasons of race, birthplace, age, sex, ‘gender identity’, cultural identity, marital status, language, religion, ideology, political affiliation, judicial record, socio-economic condition, migration status, ‘sexual orientation’, state of health, IHV condition, disability, physical difference; or by any other distinction, personal or collective, temporary or permanent, the object or result of which is to diminish or annul recognition, enjoyment or exercise of their rights. The law will sanction all and any form of discrimination.

The State will adopt affirmative-action measures to promote true equality in favor of the holders of rights who find themselves in a situation of inequality.

As can be seen, this is a very advanced constitutional provision on the question, since it expressly establishes non-discrimination on account of gender identity and sexual orientation.

Item 9 of article 66 of said Constitution rules on the Right to Personal Integrity states: “The right to take free, informed, voluntary and responsible decisions concerning one`s sexuality, life and sexual orientation. The State shall promote access to the necessary means so that these decisions can be made in safe conditions”.

Article 83 of the Constitution rules that; “The duties and responsibilities of Ecuadorian men and women, without jeopardizing other provisions in the Constitution and the law, are:

> 14. To respect and recognize ethnic, national, social, generational and gender differences, as well as ‘sexual orientation and identity’”.

As regards criminal law, we note that Article 30 of the Penal Code of Ecuador provides the following:

Aggravating circumstances, when they are not constitutive or modify the infraction, are all those that increase the malice of the act, or the alarm that the infraction produces in society, or establish the dangerousness of the authors, as in the following cases:

6º. To perform infraction motivated by discrimination related to birthplace, age, sex, ethnicity, color, social origin, language, religion, political affiliation, economic position, ‘sexual orientation’, state of health, disability or a difference of any other nature.

It should be noted that the Ecuadorian penal code typifies the Hate-related Crimes, setting forth the following in numbered articles:

> “A prison sentence of six months to three years will be served to whoever publicly or through any other medium of public diffusion incites hatred, disregard, or any other form of moral or physical violence against one or more persons on account of the color of their skin, their race, sex, religion, national or ethnic origin, ‘sexual orientation or identity’, age, marital status or disability.
>
> A sentence of six months to two years will be served to whoever commits acts of moral or physical violence of hate or scorn against one or more persons on account of the color of their skin, their race, sex, religion, national or ethnic origin, ‘sexual orientation or identity’, age, marital status or disability. If the acts of violence referred to in this article result in injury to anyone, the authors shall be committed to prison for two to five years. If said acts of violence produce a person`s death, the authors will be sanctioned to imprisonment of twelve to sixteen years.
>
> A sentence of one to three years will be served on whoever in the practice of their professional, commercial or entrepreneurial activities denies anyone a service to which they are entitled, or excludes a person or denies, breaches or limits rights enshrined in the Constitution based on the color of their skin, their race, religion, national or ethnic origin, ‘sexual orientation or sexual identity’, age, marital status or disability.
>
> Any civil servant who commits any of the infringements provided in this chapter or denies or delays a process or service to which the other person is entitled, will be sanctioned in accordance with the provisions of the previous article. In these cases, the civil servant will be disqualified from holding any public position, job or commission for the same length of time as the imposed deprival of freedom. (non-official translation)

Article 450 provides the following: “Homicide committed in any of the following circumstances is assassination and will be punished by special major reclusion of sixteen to twenty-five years: item 10 states: with hate or disregard on account of race, religion, national or ethnic origin, “sexual orientation or sexual identity”, age, marital status or disability of the victim”.

Article 71 of the Organic Law of Higher Education rules on the Principle of Equal Opportunity, which consists of: “guaranteeing to all the actors of the System of Higher Education the same possibilities as to access to, permanence and mobility in, and departure from the system,

without discriminating in terms of gender, religion, 'sexual orientation', ethnicity, culture, political preference, socio economic condition or disability".

Likewise Article 91 of the same law rules on selection and Exercise of teaching and research without restrictions, establishing that for the selection of academic personnel, as well as for the exercise of teaching and research in the institutions of the System of Higher Education, no limitations shall be made that imply discrimination based on, among others, their "sexual orientation".

Article 132 of the Organic Law of Intercultural Education prohibits the legal representatives, directors, teachers, mothers and fathers of the corresponding educational institutions from denying students from enrolling or separating them for reasons, among others, of their "sexual orientation".

Article 6 of the Code on Childhood and Adolescence rules on Equality and non-Discrimination, and establishes that "all boys and girls and adolescents are equal before the law and will not be discriminated against on the basis, among other reasons, of their 'sexual orientation'".

Article 22 of the Law of Public and State Security establishes the following prohibition: no intelligence organization is qualified to obtain information, produce intelligence or sore data on persons solely on account, among other reasons, of their "sexual orientation".

Article 6 of the Law of Extradition provides the following: "Extradition may be rejected: 1) if there are reasonable grounds to believe that the request for extradition is motivated by a crime of common nature, has been presented for the purpose of persecuting or punishing a person because of considerations of race, religion, nationality, political opinion or sexual orientation, or that the situation of that person is in jeopardy of being aggravated by such considerations".

Article 79 of the Labor Code of Ecuador rules on Equality of Remuneration, and states that: "Equal remuneration corresponds to equal work, without discrimination because of birth, age, sex, ethnicity, color, social origin, language, religion, political affiliation, economic position, 'sexual orientation', state of health, disability or difference of any other nature; but specialization and practice in executing work will be taken into account for the effect of remuneration".

With regard to the Principles of Participation, Article 4 rules on Respect for Difference, and provides that it is the right to participate equally in public affairs without any discrimination based, among others, on "sexual orientation" or on any other personal or collective, temporary or permanent distinction, or of any other nature.

Article 6 of the Law of the National System of Registration of Public Data regulates Accessibility and Confidentiality, and states that: "Data of a personal nature are confidential, such as: ideology, political or trade-union affiliation, ethnicity, state of health, 'sexual orientation', religion, migration status and other matters pertaining to personal intimacy, in particular information whose public use violates the human rights enshrined in the Constitution and international instruments".

Article 20 of the Regulations of Drug Addiction Rehabilitation Centers rules that:

> For the processes of admission, treatment and internment of persons with problems of addiction or dependence on psycho-active substances, and in general in their functioning Rehabilitation Centers and their staff cannot: a) offer, receive, practice or recommend treatments or therapies whose objective is to impact their human rights, especially the free development of personality, 'gender identity', 'sexual orientation' (such as de-homosexualization), freedom, integrity, non-discrimination, health and life, or any other type of practice that ratifies or advocates violence of gender or against boys, girls and adolescents.

The Municipal Code for the Metropolitan District of Quito declares as a public policy special protection of boys, girls and adolescents at risk in the streets of the Metropolitan District of Quito and rules on social inclusion to guarantee effective exercise of their human rights without discrimination for reasons of "sexual orientation", among others, juridical status or difference of any other nature.

Municipal Regulation N° 205, published in Official Register 111 dated 22 June 2007, regulates the Principle of Equality, among others, aimed at

> eliminating the unjust and avoidable situations that hamper the universal access of citizens to full health care according to their particular needs and ensuring non-discrimination because of gender, age, ethnicity, 'sexual orientation', political affiliation, religion or socio-economic situation.
>
> Any type of discrimination is prohibited against young people on grounds of ethnicity, 'gender identity or sexual orientation', age, migrant status, social origin, language, religion, marital status, political affiliation, state of health, physical difference or of any other nature, in accordance with the existing juridical system.

The Ecuadorian Normative also relies on Judicial Decisions in which discrimination for reasons of Sexual Orientation, Homosexualism, Homophobic Declarations of political candidates against the LGBTI Community, Lesbianism, Transsexualism, Bisexualism are sanctioned.

One of the judicial decisions expressly states:

> In the case of homosexuality, bisexuality or transsexuality, as mentioned both in the Constitution and in International Conventions and Treaties, cannot be considered as diseases or pathological abnormalities that must be cured or combated, but constitute rather legitimate sexual orientations that enjoy constitutional protection both by virtue of the normative force of equality and by the enshrined right to frequent development of the personality. In this same order of ideas, all forms of different treatment based on different sexual orientation are equivalent to possible discrimination on grounds of sexual orientation and even gender identity.

There are also resolutions as to Harmonization of Procedures for the Direction of Council Registers regulating Identity for Transsexuals; the resolution states that the requirements for identity cards in general will be observed, with photographs as the persons are presented, respecting their personality and sexual orientation.

The Ecuadorian Institute of Social Security grants benefits to the insured without any distinction as to sexual orientation, and dispensing with legal resolutions and reforms, since the right is clearly established and must be complied with.

As for Public Policies:

> a) On the Ecuadorian Multisectorial Committee for HIV/AID, besides the governmental institutions that make it up, there is a representative of civil-society groups, among them gay men and transsexuals;
>
> b) In Ecuador, the National Plan for Eradication of Violence of Gender against Children, Adolescents and Women has assumed the responsibility to build and implement a priority State policy for the eradication of gender violence, constituting various forms of discrimination against persons on account of gender, age, ethnicity, social condition or sexual option.
>
> Likewise, many lesbian women in the city of Quito have been mistreated because of their sexual orientation, and in most cases the aggression has most often come from persons close to them, such as family members and friends. According to the international obtained the lesbian women do not denounce aggressions for fear of being re-victimized. For this reason the Ecuadorian State will guarantee a legal framework that prevents and sanctions all forms of violence against women without distinction of age, ethnicity, class, sexual orientation and origin.
>
> c) The National Welfare Plan, which is aimed at fostering equality, cohesion and social and territorial integration in diversity, and at recognizing and respecting socio-cultural diversity and eradicating all forms of discrimination, whether motivated by gender, sexual orientation, ethnic- cultural diversity, political, economic, religious reasons or those to do with origin, migratory status, geographical origin, age, socio-economic condition, disability or other.

The Report of the Commission of the Truth, May 2010, declared that:

> Violation of the human rights of the LGBTTI community has been practiced repeatedly and denounce permanently since before the period of Febres Cordero. The Commission of the Truth was unable to investigate specific individual cases of arbitrary detentions, sexual violence or torture of persons belonging to the lesbian, gay, bisexual, and transgender group because no individual testimonies were gathered that could document these violations with the necessary guarantees, seeing as the victims did not come before the Commission to give testimony.
>
> However, the Commission carried out several studies on focal groups and interviewed persons belonging to such groups so as to make this problem visible as part of the pending challenges in defense of human rights in the country. This demand is especially important since the people involved are considered different or marginal because of their sexual condition, and their rights are frequently violated.

Concerning the Legislation and Jurisprudence sent by Peru on Non-Discrimination due to sexual orientation, gender identity and gender expression of people, note should be taken of the following:

Item 2 of Article 2 of the Political Constitution of Peru rules the Fundamental Right s of People and literally expresses that: “All people have the right (…), to equality before the law. No-one should be discriminated against for reasons of origin, race, sex, language, religion, opinion, economic condition or of any other nature”.

Item 1 of Article 37 of the Procedural Constitutional Code regulates Protected Rights thus: “Protection prevails in defense of the following rights: 1) Equality and non-discrimination on grounds of origin, sex, race, “sexual orientation”, religion, economic condition, social condition, language or of any other nature”.

As for Jurisprudence, note the following Sentences of the Constitutional Tribunal, the first dated 9 June 2004, ruled in Record Nº 0023-2003 AI/TC referring to a case of unconstitutionality filed by the National Ombudsman (“Defensoría del Pueblo”) of the People because of discrimination on grounds of homosexuality contained in military laws of Peru.

The Sentence dated 24 November 2004, ruled in Record Nº 2868-2004 AA/TC, referring to supposed violations of police decorum and police spirit that provoked a situation of availability of a police officer of intersexual appearance who marries a person of the same sex; the officer was protected and re-admitted to active service.

The Sentence dated 20 April 2006, ruled in Record Nº 2273-2005 PHC/TC, referring to the case of Habeas Corpus filed because of the refusal to grant a national identity card, since one had previously been given with masculine sex and then a request was made for another of feminine sex, denied on grounds of double sexual identity. The Constitutional Tribunal provides that Habeas Corpus is in order and rules that the National Election and Identity Register grant the document with the second sexual identity, that of the feminine sex.

The Sentence dated 20 March 2009, ruled in Record Nº 01575-2007 PHC/TC, referring to the Habeas Corpus case against the General Directorate of Treatment of the National Penitentiary Institute (INPE) (Spanish acronym) for the purpose of granting the benefit of conjugal visits taking into account fundamental rights violated and discrimination due to gender; such visits had been denied with the argument that the prisoner was condemned for acts of terrorism. The Constitutional Tribunal resolved to declare the Petition well grounded and ordered the National Penitentiary Institute to grant the benefit of conjugal visits to prisoners condemned for acts of terrorism.

The Sentence dated 3 November 2009, ruled in Record Nº 00926-2007- PA/TC, referring to a constitutional appeal for a breach of rights against the Director of Inspection and Teaching of the National Police of Peru (PNP), ordered re-admission of a pupil of said police force expelled for having had sexual relations with another pupil; the Constitutional Tribunal declared the appeal valid.

Note should be taken of the following National Plans in Peru:

The National Plan of Human Rights 2006-2010 (PNDH) involves "Fostering actions to promote a social culture of respect for differences, avoiding denigrating or violent treatment based on sexual orientation, within the framework of the Constitution and the law".

There is also a National Plan against Violence against Women 2009 – 2015 (PNCVHM) and a National Plan of Equality of Gender 2012-2017 (PLANIG).

With regard to resolutions of the National Institute of Defense of Competence and Protection of Intellectual Property (INDECOPI) (Spanish Acronym), note should be taken of the following:

The Commission of Protection of Consumers (Lima Sur Office). Final Resolution Nº2264-2010/CPC, dated 24 September 2010, in which case a transsexual denouncer appealed against the Gold' Gym Jesús María for discriminatory treatment of transsexuals because he wanted to use the ladies` restroom rather than the men`s, and did not want to be called a man. The Commission considers that the fitness center did not deal with the situation adequately, as it discriminately dealt with a situation involving a transsexual person.

Another resolution is that of the Tribunal for the Defense of Competition and Intellectual Property. In this regard, Resolution No. 1507-2013/SPC-INDECOPI, date June 12, 2013 refers that the Plaza Hotel E.I.R Ltda. was denounced on the basis of sexual orientation discrimination, because it denied lodging and accommodation in a matrimonial suite to a couple who denounced the hotel. The resolution established that the hotel had discriminated the couple for their sexual orientation.

In relation to municipal regulations there are the following:

The Regulation issued by the Apurimac Regional Government under No. 017-2008-CR-APURIMAC prohibits discrimination as a means of infringing human rights, and as violation of the principles on human dignity, in addition to an infringement against the respect that all human beings deserve in Peru. In this regard, Article 5 of the Regulation establishes as follows: "Prohibited Discriminatory Acts. The Regional Apurimac Government recognizes the equality of human beings and therefore rejects any kind of discrimination (among others) due to 'sexual orientation' (…) or of any kind."

The Regulation of the Huancavelica Regional Government under No. 145-GOB.REG-HVCA/CR recognizes as in Article 5 of the previous regulation that: "the Regional Huancavelica Government recognizes equality of human beings and rejects any type of discrimination on the basis of sexual orientation (among others) (…) or of any other kind".

The Regulation of the Amazonas Regional Government under No. 275-2010-GRA-CR establishes something similar in Article 5, which reads that: "The Regional Amazonas Government recognizes the equality among human beings and rejects any form of discrimination on the basis of Sexual Orientation (among others) (...) or of any other nature".

The Regulation of the Ucayali Regional Government under No. 016-2010-GRU-CR establishes in Article 1 that it "Recognizes the Equality of Treatment among human beings, rejecting and condemning any discriminatory behavior in all its forms, within the territory of the Ucayali Region, establishing that the vulnerable populations [are] the Lesbians, Gays, Transsexuals, Bisexuals (LGTB), men that have sex with men (MSM), sexual workers, both male and female (SW) have the same fundamental rights of persons as those that suffer from STD, HIV and AIDS, who enjoy the same fundamental rights established in the Political Constitution of Peru, in the national and supra-national legislation, and cannot be discriminated on the basis of reasons not contemplated in the prevailing legislation, such as sexual orientation or gender identity, which includes any differentiation, exclusion, restriction or preference based on sexual orientation of gender identity seeking the annulation or the diminution of the recognition, enjoyment or exercise [of their rights] and which are protected by the State through local development policies and equality of opportunity.

The wording of the Regulation of the Tacna Regional Government under No. 016-2010-CR/Gob.REG. TACNA establishes in Article One that: "The Equality and Nondiscrimination on the basis of Sexual Orientation and Gender Identity is hereby established in the TACNA region

therefore any discriminatory condition is rejected, as the equality rights of the persons are fully recognized".

Other provisions involve:

The Handbook on Human Rights applicable to police duties, approved by Ministerial Resolution No. 1452-2006 –IN of May 31, 2006. Item 6 of the Handbook on Lesbians, Gays, Transvestites and Bisexuals establishes that they are groups of persons who on the basis of their sexual orientations are discriminated against in several areas of society.

As regards the domestic legislation forwarded by the Multi-National State of Bolivia we may cite as follows:

The information was delivered by the Ministry of Justice Article 14 item II of the Political Constitutional of the Multinational State of Bolivia currently establishes that: The State forbids and punishes any sort of discrimination on the basis of sex, color, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religious belief, ideology, political or philosophical tendency, marital status, economic or social conditions, kind of occupation, degree of instruction, disability, pregnancy or any other that seek to annul or diminish the recognition, enjoyment or the right to exercise, under egalitarian conditions, the rights vested on human beings".

Article 5 of Law No. 045 of October 8, 2012, (Law against Racism and Any Form of Discrimination) provides definitions, and Item "a)" of the provision refers to discrimination indicating that:

> Discrimination is any form of distinction, exclusion, restriction or preference based on, among others, 'sexual orientation and gender identity'(…) that aims to annul or diminish the recognition, enjoyment or exercise, under egalitarian conditions, of human rights and fundamental freedom recognized by the Political Constitution of the State and by the international law. Affirmative action measures are not considered to be discriminative", (...) g) Homophobia. Refers to the aversion, hatred, prejudice or discrimination against male or female homosexuals, and also includes other persons included in the idea of sexual diversity (...). h) Transphobia. It is the discrimination of transsexuality and of transsexual or transgender persons, based on their gender identity.

Article 23 establishes that "Chapter V" is incorporated under the Title VIII of the Second Book of the Criminal Code, which is denominated "Crimes against the Dignity of Human Beings" and comprises the following provisions:

Article 281 ter. - (Discrimination)

> The person who arbitrarily and illicitly obstructs, restricts, diminishes, prevents or annuls the exercise of individual and collective rights on the basis of 'sexual orientation and gender identity' (…) shall be penalized with imprisonment from one to five years".

Supreme Decree No. 29851 of December 10, 2008 on the National Plan of Action on Human Rights -known as "Bolivia ready to live well 2009-2013" (the PNADH) (Spanish Acronym) was approved, and Item 7 of Chapter 5 of the Plan on the "Human Rights of the Risk Groups under Vulnerability" which refers to the "Rights of the People with Different Sexual Orientation and Gender Identity" whose purpose is to promote devising public policies granting and to ensure the exercise of human rights of people with different sexual orientation and gender identity, establishes actions in favor of this populations, as these actions should be performed by different State agencies".

Supreme Decree No. 189 of July 01, 2009, which declares the 28th of June each year as the "Day of the Rights of the Population with Diverse Sexual Orientation in Bolivia", also known as the 'Gay, Lesbian, Bisexual and Transsexual Pride Day", on which this group celebrates the 1969 events in Stonewall, New York, as a result of the constant abuse by police forces in which the society was publicly urged to enhance and practice values such as tolerance and respect for people bearing different sexual orientation and gender identity".

Supreme Decree No.1022 of October 26, 2011 states that “the 17th of May is the National Fight Day against Homophobia and Transphobia in Bolivia”, in order to effectively protect and grant the rights of the TGTBI population.

In addition, pursuant to the regulations of the PNADH, the Ministry of Justices, through the Vice-Ministry of Justice and Fundamental Rights (VJDF) (Spanish Acronym) has worked in partnership with LGTBI organizations on the following provisions:

1- Supreme Decree No. 0189 of July 1, 2009, which establishes the “Day of the Rights of the Population with Diverse Sexual Orientation in Bolivia”.

2- Supreme Decree No. 1022 of October 26. 2011, which declares the 17th of May of each year, the date of the Fight against Homophobia and Transphobia in Bolivia, throughout the whole territory.

3- Gender Identity Law Draft, which at the recognition of the right of gender identity, allowing such a change once and definitely, with legal backing and by the interested party's own decision of his/her name and information on sex of transsexual and transgender males and females.

4- The VJDF has received from organizations such as the ADESPROC (*Libertad*, the Civil Association for the Social Development and Cultural Promotion) and the CDC – Training in Human Rights the draft of a Supreme Decree which - if approved – will derogate Article 16 of Supreme Decree No. 24547 of March 31, 2007, which regulates the Medicine Transfusion and Blood Banks Legislation, as the provision is discriminatory against population with diversified sexual orientation and gender identity, because it does not allow homosexuals or bisexuals to donate blood in view of their alleged promiscuity: The VJDF has invited the pertinent bodies and organizations to hold coordination meetings in order to analyze the proposal.

5- The VJDF has received the proposal for the Plan of Action against Homophobia and Transphobia drafted by the National Working Panel (the MNT) with the support of the United Nations Population Fund (UNFPA) as the aim of this Fund is to promote a process of integrated political incidence in order to influence different governmental agencies so that they incorporate policies and actions against homophobia and transphobia. Accordingly, the VJDF has called for coordination meetings with the different pertinent agencies and also with LGBTI groups and the proposing Organization in order to analyze the draft.

It can be seen therefore that the legal provisions of these three OAS Member States, i.e. Ecuador, Peru and Bolivia, envisage the protection of the fundamental rights of Lesbians, Gays, Bisexuals, Transsexuals and Intersexuals, and they consider that the Principle of Equality should be obeyed and that no discriminatory attitude against people should prevail involving Sexual Orientation, Gender Identity and Gender Expression.

As regards the legislation from El Salvador, the information available is the following:

> The legislation in El Salvador is not completely exhaustive as regards categories such as sexual orientation, gender identity and gender expressions as regards the prohibition to discriminate, and that most provisions approved by legislative organs are not specific and definitive on these issues.
>
> In addition, the Salvadorian Criminal Code includes a description of a crime known as Labor Discrimination, in Article 246, establishing solely that “whoever commits serious discrimination at work based on sex, pregnancy, origin, marital status, race, social or physical condition, religious or political ideas, membership or non-membership to trade unions and their agreements, and in view of relationship or kingship with other workers in the company, and does not restore egalitarian situations before the law, after summons and administrative penalties, repairing economic damages caused, shall be punished with imprisonment from 6 months to two years.

Legislation contemplating “Sexual Identity” as a source for nondiscrimination involves the recent Integral Special Legislation for a Life Free of Violence for Women, which establishes in Article 5 on Legally Entitled Persons that “The current law will be applied for the benefit of women, without age distinction, within the national borders; therefore any kind of arbitrary discrimination is prohibited, involving any distinction, exclusion, restriction or differentiation on the basis of sex, age, ‘sexual identity’, family situation, rural or urban upbringing, ethnic origin, economic situation, religion or beliefs, physical, psychological or sensorial disability, or any similar cause, either from the State, its Agents or private persons”.

That the duties of the Executive Organ include the issuing of decrees, agreements, orders and measures necessary to fulfill their work. In this context, the President of the Republic issued, on May 4, 2010, Executive Decree No. 56 on the “Provisions to prevent any kind of public discrimination in terms of Gender Identity and/or Sexual Orientation”, through which any kind of discrimination based on gender and/or sexual orientation is prohibited within Public Administration agencies. We have mentioned these provisions in previous reports.

Executive Decree No. 56 is compulsory for all the agencies of the Executive Power, including decentralized bodies and also those attached to them, independently from their delivery - or not - of services to the public.

The aforementioned Decree establishes that “Discrimination” is any kind of distinction, exclusion or restriction on the basis of gender identity and/or sexual orientation, aiming to annul or diminish the recognition, enjoyment or exercise, under egalitarian conditions, of human rights and fundamental freedoms.

It also establishes that the head of the various agencies and organisms within the public administration must ensure the implementation of a culture of respect and tolerance within the activities of those agencies and organizations, whichever person’s only gender identity and/or the sexual orientation.

Since the issuance of the above Decree, the Secretariat of Social Inclusion of the Presidency of the Republic established the Directorate of Sexual Diversity, in order to provide follow-up work on the enforcement of Decree No. 56, and also to provide counseling or the necessary advice to the different departments and agencies of the public administration on the result of the enforcement actions.

As can be seen, the Republic of El Salvador, through its Executive Organ, is ensuring non-discrimination on the basis of “gender identity and/or on sexual orientation”. At the same time, public administration agents in the country are being trained in order to ensure a culture of respect and tolerance within their activities, no matter the gender identity and/or the sexual orientation of a certain person.

D) Recommendation

As established in this report, some substantive progress was made on this issue in the region, as in the Forty-Second Ordinary Session of the Organization of American States – OAS, which took place in La Antigua, Guatemala from 4 to 6 June, 2013, the “Inter-American Convention against All Forms of Discrimination and Intolerance” was approved, and on which it was establish that discrimination on the basis of sexual orientation is on aggravated form of discrimination and intolerance. The Convention governs discrimination against ‘sexual orientation’ as a specific infringement, and therefore it would not be necessary to refer to any other category such as ‘sex or any other social condition’ in order to refer to this specific kind of discriminatory conduct, therefore the protection of the fundamental rights or persons bearing certain sexual orientation would be fully ensured.

In this regard, it seems convenient to encourage Member States of the Organization to ratify and adhere to this Convention to protect the fundamental rights of LGTBI persons so as to grant them egalitarian and non-discriminatory treatment. Similarly, it is necessary for all OAS Member States to provide the necessary support to the setting-up of the Inter-American Committee for the Prevention and Elimination of Racism, Racial Discrimination and all the Forms of Discrimination and Intolerance, in order to monitor and follow up on the commitments included in the Convention.

It is also advisable for all the OAS Members States that so far have not amended their domestic legislation, to take into consideration new provisions adopted by other Member States in order to ensure the respect of the fundamental rights of any discriminated person on the basis of their sexual orientation. These provisions can be found in countries such as Ecuador, Peru and Bolivia, which substantially ensure the rights of these persons, and which prohibit any discriminatory treatment, as is stated in their constitutional norms, their domestic legislation, and also their jurisprudence, municipal regulations and finally in their national plans and public policies.

It might also be convenient to have an exchange of experiences, legislation and jurisprudence with other international and regional organizations, so as to have a broader view of their norms, jurisprudence and opinions of the experts, and in this regard it would be convenient to analyze the norms of the European Union, both involving their jurisprudence and directives, in order to potentially include those norms in the jurisprudence of the State Members of the inter-American system, in order to reinforce and strengthen it.

As regards the follow-up work to this Report, the analysis of norms forwarded by other OAS Member States is highly convenient, in order to ascertain progress achieved in the legislation of those States.

* * *

CJI/doc.440/13

SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPRESSION

(presented by Dr. Freddy Castillo Castellanos)

The approval of the "Inter-American Convention against All Forms of Discrimination and Intolerance" by the General Assembly of the Organization of American States, during its forty-second regular session held in Antigua (Guatemala) last June, denotes relevant progress in this topic of the rapporteurship, since the Convention unequivocally included "sexual orientation and gender identity and gender expression" as one of the categories whose discrimination is banned. As is known, the list of these categories included in human rights international instruments within the inter-American system was not exhaustive, except in some declarations that were not included within the positive law. For this reason, the regional jurisprudence in the area of human rights had interpreted that "sexual orientation" and "gender identity" was included within the causes where discrimination was prohibited. This was specifically the case ruled by the Inter-American Court of Human Rights *in re* "Atala Riffo vs. Chile", which the Committee commented upon during the last session´s meetings. In view of the progress represented by the aforementioned Convention, the broad interpretation provided by the Court turned into a provision of a treaty, reaffirming that the principle of non-discrimination and the right to equality before the law is applicable to all human beings without exception.

For this reason, the first recommendation that the Inter-American Juridical Committee can put forward right now is for all Member States of the Organization to adhere to said Convention, in addition to making endeavors to add to their own domestic legislations the principles of non-discrimination established by the Convention.

A detailed study of the legal situation involving this issue throughout the region allows us to establish, as shown by the various sources consulted, that some progress was achieved in a number of countries, whilst in others certain norms still prevail against non-discrimination on the basis of sexual orientation and gender identity and expression.

Access to identity

As regards this topic, which we have already addressed in the past, we have been able to ascertain quite interesting developments. In fact, some gender-identity legislation allows the recognition of identity, even in the absence of genital surgery, in countries such as Mexico and Uruguay and by decision of the courts in Argentina, Chile and Ecuador, among others. In

reviewing the information provided by Ecuador, Peru and Bolivia, we were able to ascertain that these countries allow the simple change of name, without the requirement of genital modification, which certainly represents the recognition of the right to identity in favor of transsexuals.

Legal protection to same-sex couples

This is another point that could be greatly improved. The real situation, as shown in some countries such as Venezuela, has been described by the Venezuelan researcher Tamara Adrián, a specialist on the matter, in the following way:

> …same-sex couples suffer from lack of need legal protection both in life and in death. They find themselves deprived of access to surviving partner`s pension, to the right to social security and joint-savings mechanisms; to access to and benefits of the housing system as a couple and to sources of joint financing; they are not exempt from incriminating their own partners; they are not entitled to joint immigration; and of course they are deprived of the minimum rights to common property often constructed over many years of living together, both in the case of separation and death of one of the partners. In short, at present we are dealing with relations that simply do not exist as far as the law is concerned. As was the case up to 1982 of non-married couples, which were deprived of any right on religious grounds that today work just as aggressively to deny rights to same-sex couples, thus creating an inadmissible and unconstitutional interference related to religion and beliefs within the sphere of people`s rights in a lay State. And just like those cases of non-married couples prior to 1982, the assets accumulated through hard work and diligence by same-sex couples are appropriated and disposed of upon the death of one of the partners by relatives who often had no sort of relationship with the couple on account of their sexual orientation.

The above situation is no longer so in other countries. The Federal District of Mexico, the Civil Code was changed in December 2009 (and came into force in February 2010) to allow marriage without the requirement of heterosexuality and to allow joint adoption. In Uruguay, the 2008 Law of Cohabiting or *de facto* couples provider for same-sex allows for cohabiting couples and their right to adopt. In Colombia, several sentences of the Constitutional Court – beginning with C-075/2007 – today recognize the full and equal rights of same-sex partners and those of different sex. In turn, the Ecuadorian Constitution of 2008 recognizes the equal and full rights of same-sex partners and those of different sex. In Argentina, more limited rights are recognized in specific regions, but a number of marriages have been performed by legal decisions that saw the requirement of different-sex marriage as discrimination and avoided applying the provision through judicial review of the constitutionality of the norm (*control difuso de la constitucionalidad*). At the same time, discussion is beginning on a reform of the Civil Code to eliminate separate-sex marriage rule. Brazil likewise has local norms that enable protection of couples. At present, 69 countries, States or territories worldwide recognize some protection of same-sex couples, from full equality of the right to marry (in some 20 countries, States and territories) to somewhat less protection.

EDUCATION

There is a need for educational policies geared to creating a culture of tolerance and respect for sexual and gender diversity. To insist on forming human beings and citizens who show respect for differences is fundamental here, as is updating laws that derogate numerous limitations still in effect and approve others that punish discrimination.

* * *

2. International Humanitarian Law: Model legislation on protection of cultural property in the event of an armed conflict

Document	
CJI/doc.403/12 rev.5	Model Legislation on protection of cultural property in the event of an armed conflict (presented by Dr. Ana Elizabeth Villalta Vizcarra)

In June 2007, the General Assembly adopted Resolution AG/RES. 2293 (XXXVII-O/07), "Promotion and Respect for International Humanitarian Law", wherein it instructed the Inter-American Juridical Committee to prepare and propose model laws supporting efforts to implement treaty obligations concerning International Humanitarian Law, on the basis of priority topics identified in consultation with the Member States and the International Committee of the Red Cross, and to present a progress report on this matter prior to the thirty-eighth regular session of the General Assembly.

At the Inter-American Juridical Committee's 71st regular session (Rio de Janeiro, August 2007), Dr. Dante Negro, Director of the Office of International Law, noted that the mandate given to the Juridical Committee was basically to propose model laws, devoting particular attention to the operative part of the resolution which states that the model laws should be proposed "on the basis of priority topics identified in consultation with the Member States and the International Commission of the Red Cross."

During the 72nd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2008), Dr. Jorge Palacios expressed his regret over the lack of responses of Member States to the questionnaire on International Humanitarian Law, which are important for compliance with the General Assembly's mandate. He said that perhaps at the time it would be more convenient for the Juridical Committee to deal with crimes against humanity and other crimes whose typification is not applicable in times of war, more than on war crimes themselves.

At that opportunity, the Inter-American Juridical Committee decided to adopt Resolution CJI/RES. 141 (LXXII-O/08), "Implementation of International Humanitarian Law in OAS Member States", in which it reiterates the note sent to the OAS Member States requesting the priority topics on which to prepare and propose model laws in accordance with Resolution AG/RES. 2293 (XXXVII-O/07), suggesting as possible sources of information, where available, the national inter-ministerial committees on humanitarian laws, and requesting the co-rapporteurs to submit a progress report in this matter when they have received responses from the Member States of the OAS.

In June 2008, the General Assembly issued Resolutions AG/RES. 2414 (XXXVIII-O/08) and AG/RES. 2433 (XXXVIII-O/08), requesting the Inter-American Juridical Committee to continue drafting and proposing model laws in support of efforts undertaken to implement obligations derived from treaties on International Humanitarian Law, based on priorities defined in consultation with Member States and with the International Committee of the Red Cross. To this end, Member States were urged to submit a list of priority issues as soon as possible to the Inter-American Juridical Committee, so that it can fulfill its mandate.

At the 73rd regular session of the Inter-American Juridical Committee, Dr. Jorge Palacios, rapporteur on the subject, reported that he had prepared a preliminary document on this matter document CJI/doc.304/08, entitled "Implementation of International Humanitarian Law in OAS Member States: Preliminary Document," in which he highlighted the items that required further attention.

In view of the different comments made by members, the Chairman of the Juridical Committee concluded that, in view of the fact that no responses have been received, it could request the rapporteur to draw up a general report, which should also answer the questions that have been raised, such as the issue of ranking or precedence, the criteria for harmonization, and the applicable rules or provisions, among others, and at the same time propose a guide on principles for interpretation and harmonization

of laws. If deemed relevant, the report could also suggest a meeting of government experts to provide more information to be considered in this process.

During the 74th regular session of the Inter-American Juridical Committee (Bogota, March 2009), the rapporteur on the subject, Dr. Jorge Palacios, presented his report on "Implementation of International Humanitarian Law in the OAS Member States," document CJI/doc.322/09.

Dr. Jorge Palacios concluded that the work of the Inter-American Juridical Committee is to help States to legislate. In the case at hand, there is the ICRC's suggestion on war crimes in the document entitled "Repression of War Crimes in National Criminal Law in the Member States," which proposes 22 elements for each crime. As for the Statute, the elements were drafted by the states themselves, and they are required to be adopted in their domestic legislation pursuant to Article 9 of the Statute.

Finally, the Inter-American Juridical Committee decided to set up a working group to draft a new basic reference document.

In June 2009, the General Assembly Resolutions AG/RES. 2515 (XXIX-O/09) and AG/RES. 2507 (XXIX-O/09) requested the Inter-American Juridical Committee to continue preparing model laws in support of efforts undertaken by Member States in implementing obligations derived from treaties in International Humanitarian Law, based on priorities defined in consultation with Member States and the International Committee of the Red Cross. To this end, it urged Member States to send to the Committee, by the end of November 2009 at the latest, a list containing these priorities, so that the Committee can fulfill this mandate and report on the advances made to the General Assembly at its 40th session.

During the 75th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2009), the rapporteur, Dr. Jorge Palacios, reminded the members of his two reports on this topic, particularly the reference made to internal armed conflicts and war crimes (CJI/doc.304/08 and CJI/doc.322/09). In summary, he said that internal armed conflicts were not covered by the concept of International Humanitarian Law, but by that of Human Rights. With reference to war crimes, he reminded the meeting that at the March 2009 session he had submitted a detailed explanation in document CJI/doc.322/09, "Implementation of International Humanitarian Law in the OAS Member States."

On that occasion he made reference to document CJI/doc.328/09, "War Crimes in International Humanitarian Law," in which he offered a number of clarifications regarding war crimes under International Humanitarian Law and also explained the conflict that existed between the four Geneva Conventions and their additional protocols and the terms of the Statute of the International Criminal Court.

As he saw it, the new resolution adopted by the OAS General Assembly contains a specific mandate that must be implemented in order to report on progress to the 40th regular session of the General Assembly.

Dr. Herdocia believed that the most recent General Assembly Resolution gives the Juridical Committee a new mandate in connection with the International Criminal Court, by asking it to draft model legislation covering the crimes defined in the Rome Statute, including war crimes, a topic on which Dr. Palacios has already produced excellent work. He therefore proposed working in conjunction with Dr. Palacios, taking advantage of the fact that he was almost finished with the entry into force of the Rome Statute complementary legislation and the proposals made by the ICRC, to present model legislation on war crimes at the next session.

Dr. João Clemente Baena Soares remarked on the question of internal violence and other internal conflicts, in terms of the escalation of violence until it becomes a civil war; that topic represents an evolution of the Committee's agenda and, consequently, there would be a new exercise dealing with the adoption of model legislation for war crimes, and for that reason he expressed his agreement with Dr. Herdocia's proposal.

At the 76th Regular Session of the Inter-American Juridical Committee (Lima, Peru, March 2010), Dr. Jorge Palacios, the rapporteur for the topic, explained the General Assembly's mandate and reported on the communications received from five countries: Bolivia, Ecuador, El Salvador, Mexico, and Suriname. He also noted that the General Assembly's deadline for submitting notifications expired in November 2009.

Regarding Bolivia's note, he asked the Department of International Law to thank the country for the information sent and to record the Committee's willingness to provide any advice deemed necessary in the future.

Regarding Ecuador's communication, asking that work be carried out on defining war crimes, he suggested forwarding a document from the International Committee of the Red Cross dealing with that issue.

In addition, he said that El Salvador proposed the topics of drafting model laws for the preservation of cultural property, determining sanctions for damage to the emblem, and the protection of those assets at times of natural disasters. In turn, the proposal presented by Mexico dealt with the protection of cultural property during times of armed conflict.

Since legislation on this matter already existed, he proposed sending those countries the International Committee of the Red Cross document "Practical Advice for the Protection of Cultural Property."

The information submitted by the Republic of Suriname was, he explained, focused on laws on cooperation with the International Criminal Court.

The rapporteur then presented a paper on "War Crimes in International Humanitarian Law," document CJI/doc.328/09 rev. 1, and another on "International Criminal Courts," document CJI/doc.349/10.

Dr. Dante Negro explained that the Committee's mandate is to prepare draft model laws based on the information on priority topics submitted by the Member States. He noted that the States had failed to comply with the mandate, either because their replies were not clear or because only a minimal number of countries had replied.

Dr. Jean-Paul Hubert expressed his disagreement with this mandate, which was repeated every year, and said it could be discontinued if there was no interest in the topic.

Dr. Jorge Palacios interpreted the absence of requests from the States as indicating that they did not need the Committee's support. As he saw it, the work was finished. Drs. João Clemente Baena Soares and Miguel Pichardo supported the rapporteur for the topic. At the end of the discussion, the rapporteur agreed to submit a list of the priority topics that the Member States had requested.

On April 14, 2010, the Department of International Law received a communication from the Permanent Mission of Paraguay to the OAS, dated April 12, stating that it was placing priority on the bill to amend the Military Civil Code in line with the obligations entered into by the Paraguayan State.

At the fortieth regular session of the OAS General Assembly (Lima, June 2010), the Committee was asked, on the basis of the proposals on priority topics submitted by the Member States, to continue preparing and proposing model laws to support the efforts undertaken by the Member States in implementing their obligations under International Humanitarian Law treaties; see Resolutions AG/RES. 2575 (XL-O/10) and AG/RES. 2611 (XL-O/10).

On July 7, 2010, Dr. Elizabeth Villalta presented a report – document CJI/doc.357/10, "International Humanitarian Law" – dealing with the Committee's participation at the International Conference of Latin American and Caribbean National International Humanitarian Law Commissions.

At the 77th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2010), the rapporteur, Dr. Jorge Palacios, was not in attendance. However, Dr. Elizabeth Villalta presented report CJI/doc.357/10 on the topic, noting that although she was not the rapporteur, she had attended, as a member of the Juridical Committee, the International Conference of Latin

American and Caribbean National International Humanitarian Law Commissions, held in Mexico City the previous June, and at which she had made a statement on the "Ratification and implementation of International Humanitarian Law treaties," thus furthering the Juridical Committee's outreach work on the issue.

During the 78th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2011), the Chairman explained that the mandate consisted in "preparing and proposing model laws to support the efforts undertaken by Member States to implement obligations arising from treaties in the area of International Humanitarian Law." In this regard, the Committee requested Member States to draw up a list of priority topics. The following six countries have responded: Bolivia, Ecuador, El Salvador, Mexico, Suriname, and Paraguay.

As regards the follow-up on this mandate, some members proposed that it be considered as concluded. At the same time, there were members who requested that the General Assembly be informed about the absence of responses by Member States and the lack of interest in continuing this topic. In addition, the Chairman was requested to pay a courtesy visit to the Permanent Representative of Mexico to the OAS while he was present at headquarters in April 2011, for information on the mandate that said mission would be presenting to the General Assembly.

Since Dr. Jorge Palacios was the rapporteur for this topic. Dr. Negro suggested that a rapporteur be appointed for the continuation of the mandate. Dr. Elizabeth Villalta expressed an interest in serving as rapporteur for this topic.

After discussion, it was decided that the item would remain on the agenda and a decision on dealing with this topic would be made at the August session, in light of the new mandate to be granted by the General Assembly.

During the forty-first regular session of the OAS General Assembly (El Salvador, June 2011), the Inter-American Juridical Committee was requested to "propose model laws to support the efforts made by Member States to fulfill obligations under International Humanitarian Law treaties, with an emphasis on protection of cultural property in the event of armed conflict, and to report on the progress made to the General Assembly at its forty-second and forty-third regular sessions, respectively" AG/RES. 2650 (XLI-O/11).

During the 79th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2011), Dr. Dante Negro encouraged the Committee to appoint a rapporteur to replace Dr. Jorge Palacios, and presented a document prepared by the Department that could serve as a basis for initial research ("Protection of Cultural Property in Armed Conflict: Considerations for the National Implementation of IHL Rules," document DDI/doc.10 of July 26, 2011). In response to Dr. Hubert's question regarding the history of model laws in the Committee, Dr. Negro referred to the work done on the subject of Transnational Bribery and Illicit Enrichment, in addition to the cases where the Committee prepared guidelines.

The Chairman requested Dr. Freddy Castillo to draft an explanatory report on the mandate, with the support of the Secretariat, to clarify and specify the work of the Committee on the subject. He agreed, and noted the highly advanced work of UNESCO. Dr. Freddy Castillo confirmed the relevance of studying this topic given the current situation. He indicated that he had found legal instruments that protect both the cultural and natural patrimony and property in times of armed conflict. He cited the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflicts that appeared as a response to the destruction of two world wars. He also referred to adoption of Protocol II to the Convention, which updates the instrument. He mentioned a fund of financial resources to protect said cultural property in the event of armed conflict. At the same time, he voiced his concern regarding countries that do not have property declared as the patrimony of humanity and that appear to be unprotected. Finally, he recommended that the work of preparing the model laws is meaningful to other areas of law. In response to a question by Dr. Hubert on the status of preservation of cultural property in the case of internal clashes that are not part of cross-border conflicts, the Committee agreed to work on mechanisms to implement and develop in cases of internal conflicts.

Dr. Villalta referred to the interest of the ICRC in protection of property in the event of both international and internal armed conflicts. In addition, she explained her position on the need to deal separately with the topics of cultural diversity and International Humanitarian Law.

Dr. Mauricio Herdocia made two suggestions to the rapporteur on this subject: first, to incorporate the work done by the ICRC with the national committees on International Humanitarian Law; and, second, to include developments related to appropriation of cultural property in cases of both international and internal armed conflicts, and to cover matters related to war crimes in this context.

Dr. Gómez Mont Urueta requested that a relationship be established between cultural events as a value added by man and the natural environment.

At the end of the discussion on the General Assembly mandate, the Chairman asked Dr. Castillo to serve as rapporteur on this topic to which he assented.

At the 80th regular session of the Inter-American Juridical Committee (Mexico City, March 2012), Dr. Ana Elizabeth Villalta, the co-rapporteur for this topic, gave an explanation on her report "Model legislation on protection of cultural property in the event of armed conflict," document CJI/doc.403/12, of February 28 2012. Reading the document aloud, Dr. Villalta explained the mandate and identified relevant instruments that may be useful in drafting model legislation to protect cultural property in the event of armed conflicts.

Observing that security in the Americas was currently a priority issue, Dr. Luis Moreno urged the rapporteur to identify groups responsible for attacking and destroying cultural property and to identify sanctions that should be applied.

For his part, Dr. Carlos Mata Prates, citing the Rome Statute on the jurisdiction of the Court with respect to four international crimes, suggested working further on the topic of cultural property. In terms of mandates involving instruments that are not part of the inter-American system, he proposed that OAS Member States be urged to take the action prescribed.

The Vice Chairman expressed appreciation for the document and for rapporteur Dr. Elizabeth Villalta's explanation of the mandate. He noted as well the usefulness of discussing International Humanitarian Law, besides including applicable international instruments. He took the opportunity to also suggest including OAS Member States that were party to the aforementioned instruments; making reference to rules traditionally considered to be part of General International Law; and dividing the text into the segments indicated, with their respective subtitles.

Along the lines of the Vice Chairman's observation, Dr. David Stewart proposed that states that were not party to the aforementioned instruments should be included as well. He asked the rapporteur for her views on whether it was appropriate for reference to be made to the protection of cultural property in times of peace, and for situations to be anticipated.

Co-rapporteur Dr. Elizabeth Villalta expressed appreciation for all the comments, and announced her intention to include them into her report. In addition, Dr. Jean-Paul Hubert requested the inclusion of reference to threats from fundamentalist religious organizations. The Vice Chairman noted that the co-rapporteur's document discussed the relevance of including domestic violence that does not meet the threshold for a non-international armed conflict, and asked the rapporteurs for their views on this. Both rapporteurs confirmed that there were two scenarios – that is, cases of armed conflicts at both the international and domestic levels. The analysis of the situations of internal disturbances and internal tensions has been deferred.

The Vice Chairman concluded by announcing that the co-rapporteurs would be submitting a revised report with the suggested corrections and a first draft of the model legislation by the next meeting of the Inter-American Juridical Committee in August 2012.

During the 42nd regular session of the General Assembly of the OAS held in Bolivia in June 2011, the Inter-American Juridical Committee was requested "to report on progress made in

developing model legislation to support efforts undertaken by the Member States to implement their obligations under treaties on the subject of International Humanitarian Law, with emphasis on protecting cultural goods in the event of armed conflict" AG/RES. 2722 (XLII-O/12).

At the 81st regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2012) one of the rapporteurs for the topic, Dr. Elizabeth Villalta, presented a report, document CJI/doc.403/12 rev.1, which includes the suggestions mentioned at the previous session held in Mexico City. The report includes as background information relevant legal instruments on the subject matter, a list of ratifications by Member States of the OAS, and an explanation of the scope of the general protection for cultural property in the Hemisphere. Dr. Villalta underscored the importance of taking preventive steps in peace time, such as preparation of inventories, planning emergency measures, transfer of cultural property, designation of authorities, and publicity on said measures. She also proposed that issues related to identification and inventories be developed, marking, identification cards, international registry, promotion, and criminal sanctions.

The members of the Committee thanked Dr. Villalta for her presentation. Dr. Freddy Castillo Castellanos confirmed that this document would reinforce the Committee's work in the area of International Humanitarian Law and protection of cultural property. Dr. Fernando Gómez Mont Urueta noted the complexity involved in dealing with this subject matter and, in light of aggressions that follow regime changes or historical revisionism, expressed his concern with about leaving protection of cultural property exclusively in the hands of the state. Accordingly, he requested that the document identify elements for a registry to be recognized independently of changes that may occur as a result of political circumstances. Vice Chairman Novak presented specific observations to contribute to the work carried out rapporteur Villalta, and requested that national liberation movements be included in the definition of international armed conflict and, in the section on ratifications, naming the states. As regards the draft model law, he proposed eliminating the numbering from the preamble and, in the fifth paragraph of the preamble, making mention of the civil authorities. He further suggested including articles 2, 4, and 5 under one provision and, finally, expressed doubts about the reference to national legislation in article 15.

Dr. David Stewart thanked rapporteur Elizabeth Villalta for the document and inquired as to why the use of language that departed from the typical model law in terms of indicating how States should address safeguard measures. Regarding article 8, he expressed concern about focusing only on criminalization, and thus proposed rewording it. In article 9, he proposed urging the States to designate a central coordinating authority in each country, given the issues that would arise with having an international authority. Rapporteur Villalta explained that penal measures were included in the light of the developments in the criminal codes of several countries but that she would leave the final decision to the plenary. Regarding article 9, she proposed making it a joint effort between the inter-American system and the principles of the Hague Convention.

Dr. José Luis Moreno suggested including international organizations in armed conflicts. Regarding Dr. Gomez Mont's concern about changes in the lists, he suggested wording that provides protection to prevent revisionism for political or religious reasons. Finally, proposed to simplify some provisions by eliminating duplication or multiplication of verbs.

Dr. Carlos Mata Prates proposed deleting the word "only" from the third paragraph and amending article 15, which refers to the rules, since it is very general. Regarding Dr. Gomez Mont's concern, he suggested an alternative formulation to the absolute nature of the registry of property that must be respected regardless of the regime in power. Finally, in relation to the preparation of the draft, he requested that a peremptory norm be included, instead of a reference to the commitment by States.

Dr. Jean-Paul Hubert underscored the difficulties in enforcing international obligations. Dr. Villalta's document contains a list that reminds states of obligations that they must fulfill under the instruments they have ratified, and in this sense, it is extremely useful. Accordingly, her preference was for changing the document format to draw it up as a guide rather than a model law. Dr. Villalta recalled

the principles guides drafted by Dr. Herdocia and Dr. Aparicio on a variety of subjects, but felt that this methodology could not satisfy the needs of the ICRC in this subject area.

Dr. Gomez Mont also proposed drafting a set of principles to guide the action of States, since insisting on drawing up a model law would involve a complete re-drafting. To address the concern he expressed before, concerning the registry being absolute, he proposed that in the absence of a list or where existing lists are incomplete, the criterion should be "to take into account the identification of the goods at any time."

Dr. Fabián Novak, although noting that the mandate called for "model laws" to be drafted, did agree with the observation by Dr. Stewart and Dr. Hubert concerning the way the document was written. In that connection, he acknowledged that although drawing up a model law may involve more effort, the mandate must be respected and States facilitated in terms of how to proceed and to identify the measures that were being proposed.

Dr. Carlos Mata Prates emphasized that the reference to "industrial center" in article 3 could diminish the protection being sought. He therefore proposed rewording article 15 if working on a model law is the aim.

Dr. Villalta expressed concern about the rewording the document, which would involve additional work time and would consequently delay the submission of the document to the General Assembly. For his part, Dr. Castillo Castellanos suggested presenting this preliminary product to the General Assembly as "principles to guide" with a view to a different document to subsequently reflect a model law, a suggestion supported by Dr. Fabián Novak. Chairman Baena Soares felt that present principles to guide should not be incompatible as long as this is explained.

Dr. Jean-Michel Arrighi shed light on progress made in terms of the drafting of legal instruments within the OAS. He said that in the case at hand there was no gap in the rules or the general principles agreed upon, but rather in the modalities of implementation at the domestic level. He cited the case of model laws drawn up by the Committee in relation to the Inter-American Convention against Corruption, and felt it was necessary to seek uniform solutions in implementing international obligations at the domestic level.

Dr. David Stewart asked Dr. Elizabeth Villalta whether there were examples of States that had implemented these instruments. If so, those cases should be used as a reference and, if not, the course of action proposed by Dr. Castillo Castellanos should be followed. Dr. Villalta cited her country as an example in the area of markings, but requested more time to check the situation in other countries and aspects.

Dr. Hyacinth Lindsay revealed that although Jamaica had laws governing the subject matter, cases of cultural property being stolen were still being properly and duly reported, and presumably protected.

Announcing the document presented could be reviewed at the session in March, Chairman Baena Soares asked the plenary for its position with regard to the presentation of a model law or a set of guiding principles. The members decided in the end that a model law should be drafted.

At the 82nd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2013), it was discussed the proposed draft for the “Model Law regarding the Protection of cultural property in the event of armed conflict” (CJI/doc.403/12 rev.5).

The draft Model Law has an introductory part which presents the aims of the Model Law and the following twelve chapters: General Provisions, Scope of the Law, Definitions; Measures to Promote the Protection of Cultural Property; Marking, Identifying, and Inventorying Cultural Property; Coordination Measures for the Protection of Cultural Property; Promotion of Training and Dissemination; Presentation of Reports; Responsibility in the Protection of Cultural Property; Monitoring and Compliance Mechanisms; Cultural Property Protection Fund; Implementation Regulations; Transitory Provisions, Reservations and Interpretation of the Law; Entry into Force.

Co-rapporteur Dr. Freddy Castillo Catellanos has acknowledged the relevance to urge the States to comply with their obligation to identify every property that has to be included in the official cultural property list.

All members of the Juridical Committee expressed their deep recognition to the work presented by Dr. Elizabeth Villalta Vizcarra.

The Chairman of the Committee, Dr. João Clemente Baena Soares, thanked Dr. Elizabeth Villalta Vizcarra and asked her about the reference to the concept of "pressing military necessity", an aspect that has not been made clear in the instruments relating to the issue.

Dr. Carlos Matta Prates offered a number of concrete suggestions, concerning the presentation of definitions, "reinforced protection," and references to reservations. Drs. David P. Stewart and Hyacinth E. Lindsay agreed with keeping Article 27 bearing in mind that in some systems consideration must be given to "international instruments on such matters." Dr. Fabián Novak Talavera only made observations that related to form and was in favor of adopting the draft during that session. He also urged against the creation of new organs and that instead powers be delegated to extant institutions in each country. This position was supported by the Chairman of the Juridical Committee, Dr. João Baena Soares and Drs. Aníbal Pichardo Olivier and David P. Stewart.

Dr. Aníbal Pichardo Olivier suggested omitting the name of the instrument from the introductory section, to which the rapporteur agreed.

The Chairman, Dr. João Clemente Baena Soares, noting that the rapporteurs had accepted all the formal changes, avoided the creation of any new organs, and coming up with a definition for the expression "pressing military necessity," proposed that a clean version of the document be drawn up and adopted.

Having approved the report, the CJI decided to forward it to the Permanent Council of the OAS for consideration.

The text of the document is as follows:

CJI/doc.403/12 rev.5

MODEL LEGISLATION ON PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

(presented by Dr. Ana Elizabeth Villalta Vizcarra)

I. MANDATE

Taking into account Resolution AG/RES. 2650 (XLI-O/11), adopted at the fourth plenary session, held in San Salvador, El Salvador, on June 7, 2011, of the forty-first regular session of the General Assembly of the Organization of American States (OAS), which Resolution is entitled "Promotion of and Respect for International Humanitarian Law," and which refers to the rich legacy of cultural assets in the Hemisphere recognized by UNESCO as world heritage, which would benefit from the protection systems of International Humanitarian Law; and that, in that resolution, the OAS General Assembly resolves, in operative paragraphs 1 and 4.d:

> *1. To urge the Member States and the parties engaged in armed conflict to honor and fulfill their obligations under International Humanitarian Law, including those pertaining to safeguarding the life, well-being, and dignity of protected persons and property, and the proper treatment of prisoners of war.*
>
> *4. To urge the Member States to adopt such legislative or other measures as may be necessary to meet their legal obligations under the treaties on International Humanitarian Law to which they are party, including:*
>
> *d. To adopt provisions to guarantee protection of cultural property from the effects of armed conflict, which may*

> *include preventive measures related to the preparation of inventories, the planning of emergency measures, and the appointment of competent authorities.*

and in operative paragraph 12 resolves:

> *To request the Inter-American Juridical Committee (CJI), to propose model laws to support the efforts made by Member States to fulfill obligations under International Humanitarian Law treaties, with an emphasis on protection of cultural property in the event of armed conflict, and to report on the progress made to the General Assembly at its forty-second and forty-third regular sessions, respectively.*

Taking into account that the Inter-American Juridical Committee, at its 79th regular session, held from August 1 to 6, 2011, in Rio de Janeiro, Brazil, adopted Resolution CJI/RES. 182 (LXXXIX-O/11), entitled "Agenda for the Eightieth Regular Session of the Inter-American Juridical Committee," which was to be held in Mexico City, Dr. Freddy Castillo Castellanos and the undersigned were appointed rapporteurs for the topic "Model legislation on protection of cultural property in the event of armed conflict." (CJI/doc.403/12). As rapporteur for the topic, I placed this report for the discussion and deliberation of the Inter-American Juridical Committee at its 80th regular session.

Also taking into account that Resolution AG/RES. 2722 (XLII-O/12), "Observations and Recommendations on the Annual Report of the Inter-American Juridical Committee", adopted at the forty-second regular session of the General Assembly of the Organization of American States (OAS), held in Cochabamba, Bolivia, gave the Inter-American Juridical Committee the following mandate: "To ask the Committee to report on progress made in developing model legislation to support efforts undertaken by the Member States to implement their obligations under treaties on the subject of International Humanitarian Law, with emphasis on protecting cultural goods in the event of armed conflict."

In consideration whereof, the 81st regular session of the Inter-American Juridical Committee, which took place in the city of Rio de Janeiro, Brazil, on August 6 to 11, 2012, was presented with a Second Report on this topic. That report was discussed by the members of the IACJ with a view to including additional elements to enrich its contents, prior to its presentation at the Committee's 82nd regular session, to be held in Rio de Janeiro, Brazil, on March 11 to 15, 2013. Accordingly, the following report is hereby submitted.

II. BACKGROUND

International Humanitarian Law (IHL) is the collection of legal provisions, most of them enshrined in the 1949 Geneva Conventions and their additional protocols of 1977, the aim of which is to protect persons not participating in hostilities or who have decided no longer to participate in a conflict and their property, and to limit the means and methods of waging war. The various provisions of International Humanitarian Law are intended to prevent and limit human suffering in times of armed conflict. Their fulfillment is compulsory both for governments and armies participating in a conflict and for the various armed opposition groups or any other participant in a conflict. International Humanitarian Law limits the use of methods of war and of means used in conflicts.

International Humanitarian Law essentially is contained in the four 1949 Geneva Conventions, and in their additional protocols, but there are also other treaties governing various aspects of these matters, and many of their provisions may be of relevance for this topic. Those instruments are: the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols; the 1972 Biological Weapons Convention; the 1980 Convention on the Use of Certain Conventional Weapons and its five protocols; the 1993 Chemical Weapons Convention; the 1997 Ottawa Treaty (Mine Ban Treaty); the 2008 Convention on Cluster Munitions; and the Optional Protocol to the United Nations Convention on the Rights of the Child on the involvement of children in armed conflict. The current practice of states is to accept many provisions of international humanitarian as customary law.

International Humanitarian Law distinguishes between international and non-international armed conflict. In international armed conflict, at least two states are involved and national liberation movements may also be included. Non-international armed conflict involves, within a single state, regular armed forces and armed dissident groups, or more than one armed group; in these conflicts in particular, common Article 3 of the four 1949 Geneva Conventions and the Additional Protocol II of 1977 applies.

International Humanitarian Law provides for the use of certain distinctive emblems to identify protected persons, property, and places, mainly the emblems of the Red Cross and Red Crescent, as well as specific distinctive emblems for cultural property and civil protection.

III. PROTECTION OF CULTURAL PROPERTY

The topic of this report is the protection of cultural property in the event of armed conflict through development of model legislation. We need to determine what is meant by cultural property. It is defined in Article 1 of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, as follows:

> *For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership: (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above; (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a); (c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments.'*

We should also refer to the principal instruments of International Humanitarian Law that protect cultural property in the event of armed conflict: the Peace Conferences of 1899 and 1907; the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which is the main treaty of International Humanitarian Law for the protection of such property, and which includes Regulations for Execution, as well as the two Additional Protocols, of 1954 and 1999. There also are other instruments containing provisions on the protection of cultural property in cases of armed conflict: Additional Protocols I (particularly Articles 38, 53, and 85) and II (especially Article 16) of 1977 to the four 1949 Geneva Conventions, and the 1998 Rome Statute establishing the International Criminal Court.

The Hague Peace Conferences of 1899 and 1907 played a decisive role in the development of the protection of cultural property at times of war, and were based on the 1874 Brussels Conference on arms limitations. The chief purpose of the First Conference held in The Hague on May 15 to July 31, 1899, was to discuss peace and disarmament and to adopt a Convention for the peaceful settlement of international disputes addressing not only arbitration but also other mechanisms for the peaceful settlement of disputes. It adopted rules on the laws and customs of war on land and established on international court of arbitration, embracing the use of good offices, mediation, and arbitration to prevent armed conflicts between nations. It also created a permanent mechanism for the establishment of arbitration tribunals, which was the forerunner of the Permanent Court of Arbitration.

The Second Hague Peace Conference, which took place from June 15 to October 18, 1907, reviewed the 1899 Convention and the rules for the arbitration procedure. It adopted 13 international conventions, of which IV and IX covered the laws and customs of war on land. These also contained provisions governing the protection of cultural property, as did Article 5 of the latter. The meeting also received a joint proposal for the creation of a Permanent Court of International Justice.

Both Conferences placed a ban on attacking “open cities” and the obligation of taking the steps necessary, to the extent that was possible, to respect buildings dedicated to worship, the arts, science, and charity, historical monuments, hospitals, and places occupied by the sick and injured, with the exception of those buildings also designed for military purposes. They also included two kinds of responsibility: individual criminal responsibility, for subjects who seized or destroyed cultural property, and the states’ liability for indemnifying the damage caused by their armed forces.

These conventions were unable to prevent the destruction of countless cultural assets during the First World War, despite playing a prohibitive role as part of customary international law. It therefore became necessary to adopt an instrument to specifically regulate the protection of cultural property during wartime: thus, on April 15, 1935, the Treaty of Washington on the Protection of Artistic and Scientific Institutions and Historic Monuments, known as the “Roerich Pact,” to be observed at times of both peace and war, was signed. This treaty created a distinctive sign for protected historical and institutional monuments, covering solely immovable cultural property, and it enshrined the neutrality of the historical monuments, museums, and institutions set down on a list by the contracting governments.

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict is virtually the first universal instrument establishing a regime to protect such property and was the culmination of a great effort. It was the first coherent set of legal provisions enshrined entirely for the protection of cultural property, and introduced the concept of cultural property, thus protecting all property that constitutes, in essence, the manifestation of the culture of a particular people and that, by virtue of its importance, should be preserved from the effects of war. The other instruments cited broaden the scope of application or reinforce the protection regime it has established. All such property enjoys general protection, and some of it special protection aimed at its preservation, because it constitutes cultural heritage that is part of the identity of each people.

Therefore, the Additional Protocol of 1954 provides a protection regime for situations in which the territory of a state is occupied by another state. Its Additional Protocol of 1999 allows States Parties to complete and reinforce the system established in 1954, instituting a system of enhanced protection for cultural property of the greatest importance to humanity, provides also for individual criminal responsibility, stipulates new precautionary measures concerning attacks, and against the effects of attacks, and creates more effective institutions to ensure monitoring of compliance with the cultural property protection regime, such as the creation of a Committee of Experts and a Fund, to be used by States in implementing their obligations arising from that instrument.

The Additional Protocols of 1977 to the four 1949 Geneva Conventions establish provisions on the protection of cultural property in times of armed conflict, whether international or non-international, prohibit the transformation of cultural property into military targets, and prohibit acts of hostility against them. Infractions of such norms, under certain conditions, can constitute war crimes.

Article 8, “War Crimes,” section 2b.ix, of the 1998 Rome Statute establishing the International Criminal Court makes it possible to prosecute persons presumed, in the event of armed conflict, whether international or non-international to have directed deliberate attacks against civilian property and buildings devoted to religious observance, education, arts, sciences, or charity, monuments, hospitals, and places where the infirm and wounded are gathered, as long as those buildings are not military targets. Under Article 5 of the Rome Statute, the Court has competence over the following crimes: (a) the crime of genocide; (b) crimes against humanity; (c) war crimes, and (d) the crime of aggression.

Accordingly, a model law should harmonize the application of all legal provisions set forth in all those instruments to safeguard cultural property in the Hemisphere.

We must consider as well that cultural property is to be protected at all times, both in peace and in war. To that end, governments provide means of identification and preservation and specialized personnel tasked with classifying and safeguarding the property. Governments must take all preventive and preparatory measures in times of peace, so as to be able to protect cultural property in the event of armed conflict, whether international or non-international. It would be

advisable to establish the necessary ties between civilian and military protection systems and the various responsible entities to ensure understanding of and compliance with the specific rules designed for application during armed conflicts.

In addition, other treaties also exist that regulate the protection of cultural property at times of armed conflict. These include: the 1970 Paris Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage; the 1976 Convention of San Salvador on the Protection of the Archeological, Historical, and Artistic Heritage of the American Nations; the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects ("the Rome Convention"); and the 2005 Study of Customary International Humanitarian Law prepared by the International Committee of the Red Cross (ICRC), Rules 38 to 41.

IV. RATIFICATION OF THE MAIN IHL CONVENTIONS ON THIS TOPIC BY THE MEMBER STATES OF THE INTER-AMERICAN SYSTEM

The four Geneva Conventions of 1949 have been ratified by all the nations of the Americas: that is, 35 OAS Member States, namely: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, United States of America, Uruguay, and Venezuela.

Their Additional Protocol I of 1977 has been ratified by 34 of the region's states, the only state that has not ratified is the United States of America.

Additional Protocol II of 1977 has been ratified by 33 of the region's states; only two states have not ratified: the United States of America and Mexico.

And the Additional Protocol of 2005 has been ratified by 15 of the region's states namely: Argentina, Brazil, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay and United States of America, Uruguay, with ratification by 20 states pending Antigua and Barbuda, Bahamas, Barbados, Belize, Bolivia, Colombia, Cuba, Dominica, Ecuador, Granada, Guyana, Haiti, Jamaica, Panama, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict has been ratified by 22 states in the Hemisphere namely: Argentina, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, México, Nicaragua, Panamá, Paraguay, Peru, United States of America, Uruguay and Venezuela, with ratification by 13 states pending: Antigua and Barbuda, Bahamas, Belize, Dominica, Granada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname and Trinidad and Tobago.

Its Additional Protocol of 1954 has been ratified by 19 of the region's states, of the Hemisphere, namely: Argentina, Barbados, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Uruguay, with ratification by 16 states pending: Antigua and Barbuda, Bahamas, Belize, Bolivia, Dominica, Granada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, United States of America and Venezuela.

And its Additional Protocol of 1999 has been ratified by 18, including: Argentina, Barbados, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Uruguay, with ratification by 17 states pending: Antigua and Barbuda, Bahamas, Belize, Bolivia, Cuba, Dominica, Granada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, United States Of America and Venezuela.

The 1998 Rome Statute creating the International Criminal Court has been ratified by 28 states of the Americas, namely: Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, Granada, Guatemala, Guyana, Honduras, México, Panamá, Paraguay, Peru, San Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, Uruguay and Venezuela, with ratification by 7 states pending: Bahamas, Cuba, El Salvador, Haiti, Jamaica, Nicaragua and United States Of America.

The 1972 Biological Weapons Convention has been ratified by 33 states in the Hemisphere, namely: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Granada, Guyana, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, San Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, United States of America, Uruguay and Venezuela, with ratification by 2 states pending: Guyana and Haiti.

The 1980 Convention on the Use of Certain Conventional Weapons has been ratified by the following 24 states in the region: Antigua and Barbuda, Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, México, Nicaragua, Panamá, Paraguay, Peru, Saint Vincent and the Grenadines, United States of America, Uruguay and Venezuela, with ratification by 11 states pending: Bahamas, Barbados, Belize, Dominica, Granada, Guyana, Haiti, Saint Kitts and Nevis, Saint Lucia, Suriname and Trinidad and Tobago.

Its Additional Protocol I of 1980 has been ratified by 24 states, namely: Antigua and Barbuda, Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, United States of America, Uruguay and Venezuela, with ratification by 11 states pending: Bahamas, Barbados, Belize, Dominica, Granada, Guyana, Haiti, Saint Kitts and Nevis, Saint Lucia, Suriname and Trinidad and Tobago.

Additional Protocol II of 1980 by 18 States, namely: Argentina, Bolivia, Brazil, Canada, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, United States of America, Uruguay and Venezuela, with ratification by 17 states pending: Antigua and Barbuda, Bahamas, Barbados, Belize, Chile, Dominica, Granada, Guyana, Haiti, Jamaica, Nicaragua, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname and Trinidad and Tobago.

Additional Protocol III of 1980 by 24 states, namely: Antigua and Barbuda, Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, United States of America, Uruguay and Venezuela, with ratification by 11 states pending: Bahamas, Barbados, Belize, Dominica, Granada, Guyana, Haiti, Saint Kitts and Nevis, Saint Lucia, Suriname and Trinidad and Tobago.

Additional Protocol IV of 1985 by 22 states, namely: Antigua and Barbuda, Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, United States of America and Uruguay, with ratification by 13 states pending: Bahamas, Barbados, Belize, Cuba, Dominica, Granada, Guyana, Haiti, Saint Kitts and Nevis, Saint Lucia, Suriname, Trinidad and Tobago and Venezuela.

And Additional Protocol V of 2003 by 16 states, namely: Argentina, Canada, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, Panamá, Paraguay, Peru, Saint Vincent and the Grenadines, United States of America and Uruguay, with ratification by 19 states pending: Antigua and Barbuda, Bahamas, Barbados, Belize, Bolivia, Brazil, Colombia, Cuba, Dominica, Dominican Republic, Granada, Guyana, Haiti, Mexico, Saint Kitts and Nevis, Saint Lucia, Suriname, Trinidad and Tobago and Venezuela.

The 1993 Chemical Weapons Convention has been ratified by 35 OAS Member States: Antigua y Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Granada,

Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, United States of America, Uruguay and Venezuela.

The 1997 Ottawa Mine Ban Treaty has been ratified by 33 states in the region, namely: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Granada, Guatemala, Guyana, Haiti, Honduras, Jamaica, México, Nicaragua, Panamá, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, Uruguay and Venezuela, with ratification by 2 states pending: Cuba and United States of America.

The 2008 Convention on Cluster Munitions has been ratified by 15 of the region's states, namely: Antigua and Barbuda, Chile, Costa Rica, Dominican Republic Ecuador, El Salvador, Granada, Guatemala, Honduras, Mexico, Nicaragua, Panama, Saint Vincent and the Grenadines, Trinidad and Tobago and Uruguay, with ratification by 20 states pending: Argentina, Bahamas, Barbados, Belize, Bolivia, Basil, Canada, Colombia, Cuba, Dominica, Guyana, Haiti, Jamaica, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Suriname, United States of America and Venezuela.

The 2000 Optional Protocol to the United Nations Convention on the Rights of the Child on the involvement of children in armed conflict has been ratified by 26 states in the region, namely: Argentina, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, United States of America, Uruguay, and Venezuela, with ratification by nine states pending: Antigua and Barbuda, Bahamas, Barbados, Dominican Republic, Haiti, Saint Kitts and Nevis, Saint Lucia, Suriname, and Trinidad and Tobago.

It would be useful for those states of the Americas that are not yet parties to these instruments to analyze the possibility of ratifying them.

V. ABOUT THE MODEL LEGISLATION

Consequently, the Model Law to be implemented should provide clear rules as to the general special, and enhanced protection of cultural property, as provided for in the main instruments. General protection involves the safeguarding of and respect for all cultural property; special protection covers a limited number of refuges intended to preserve movable cultural properties in the event of an armed conflict, centers containing monuments, and other immovable cultural property of great importance; and enhanced protection is for cultural heritage properties of the highest importance for humankind.

In this way, general protection is extended to a large number of objects, with a few artifacts of exceptional importance receiving particularly close protection. Thus, all the cultural properties referred to in Article 1 of the 1954 Convention receive general protection, to be afforded by the authorities of the country where they are located. A domestic legal instrument is therefore needed to oblige those authorities to take certain steps to ensure safeguard and respect and to allow governments to mark protected assets and properties with the protective emblem, a matter that could also be addressed in the Model Law.

Accordingly, the general protection mostly involves imposing on the contracting State an obligation to respect and safeguard, requiring it to prepare beforehand, in peacetime, for the protection of such property by taking the necessary measures to that end, adopting legislative or administrative measures for its protection.

The general principle of protection of cultural property in the event of armed conflict is based on the obligation to safeguard and respect such property. Therefore, safeguarding such property involves a set of measures that must be taken in peacetime to ensure the best possible material conditions for its protection. This is where the Model Legislation could make a contribution.

We must consider as well that the responsibility to protect cultural property belongs to both parties to a conflict, that is, both to the party who controls the cultural property and to its adversary. The only possible justification for removing the obligation to respect cultural property

is the concept of *"imperative military necessity"*, which should be clearly defined in the Model Legislation and in line with the international standards set by the applicable instruments.

As for enhanced protection, property protected under this regime is more limited and the conditions for enjoyment of such protection are more difficult to meet, since it is given immunity against all acts of hostility and all use, including the use of its immediate proximity. Here, no exception for imperative military necessity is provided.

Property subject to enhanced protection must meet the following conditions: (1) it must be at a sufficient distance from a major industrial center or from any important military target; and (2) it must not be used for military purposes. Nevertheless, if a state party pledges not to make any use of the object in question in the event of armed conflict, enhanced protection of the cultural property may be granted.

Enhanced protection may be granted solely to property registered in the International List of Cultural Property under Enhanced Protection. The List accords the status of enhanced protection granted by the 1954 Hague Convention.

Also necessary are national enacting measures to ensure that cultural property is safeguarded and respected. These measures, which would need to be governed by the Model Legislation, are:

a. Measures concerning identification and inventory. Identification is the decision, taken by a national authority, that an object, a building, or a site shall be deemed cultural property worthy of protection. The inventory is the list of all property protected, made available to the entities responsible for its protection, that is, the civilian and military authorities, specialized organizations, and other interested institutions. State-based practices in terms of marking or identification of cultural property have not been very successful, so this could be regulated in the model legislation.

b. Measures concerning the distinctive emblem—since all cultural property under general protection or enhanced protection is marked with a distinctive emblem for one or the other.

c. Measures concerning the identity card. Persons tasked with protecting cultural property carry an identity card bearing the appropriate distinctive emblem, i.e., specifying whether the cultural property is under general protection or enhanced protection, and also providing the person's given names and surnames, date of birth, title or rank, function, photograph, signature, and fingerprints, and the embossed stamp of the competent authorities. This identity card could be harmonized for all the states of the Hemisphere in the model legislation.

d. Measures supporting the International List of Cultural Property under Enhanced Protection. Refuges, centers containing monuments, and other immovable property under enhanced protection should be recorded in the List, which is kept by the Director General of UNESCO. To that end, the national authority should indicate the location of the property and certify that it meets the established criteria for such protection.

e. Measures concerning dissemination. It is necessary to translate the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its Additional Protocols, and its Regulations for Execution. These should be disseminated in the four official languages of that Convention—that is, in English, French, Spanish, and Russian—as well as in the official languages of the Organization of American States (OAS) (English, French, Spanish, and Portuguese), so that the principles contained therein are known by the population as a whole. These measures also have not been well implemented at the state level, although significant efforts are being made to comply with this duty to disseminate and instruct.

f. As for measures concerning criminal sanctions, these are necessary to enforce the provisions of these instruments. Violations should be made punishable at the

national level with criminal or disciplinary sanctions, which should also be made available through the model legislation.

In order to monitor compliance with the provisions of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, Article 26, section two, thereof provides: *"The High Contracting Parties … at least once every four years, … shall forward to the Director-General a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfillment of the present Convention and of the Regulations for its execution."*

They established thereby an international mechanism to monitor compliance by states, based on o reporting system. Still, practice at the state level has also had little success in the presentation of such reports, and they have not always given a strict account of measures taken in compliance with each provision of the 1954 Hague Convention. Perhaps a body should be created to monitor and oversee these reports. This is another point that could be developed in the model legislation.

The 1999 Additional Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict establishes measures to improve its application and efficacy, as well as a series of innovations that reinforce the protection of such property. For example, it provides that the scope of application is armed conflict, whether international or non-international, since most conflicts now are non-international and require protection of cultural property or well. The 1999 Protocol sets forth better guidance on protective measures states should take in peacetime against the devastating effects of future hostilities in the states.

Therefore, States should take preventive measures in times of peace, such as inventories; planning of emergency measures; preparations for possible evacuation of cultural property; dissemination of all these measures; and designation of competent authorities tasked with safeguarding such property. This prevention work could also be developed in the model legislation.

Part of the enhanced protection regime established in the 1999 Additional Protocol to the 1954 Hague Convention is the obligation to respect cultural property under such protection and the registry of such property in the new International List of Cultural Property under Enhanced Protection. The following requirements must be met: (a) it must be cultural heritage of the greatest importance for humanity; (b) it must be protected by adequate domestic legal and administrative measures recognizing its exceptional cultural and historic value and ensuring the highest level of protection; (c) it must not be used for military purposes or to shield military sites and d) a declaration must have been made by the party which has control over the cultural property, confirming that it will not be so used. The use for military purposes of property included in this List would constitute a serious violation of this Protocol and the state responsible for the infraction would be subject to the corresponding sanction. This too could be regulated in the model legislation.

Considering all these international instruments of International Humanitarian Law on the protection of cultural property in the event of armed conflict, which establish a series of protective measures, some of them preventive measures to be taken in peacetime; that the 1999 Protocol to the 1954 Hague Convention also establishes an enhanced protection regime; and that the outcome of state efforts at compliance with these obligations has not been entirely satisfactory, it would be advisable to implement these principal obligations in a model law to enable countries of the Hemisphere to better comply with the obligations stemming from these instruments, particularly in the areas cited in this first rapporteur's report.

Further study on whether the obligation of states to protect cultural property could extend beyond armed conflict would be advisable—that is, whether this obligation to protect could extend to violent situations other than armed conflict, whether international or non-international. Such violent situations presently affect many States of the American Hemisphere, outnumbering sporadic and isolated acts of violence.

The topic of protection of cultural property in situations of armed conflict is so important to the states of the Hemisphere that a "*Regional Seminar of National Commissions of International Humanitarian Law on the Protection of Cultural Property in the Event of Armed*

Conflict" was held recently, in El Salvador, on December 1 and 2, 2011, with the participation of the International Committee of the Red Cross (ICRC). At that seminar, with the agreement of the Chair of the Inter-American Juridical Committee (CJI), a member of the Committee, has participated in Module 1, on the topic of *"International Obligations for the Protection of Cultural Property in the Event of Armed Conflict: the 1954 Hague Convention and its two Protocols, of 1954 and 1999"*. She spoke on model legislation on the protection of cultural property in the event of armed conflict.

With the elements previously mentioned, taken from the instruments of International Humanitarian Law and from instruments specifically governing the protection of cultural property during armed conflict, there are obligations and situations that could be developed in a model law; accordingly, this report presents a model law for the protection of cultural property at times of armed conflict that could be adopted by the Member States of the Inter-American system, provided that they deem it appropriate, in doing which they could make use of the opinions of the ICRC, UNESCO, and other international organizations involved with the topic. The text reads as follows:

VI. MODEL LEGISLATION ON THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

I. Considering the importance of respecting and upholding, at all times, International Humanitarian Law (IHL), both conventional and customary;

II. Considering the substantial progress that has been made with the protection of cultural property since the Hague Peace Conferences of 1899 and 1907, the adoption of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, of its Regulations for Execution, and of its Additional Protocols of 1954 and 1999, with the creation of a regime of specific protection for such assets in the conviction that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind;

III. Considering the need to adopt an appropriate legal framework for minimizing losses of cultural property at times of armed conflict, and for implementing, in times of peace, the measures necessary in order to ensure general, special, and enhanced protection to strengthen respect for cultural assets both during armed conflicts and after hostilities have concluded;

IV. Considering the importance of states undertaking dissemination efforts to ensure that the rules for the protection of cultural assets are known and respected at times of peace, during armed conflicts, and in other situations of violence, natural disasters, and in combating the illicit trafficking of cultural property;

V. Considering the importance of including the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Additional Protocols in the training of military and public security personnel, of the competent civil authorities, and in training programs for the population in general, in order to ensure respect for and the protection of cultural property.

The adoption of the following **"Model Law on the Protection of Cultural Property in the Event of Armed Conflict"** is therefore proposed.

Introduction:

This Model Law on the Protection of Cultural Property in the Event of Armed Conflict has been designed as a reference tool for voluntary use, either in whole or in part, by those States that wish to have clear rules and an appropriate legal framework for the general, special, and enhanced protection of cultural property in order to minimize losses of such property at times of armed conflict.

Purpose and Scope of the Model Law:

This Model Law is intended to assist States in dealing with some of the legal and regulatory issues that commonly arise in connection with the protection of cultural property at times of armed conflict, such as the provision of clear rules for the general, special, and enhanced protection of cultural property; the enforcement of the general principle of protecting cultural property during armed conflicts, which is based on the obligation of safeguarding and respecting such property; measures for marking, identifying, and inventorying cultural property; measures

governing the distinctive emblem and identity cards; measures related to the International Register of Cultural Property under all forms of protection; measures related to its dissemination; measures to be taken regarding studies and training programs, etc.

This law lays down the necessary measures to be taken by national authorities responsible for protecting cultural property in case of armed conflict, for implementing obligations defined in instruments of humanitarian international law and the like, related to protection of cultural assets in case of armed conflict.

This law will be called Model Law on Protection of Cultural Property in Case of Armed Conflict.

CHAPTER I

General Provisions, Scope of the Law, Definitions

Article 1. Definition

For the purposes of this law, the following terms shall have the meanings indicated:

Cultural Property: Those properties regulated by Article 1 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which provides: "For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership: (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined. (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums and large libraries. (c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'."

Identification: Any decision made by a national authority to consider an object, building, or site as a cultural asset that is worthy of protection.

Inventory: The drawing up of a list of all protected properties, in order to make it available to national authorities and the bodies responsible for protection.

Distinctive emblem: A mark to be borne by cultural property that is under general, special, or enhanced protection.

Identity Card: An identification document given to the persons responsible for the protection of cultural property, in accordance with the different kinds of protection: general, special, and enhanced.

National Authorities: The authorities (civilian, military, law enforcement, or any other kind) charged with protecting and safeguarding cultural property.

Imperative Military Necessity: Taking the necessary decisions to achieve war objectives within the limits and conditions laid down by international norms in accordance with Article 4, paragraph 2, of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and Article 6 of that Convention's Second Additional Protocol of 1999.

General Protection: The general principle of protection for cultural property at times of armed conflict is based on the obligation of safeguarding and respecting such property (Article 2 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict).

Safeguarding: The set of measures that are to be taken in times of peace in order to best ensure the material conditions for protection (Article 3 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict).

Respect for Cultural Property: Implies refraining from any and all acts of hostility against such property; it also entails prohibiting, preventing, and, if necessary, halting any form of theft, pillaging, concealment, or misappropriation of cultural properties, and all acts of vandalism against them. The respect obligation also requires prohibiting the use of cultural property, their

protection systems, and immediate surroundings for purposes that could expose such property to destruction or harm.

Special Protection: It is the immunity granted to Cultural Property against all acts of hostility and against all forms of use for military purposes, including the immediate vicinity (Articles 8 and 9 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict). The special protection regime also applies to refuges, centers containing monuments, and other immovable cultural properties of vital importance.

Enhanced Protection: Cultural Property may be placed under enhanced protection if the following conditions are met: (a) it is cultural heritage of the greatest importance for humanity; (b) it is protected by adequate domestic legal and administrative measures recognizing its exceptional cultural and historic value and ensuring the highest level of protection; and (c) it is not used for military purposes or to shield military sites and a declaration has been made by the Party which has control over the cultural property, confirming that it will not be so used. All pursuant to the Second Protocol of 1999 to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

CHAPTER II

Measures to Promote the Protection of Cultural Property

Article 2. National authorities responsible for the protection of cultural property at times of armed conflict shall adopt the following measures:

a) Administrative or statutory safeguard measures necessary for the protection of cultural property, in times of peace, as a preventive undertaking;

b) Measures to set a deadline for the prompt marking of cultural property covered by general, special, and enhanced protection, with the corresponding distinctive sign or emblem in those cases in which it is required;

c) Extend special protection to cultural property, to be observed during any act of hostility, provided that said property is located at a sufficient distance from any large industrial center or important military target and that it is not used for military purposes, depending always on the circumstances and on the protected property.

Those authorities shall agree to make no use of the property in question, in the event of an armed conflict, so that the Special Protection may be afforded.

The obligation of respecting cultural property may be restricted by “imperative military necessity.”

d) Register the cultural assets covered by special protection in the International Register of Cultural Property under Special Protection;

e) Protect the cultural property under enhanced protection as determined by the Second Additional Protocol of 1999 to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, particularly the guiding principles for its enforcement, and shall record them in the International List of Cultural Property under Enhanced Protection.

Article 3. States shall respect Registers of Cultural Property under General, Special, and Enhanced Protection, regardless of the regime currently in power.

CHAPTER III

Marking, Identifying, and Inventorying Cultural Property

Article 4. National authorities responsible for the protection of cultural property at times of armed conflict shall take the following steps:

a) those related to mark, identify, and inventory cultural property and shall draw up a list of all protected properties in order to make them available to all the authorities and entities responsible for their protection;

b) the administrative measures necessary regarding the Distinctive Emblem of Cultural Property, regardless of whether the property is subject to general, special, or enhanced

protection. Similarly, they shall provide the individuals responsible for the protection of cultural property with Identity Cards, which shall bear the corresponding Distinctive Emblem.

CHAPTER IV

Coordination Measures for the Protection of Cultural Property

Article 5. National authorities responsible for the protection of cultural property at times of armed conflict shall adopt the following measures:

a) preventive measures necessary for its protection during times of peace, such as: the preparation of inventories, the planning of emergency measures, the preparation of an emergency plan for the transfer of movable cultural property, or the provision of appropriate on-site protection for such property;

b) the administrative measures necessary to register their Cultural Property under Enhanced Protection on the corresponding list of cultural property in accordance with the requirements set in the 1999 Additional Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. For this purpose, they shall appoint a Representative to be in charge of registering said property;

c) the measures necessary to ensure coordination between the authorities responsible for combating illicit trafficking in cultural property, to which end they shall join their efforts to prepare inventories and databases, to be used by all the responsible authorities in the region to ensure its effective protection.

CHAPTER V

Promotion of Training and Dissemination

Article 6. The national authorities responsible for the protection of cultural property at times of armed conflict shall take the following measures:

a) those necessary to include, in the training programs of the armed forces and/or law-enforcement agencies, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, together with its two Additional Protocols of 1954 and the one from 1999, and to ensure that those provisions are also included in military manuals, military doctrine, military rules and regulations, operating procedures, and training exercises involving the protection of cultural property, etc.

   In addition, in times of peace they shall train specialized personnel to be responsible for overseeing that cultural property is respected and for collaborating with civilian authorities in the safeguarding of that property;

b) incorporate these instruments – that is, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Additional Protocols – into training programs for the competent civilian authorities and for the general population and into the training programs of the personnel charged with the protection of cultural property;

c) ensure, with the support of the International Committee of the Red Cross (ICRC), UNESCO, and other similar international organizations involved with the topic, the provision of appropriate training for all authorities, officials, and persons with connections to the protection of cultural property.

   They shall also work to ensure training for qualified personnel to assist in overseeing that cultural property is respected and to cooperate with the authorities responsible for the protection of that property;

d) disseminate, in the territory of their States, the provisions for the protection of cultural property contained in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and in its two Additional Protocols, in the official languages of that Convention and in the official languages of the Organization of American States (OAS).

CHAPTER VI

Presentation of Reports

Article 7. National authorities responsible for the protection of cultural property at times of armed conflict shall take the following measures:

a) submit reports, every four years, to the Director-General of UNESCO, containing the information they deem relevant on the measures taken, prepared, or studied by their administrations;

b) adopt the measures necessary to control and supervise the presentation of these reports in compliance with the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

CHAPTER VII

Responsibility in the Protection of Cultural Property

Article 8. National authorities responsible for the protection of cultural property at times of armed conflict shall take the following measures:

a) include, in their domestic laws and in accordance with their domestic legal systems, provisions governing criminal sanctions and administrative disciplinary measures for violations or breaches of the terms of this Model Law and of the obligations set forth in the International Humanitarian Law instruments dealing with the protection of cultural property at times of armed conflict;

b) criminalize, in their domestic laws, serious violations of the rules of International Humanitarian Law, including the provisions of Chapter IV of the 1999 Additional Protocol II to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

CHAPTER VIII

Monitoring and Compliance Mechanisms

Article 9. National authorities responsible for the protection of cultural property at times of armed conflict shall monitor compliance with the measures established in this Model Law in order to ensure that they are observed by the authorities responsible for their enforcement.

CHAPTER IX

Cultural Property Protection Fund

Article 10. National authorities responsible for the protection of cultural property at times of armed conflict shall adopt the measures necessary to access and contribute to the Fund for the Protection of Cultural Property in the Event of Armed Conflict created under Article 29 of the 1999 Additional Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

CHAPTER X

Implementation Regulations

Article 11. National authorities responsible for the protection of cultural property at times of armed conflict may enact all regulations related to matters necessary for the enforcement of this law.

CHAPTER XI

Transitory Provisions, Reservations and Interpretation of the Law

Article 12. National authorities responsible for the protection of cultural property at times of armed conflict may introduce the transitory provisions or reservations necessary for the enforcement of this law, provided they do not change the spirit of same.

Article 13. National authorities responsible for the protection of cultural property at times of armed conflict shall interpret the provisions contained in this Model Law in accordance with the applicable international instruments.

CHAPTER XII

Entry into Force

Article 14. This law shall enter into force in accordance with the State's domestic law.

* * *

3. General guidelines for border integration

Document

CJI/doc.433/13 Guidelines for Bilateral Border or Neighboring District Integration Agreements
(presented by doctor José Luis Moreno Guerra)

At the 80th regular session of the Inter-American Juridical Committee (Mexico City, March 2012), Dr. Luis Moreno Guerra proposed the addition of a new topic titled "General guidelines for border integration," which would seek to establish national jurisdictions to facilitate border integration and lead in a second stage to sub-national integration, followed by regional integration, and finally, Hemispheric integration.

During the 81st regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August, 2012), the rapporteur on the subject, Dr. Luis Moreno Guerra, presented the first report, document "Border Integration" (CJI/doc.415/12).

Dr. Fabián Novak Talavera provided some examples of how border integration processes are forged. In that context, he asked the rapporteur to describe, in as detailed a manner as possible, those processes that were proving to be successful and to point out the depressed zones on the geographical sidelines. The rapporteur welcomed Dr. Novak's comments and added that the ultimate purpose of his mandate was to propose a legal model or framework to facilitate bilateral integration. Finally, Dr. Novak asked the rapporteur to cite Articles 99 and 100 of the OAS Charter in the section relating to the mandate.

Dr. Fernando Gómez Mont Urueta described the integration dynamics on the Mexican border and suggested that the rapporteur analyze the advantages of integration in light of the pressures exerted by globalization. In addition, he suggested making guiding principles available to States to enable them to pool their efforts in favor of integration. Those principles should acknowledge the problems involved as well as possible remedies for addressing asymmetries and tensions.

Dr. Carlos Mata Prates described some experiences with integration between Uruguay and Brazil and Uruguay and Argentina and invited the rapporteur to produce an initial report focusing on a bilateral framework, and then to move on to more advanced forms of integration.

Dr. Elizabeth Villalta mentioned the efforts of El Salvador and Honduras to facilitate access to property, possession and even nationality of the citizens of both countries, based on their "Convention on Nationality and Acquired Rights."

Dr. Miguel Pichardo noted the usefulness of the rapporteur's document, which could lend support to integration efforts on the border between the Dominican Republic and Haiti. The rapporteur said that the limits to the process were set by the citizens themselves, who generally called for greater progress.

Dr. David Stewart urged the rapporteur first to empirically survey structures already in place, so as to arrive at conclusions regarding them.

The Chairman, Dr. Baena Soares asked the rapporteur to submit a new version, incorporating existing integration efforts, at the next session.

At the 82nd regular session of the Inter-American Juridical Committee, (Rio de Janeiro, Brazil, March 2013), the rapporteur for the issue, Dr. José Luis Moreno, presented a new version of his document, which is entitled "Border integration guidelines," document CJI/doc.426/12 dated October 15, 2012, containing 53 proposals or recommended rules for OAS Member States in their border and neighbor relations.

Dr. Fabián Novak Talavera recommended including only proposals – not their rationale – in the final document. In terms of the title proposed by the rapporteur, he suggested not making any reference to rules but keeping reference to "a guide." With respect to the list of elements, he recommended

starting with the second norm, and not including the first as he thought it was outside the competence of the Committee.

Dr. Carlos Mata Prates endorsed Dr. Novak Talavera's comments. As regards proposal 13, he asked that "non-profit" not to be included, as many organizations with financial and economic interests are actively involved in processes of integration. Finally, he recommended including in proposal 17 current rules regarding the Law of the Sea.

The Chairman, Dr. João Clemente Baena Soares, urged the rapporteur to respect two concepts: balance and agility in order to facilitate integration, to avoid overly bureaucratic structures leaving most of the responsibility to the Executive Secretary, who should be someone of the highest rank to be able to organize the issue in his or her country. He also endorsed the comments made by those who preceded him.

Dr. Elizabeth Villalta Vizcarra asked the rapporteur about the relationship between the national transborder commissions and this "Neighborhood Commission." Dr. Gélin Imanès Collot suggested allowing for local institutions in rule No. 20.

The rapporteur agreed with Dr. Fabián Novak Talavera's suggestion to leave the title as "general guidelines" and for the first proposal to be discarded as it was not a rule *per se*. He also remarked that this document refers to integration among neighboring and border countries and was not seeking to interfere in territorial dispute resolution and should therefore be distinguished from border commissions. He explained that there was no intention to set up any bureaucratic body even though these first twenty rules describe entities involved in planning and organizing meetings of the commissions. There is no intention to increase the budget of States, since the Foreign Ministry officials themselves would carry out those responsibilities. It is therefore proposed that officers be distributed among the countries for roles to be shared. The host country should assume responsibility for rapporteurships. In terms of rule 13, the rapporteur expressed concern about private enterprise; and regarding rule no. 14, he explained that the adoption of regulations would be subject to consent by the parties. Finally, he welcomed Dr. Gélin Imanès Collot's proposal on local institutions.

In the new round of comments, Dr. Freddy Castillo Castellanos urged the rapporteur to include a reference to culture and an explanatory note on cases involving more than two borders. In that regard, the rapporteur explained that in such cases countries already have bilateral committees in place. Dr. Fabián Novak Talavera asked the rapporteur about the consequences of setting tariffs (in a number of areas in which a private company, not the State, determines the tariff) or the free circulation of currency or freedom from customs in border zones (rules 20, 32, and 33). He also asked for clarification of the reference to "undesirable" in proposal 20, and questioned the relevance of rules on extradition or the need to eliminate fixed checkpoints or to enable border crossings. He also suggested the rapporteur establish certain exceptions to rule 29, and the rapporteur agreed he would. He proposed rule 30 to be discarded, keeping rule 39 instead. Dr. Carlos Mata Prates, meanwhile, identified certain cases that exceeded what he wanted to do with this Committee – cases on which states were already working, notably those relating to the issue of extradition, search, and arrest and recognition of foreign judgments (proposals 22 and 23).

The rapporteur explained that the issue of standardized domestic tariffs has facilitated flow and therefore income. He suggested further that integration rules emphasizing safety, control, and surveillance should help the parties in cases in where there are no legal instruments on the subject matter or the parties have not ratified it. He explained that the parties will adopt this instrument as a bilateral agreement in which all commitments would be subject to a treaty. He added that mobile stations should be viewed as a solution to fixed checkpoints where there is much corruption as an effort to allow household goods to pass free. Under rule 30, the purpose of working together is to avoid sponsorships.

In the comments section, the rapporteur proposed a new title: Guide for concluding border integration or neighborhood agreements. Dr. David P. Stewart observed that there may be resistance in some cases, considering that it would have an impact on territorial sovereignty. He proposed separating

the more easily acceptable rules from the more difficult ones, these latter possibly subject to a treaty. Reorganizing the document could avoid getting into more complex issues such as tariffs or uniform currency. Dr. Miguel Anibal Pichardo welcomed the news of certain proposals, noting that in some cases States were already working bilaterally. This would allow the states to be able to endorse it fully or in part. Dr. Carlos Mata Prates endorsed Dr. David P. Stewart's proposal. He noted the complexity of certain issues beyond strictly transborder issues, such as recognition of Professional diplomas and certificates in the integration process under proposal 40. Committee Chairman Dr. João Clemente Baena Soares agreed as well with the working methods proposed by Dr. David P. Stewart and with the title suggested by Dr. Anibal Pichardo. He felt that proposal 40 could give rise to a very dangerous situation, and could even become a source of discrimination by establishing different typologies in terms of education within a country. This view was shared by Dr. Freddy Castillo Castellanos, Dr. Elizabeth Villalta, and Dr. Gélin Imanès Collot.

With respect to rule 40, the rapporteur expressed concern about the situation of non-recognition of qualifications for individuals studying at bordering universities and schools who, because of work, must operate in the neighboring country. The rapporteur did not feel this was to the detriment of the rest of the country but rather was a benefit for those living at borders. This instrument should serve as a point of reference for negotiation between and among neighboring states. Regarding social security, recognition of services must be mutual just as with banking transactions between states. Finally, in keeping with Dr. Aníbal Pichardo's proposal, he proposed removing the reference to Olympics and delimiting the scope of activity of proposal 40.

The Chairman asked the rapporteur to make the requested changes and to submit an amended version at the Committee's next working session in August.

On May 5, 2013, the rapporteur for the topic presented a new proposal, "Guidelines for bilateral border neighboring district integration agreements" document CJI/doc.433/13.

At the 83rd regular session of the Inter-American Juridical Committee, (Rio de Janeiro, Brazil, August 2013), the rapporteur for the issue, Dr. José Luis Moreno, provided background information and the status of amendments to the document that had been presented previously. Indicated that it included the remarks made by members. As for the formalities, the rapporteur verified that activities involving border integration should be seen a kind of follow-up and support work, as there is no intention of becoming an international organization, thus, it should refrain from imposing any public obligation for any player. As regards the topic of repatriation of nationals, the norms proposed would be seen as complementary. Regarding progressive measures to be implemented by States, it indicated that they can go beyond the limits established in the guidelines.

David P. Stewart stated that in order for the ensuing formula to act as a guideline, some expressions should be rewritten to sound less imposing, in the form of recommendations rather than requirements. He illustrated his comments mentioning point 32 on waiving customs duties, which would oblige many States to make changes to their legislations. On the theme of repatriation, he said that it will be necessary to bear in mind the legal obligations of the States, or those related to points 21 and 24.

Dr. Elizabeth Villalta referred to the Inter-American Convention on Serving Criminal Sentences Abroad, she stated that some people may not want to return to their countries to serve their sentences, and that this wish should be taken into account.

Dr. Fabián Novak Talavera, like his colleagues, asked the rapporteur to amend the wording of the paragraphs to make them optional as opposed to mandatory. He described in particular to the provisions on tax exemptions, the issue of domestic tariffs, etc. He proposed joining standards 26 and 27, urging that the rapporteur “take into account, for that purpose, the steps put in place by the parties.” He also requested an explanation of standard 50. In this respect, the rapporteur explained that the mention of alternative ports and airports on borders referred to facilities with the same use located in border areas. This situation would allow infrastructure to be optimized to mutual benefit. In the case of

standard 51, he suggested replacing “divided by the border” with “in border areas,” which the rapporteur accepted.

Drs. Freddy Castillo Castellanos and Miguel Pichardo Olivier also requested the rapporteur to alter the imperative tone of the draft. In the case of standard 40, Dr. Castillo invited the rapporteur to include transborder integration as an education matter, a suggestion that the rapporteur accepted, noting that it was in the interests of the entire population, not just those who live in border areas. In the case of standard 50, he suggested that the expression “common use” be used. However, the rapporteur explained that the expression “alternative airport” was the correct technical term. For his part, Dr. Pichardo supported the changes proposed by Dr. Novak in standards 26 and 27. He requested an explanation of the expression “fixed roadside checkpoints” in standard 25. The rapporteur explained that such checkpoints were bottlenecks and that the idea was to change them in order to make them more efficient without getting rid of control altogether.

The Chairman invited the rapporteur to work on his document in light of the proposed changes and suggestions.

On August 9, 2013, by Resolution CJI/doc.439/13 it was decided to include the report on the agenda for the next session with a view to its final discussion and consideration by the plenary, and that it should take into account the changes in the form proposed by Dr. David P. Stewart.

The text of José Luis Moreno Guerra’s document is as follows:

CJI/doc.433/13

GUIDELINES FOR BILATERAL BORDER OR NEIGHBORING DISTRICT INTEGRATION AGREEMENTS

(presented by Dr. José Luis Moreno Guerra)

1. Mandate

The Inter-American Juridical Committee decided by consensus at its meeting held on March 9, 2012, during its 80th regular session, to include the Guidelines for border integration on the agenda for its next session, under the powers vested in it by Articles 99 and 100 of the Charter of the Organization of American States and by Article 12.c of its Statutes, with a view to subsequently developing a model binational treaty on the subject. At that same meeting, a rapporteur was appointed to submit a preliminary document to the Committee for analysis and debate.

The Rapporteur prepared that report and, in May 2012, sent it to the Committee Secretariat for translation into English and distribution to all the members as far in advance of the session as possible (CJI/doc.415/12).

The aforementioned report was taken up and analyzed at the Committee's 81st regular session, which began in Rio de Janeiro on Monday, August 6, 2012. The Rapporteur took that opportunity to expand on and specify the contents of the report. Given the importance of the subject matter and the interest it aroused, the Rapporteur was asked to present it as a set of "Standards Recommended to OAS Member States with respect to their Border or Neighboring District Relations."

The new document (CJI/doc.426/12) was analyzed during the 82nd regular session, held in Rio de Janeiro from March 11 to 15, 2013, at which the standards were accepted, with the following recommendations:

a) That the document be called "Guidelines for Binational Border or Neighboring District Integration Agreements";

b) That the preambular paragraphs be eliminated or moved to an annex to be consulted regarding the sense and scope of each standards; and

c) That Standard No. 1 be deleted given that is actually a recommendation.

2. Proposal

Based on the above mentioned, the standards to serve as "Guidelines for Binational Border or Neighboring District Integration Agreements" will be presented for consideration by the Plenary of the Inter-American Juridical Committee at its 83rd regular session, to be held in Rio de Janeiro, starting on Monday, August 5, 2013.

Standard No. 1

In order to manager border integration, States will establish one Neighborhood Commission for each country on its borders.

Standard No. 2

The Neighborhood Commission will function as a coordination, support, and follow-up mechanism. It will be the primary source proposing of texts treaty and binational regulations and it will be responsible for preparing border integration plans, projects, and actions to be submitted to the two governments.

Standard No. 3

The Neighborhood Commission will comprise the two national sub-committees.

Standard No. 4

The States shall agree on an equal number of members on their respective national sub-committees, and those members shall represent identical or equivalent institutions in the two countries.

Standard No. 5

The national subcommittee will be chaired and represented by a member of that country's diplomatic service, who shall be referred to as its Executive Secretary.

Standard No. 6

The Executive Secretary's chief responsibilities will be to negotiate and agree on uniform positions within his or her own country in order to present them to, and negotiate them with, the other party; convene meetings at national headquarters and propose the order of business for those meetings; follow up on commitments undertaken; suggest topics and actions; and disseminate information.

Standard No. 7

The Neighborhood Commission will hold regular and extraordinary meetings at the request of either of the parties, at venues alternating from one side of the border to the other. The meetings will be chaired by the Executive Secretary of the host country, who will present the corresponding report on behalf of the two parties.

Standard No. 8

Each party shall appoint a member of its foreign service to act as "Coordinator" of the national sub-committee. He or she shall be responsible for archive maintenance, distribution of the documents needed for each meeting, management of support personnel and management of the logistics for each meeting.

Standard No. 9

The host country shall appoint, from among their members, a Rapporteur for each meeting of the Neighborhood Commission and the binational committees. His or her job shall be to draw up the minutes of the meeting.

Standard No. 10

The Neighborhood Commission will promote training for instructors in each institution with responsibilities relating to the borders. Their task will be to train new personnel in the new approach to cross-border exchanges, mobility and neighborly relations.

Standard No. 11

The Neighborhood Commission will establish as many temporary or standing "Binational Committees" as are necessary to handle each plan, project, or specific action; the committees will comprise technical staff, experts or executives of each party's official entities, who will answer to their respective Executive Secretary; each committee will he headed by a "Director."

Standard No. 12

The parties may agree to include representatives of local official entities and of relevant private non-profit institutions as members of the binational committees.

Standard No. 13

The Rules of Procedure of the Neighborhood Commission and those of the binational committees, and any future amendments thereof, shall be adopted by common accord of the parties.

Standard No. 14

The geographical area to be managed by the Neighborhood Commission shall be the "Binational or Border Integration Zone." Each party shall notify the other of the list of political districts adjacent to the border that will form part of that zone.

Standard No. 15

The parties may, by common accord, add more and more political districts to the Binational or Border or Binational Integration Zone until they achieve the goal of binational integration.

Standard No. 16

Island states may declare both parties' territory to be a binational integration zone.

Standard No. 17

Nationals of both parties may move around the border or binational integration zone, carrying just their Identification Cards.

Standard No. 18

Plans, projects, and actions to be implemented in the Border or Binational Integration Zone shall require mutual consent, a set of priorities, and respect for the principle of alternation.

Standard No. 19

Through a binational committee, the parties shall conduct ongoing programs reporting on and disseminating plans, projects, and actions undertaken or about to be undertaken in the Border or Binational Integration Zone. Such briefings will target the regional authorities, teachers, leaders, the media, and the general public.

Standard No. 20

Public utilities in the Border or Binational Integration Zone shall be charged at the respective domestic rate, denominated in both currencies.

Standard No. 21

Through a binational "control, security and vigilance" committee, the parties will maintain a continuous flow of information on citizen security, keep track of criminals, persons fleeing justice, and other undesirables, and will warn the other country if they are likely to visit it.

Standard No. 22

Each party undertakes to recognize the judgments handed down by competent authorities of the other party; to repatriate convicts so that they serve out their sentence in their country of origin; and to arrest and surrender to the other party persons it wants to bring to justice.

Standard No. 23

The parties shall pool their efforts and coordinate their actions through a binational committee in order to jointly act against organized crime, terrorism, trafficking in persons, the smuggling of cultural assets and banned products, and money-laundering.

Standard No. 24

The parties shall coordinate joint patrols in the Border or Binational Integration Zone, by land, air, sea, river, and lakes on the border.

Standard No. 25

The parties shall eliminate fixed roadside checkpoints in the border integration zone.

Standard No. 26

The parties shall authorize the border crossing points opened up spontaneously by the inhabitants of the area and shall improve their infrastructure.

Standard No. 27

The border crossing-points authorized by the parties shall be open 24/7 throughout the year. Exceptions must be notified to the other party and agreed upon.

Standard No. 28

Works to be carried out by common consent in the border integration area shall be binational, costs shall be shared proportionally, and international financing negotiations shall be conducted jointly.

Standard No. 29

In executing binational works, attention shall be paid to the principle of alternation, to ensure construction in the territory of both parties.

Standard No 30

In binational works, execution of the different phases or stages will alternate between the parties, subject to the domestic law of the executing party.

Standard No. 31

Both countries' currency will be used and circulate freely in the Border or Binational Integration Zone.

Standard No. 32

The parties undertake to allow trading free of levies, in the Border or Binational Integration Zone, of the so-called "family basket" of staple food products that visitors take back to their countries, in volumes, units, and value amounts determined by standing regulations.

Standard No. 33

The parties shall encourage and support the establishment of binational enterprises in the Border or Binational Integration Zone, in all activities required by the population, especially in regular passenger, tour, and freight transportation. The parties shall agree on tax exemptions and shall avoid double taxation of the binational enterprises established.

Standard No. 34

The competent binational committee shall plan periodic meetings of businessmen from both countries.

Standard No. 35

The parties shall plan and establish premises for open-air markets in the Border or Binational Integration Zone, with alternating and staggered schedules.

Standard No. 36

A binational committee shall be responsible for planning and running trade fairs and expos in the Border or Binational Integration Zone.

Standard No. 37

Each party undertakes to locate, detain, and return vehicles stolen in the territory of the other party.

Standard No. 38

Through a binational committee, the parties shall agree on the establishment in the Border or Binational Integration Zone, of binational schools, colleges, institutes, universities and polytechnic institutes; they shall use the same textbooks and guarantee free access to students of both nationalities.

Standard No. 39

The studies carried out and the certificates, diplomas, and degrees awarded at every level in the Border or Binational Integration Zone shall be officially recognized by both parties.

Standard No. 40

The parties shall agree to train special teachers for the binational educational establishments, and to require them to be bilingual if the languages of the two countries or of the indigenous populations differ.

Standard No. 41

The social security institutions of both parties shall reach agreements, whereby members who move to the neighboring country do not lose contributions and continue to enjoy benefits and services.

Standard No. 42

Through a binational committee, the parties will organize annual programs of cultural, artistic, scientific, and research activities to be conducted in the Border or Binational Integration Zone, with venues alternating from one side of the border to the other.

Standard No. 43

Through a binational committee, the parties shall organize periodic sports competitions, championships, and contests in the Border or Binational Integration Zone, with participants from both countries and in alternating venues.

Standard No. 44

The parties shall establish binational committees for electricity, telephone, postal, internet, fiber optic cable, television and radio signal, and cellular telephony interconnection, so that such services are provided in the Border or Binational Integration Zone at standardized domestic rather than international rates.

Standard No. 45

The parties commit to providing immediate and sufficient help in the event of emergencies or disasters in the Border or Binational Integration Zone and to facilitate the entry of relief teams.

Standard No. 46

The parties shall have a binational committee in place for periodic or standing human, animal, and plant health programs, aimed at preventing epidemics, pandemics, and plagues; for immunization campaigns; to lend assistance to persons with disabilities; for building and equipping health centers and health posts; for accrediting binational medical personnel; and to provide medicine in the Border or Binational Integration Zone.

Standard No. 47

Through a binational mobility and transportation committee, the parties shall simplify and standardize documents in the Border or Binational Integration Zone for air, sea, lake, and overland transportation of passengers, groups of tourists, and freight; they shall standardize or recognize vehicle tag plates, registration certificates, licenses and insurance certificates issued by the other party; and they shall establish timetables, working hours, and uniform rates (based on the domestic, rather than international, rates).

Standard No. 48

The checking of documents for international and regular carriage of passengers, groups of tourists, and freight shall be performed at the place of embarkation and at destination, thereby eliminating border controls.

Standard No. 49

The parties shall plan and build new road axes with the same characteristics on both sides and they shall upgrade existing one.

Standard No. 50

The parties shall declare ports and airports to be "alternatives" to those existing in the Border or Binational Integration Zone; they shall authorize the operation of carriers of both nationalities; and they shall standardize rates (based on domestic, rather than international, rates).

Standard No. 51

The parties shall form a binational committee to address the problem of ethnic groups or minorities divided by the border, with the participation of representatives of those groups and using resources allocated by both governments.

Standard No. 52

All environmental issues in the Border or Binational Integration Zone shall be handled by the parties with the help of a binational committee, particular with respect to binational watersheds, rivers that form borders or continue on the other side, shared lakes and seas, landfills of border populations, natural parks and reserves, protected species, and reforestation programs, as well as other fields.

APPENDIX

GENERAL CONSIDERATIONS REGARDING EACH OF THE PROPOSED STANDARDS

Introduction.

It is a pressing and inescapable duty of governments to eradicate the scourge of hunger, drastically to reduce extreme poverty, and render poverty bearable.

The best way to tackle social vices, swiftly, effectively, and at least its cost, is integration.

Like any construction process, integration needs to go from small to big, not the other way around; that is to say, from the simpler to the more complex, from a smaller to a wider geographical area, from binational integration to that involving multiple Member States.

Border integration shapes and determines all the other forms of geographical integration: binational, subregional, regional and hemispheric.

All the Gordian knots and bottlenecks involved in social conflicts end up at the border.

Border integration is not just a matter of trade and tariffs. It encompasses the whole range of two peoples' needs, without exception.

The objective of any integration is to seek and achieve satisfactory outcomes for the parties, more expeditiously than would be possible on a separate, one-by-one basis.

Economic equality between neighboring states is not a prerequisite for attempting integration. If it were, there would be no integration, because no two states in the world are equal.

Border integration norms are applicable, *mutatis mutandi*, to both countries with active borders and those with depressed border areas, i.e. the great majority.

In most cases, border integration norms are also applicable to island states, which have no overland borders. The "neighborly integration" approach applies, taking the maritime border as the point of reference.

Because of its nature and particular spheres of competence, a Neighborhood Commission does not address matters relating to territorial, maritime, and air space claims, demarcation, boundaries, and related issues.

Regarding Standard No. 1

Experience has shown that for border or binational integration management it is best to establish a "Neighborhood Commission" to eliminate, soften, and overcome the pernicious effects of a border that is traditionally conceived of as an obstacle, wall, fence, or closed door meant to intimidate and punish.

Each state will be on as many "Neighborhood Commissions" as there are states on its overland or maritime borders.

Regarding Standard No. 2

The Neighborhood Commission does not aspire to become an international organization; it does not need either headquarters or a regular staff; it does not replace any existing institution nor does it aspire to do other institutions' jobs for them; it does not require a budget, nor does it need to handle funds; and, finally, it does not turn out to be either a financial burden on the parties or a political booty for either of them.

Regarding Standard No. 3

Each party shall appoint the members of its national sub-committee. There shall be as many sub-committees as there are border or neighboring countries.

Regarding Standard No. 4

Each member of the national sub-committee shall represent the official entity concerned.

It is important that there be parity in the number of members of each national sub-committee.

The official entity whose representatives sit on the Neighborhood Commission shall be of the same or equivalent kind as the entity of the other party.

The remuneration, fares, and expenses of the members of the Neighborhood Commission shall be paid by the official entities they pertain to.

Regarding Standard No. 5

Inasmuch as the integration process involves international management and representation of the State, each national sub-committee shall be chaired by a Foreign Service officer of his or her country, who shall be referred to as Secretary General, which does not imply a post or entail financial remuneration, because both remuneration and the payment of expenses are incumbent upon the institution to which she or he pertains.

Regarding Standard No. 6

The Executive Secretary of each sub-committee shall be the chief negotiator at the domestic level with the various official entities and private institutions participating; he or she shall also be responsible for negotiating with the counterparty; convening national and binational meetings, workshops, and seminars; being the principal source of initiatives; and following up on commitments undertaken.

Regarding Standard No. 7

The Neighborhood Commission shall function continuously, with the venues for its regular meetings alternating between the territories of the two parties.

Alternation is a principle applied to all border or binational integration activities and consists of successive meetings being held -- and works and actions being executed -- on different sides of the border.

At each meeting, the Executive Secretary of the host country will present the report on behalf of both parties.

Regarding Standard No. 8

Each national subcommittee shall appoint a Coordinator from among its Foreign Service officers, who shall be indispensable for the successful outcome of each meeting. The term "Coordinator" is descriptive; it does not imply the existence of a position.

Regarding Standard No. 9

At each meeting of the Neighborhood Commission and of the Binational Committees, a Rapporteur responsible for drawing up the minutes shall be appointed. That appointment should be made by the host country, with the appointee being one of its committee members. Like "Coordinator," the term "Rapporteur" does not denote a remunerated position.

The Binational Committees shall comprise staff from the official competent authorities on the subject, which shall be responsible for paying their salaries, fares, and per diem expenses, given that the Neighborhood Commission has no payroll of its own.

Regarding Standard No. 10

The innovative border integration process involves altering the behavior and habits of border personnel and adapting to new approaches. Because police, army, migration, immigration, customs, health and other personnel on duty at the border rotate frequently, it is impossible to provide ongoing training for an indefinite period of time. Such training will therefore be entrusted to each institution's instructors.

Regarding Standard No. 11

It will be up to the Neighborhood Commission to establish, alter, and terminate binational committees.

The binational committee meetings will be held at alternating venues, preferably in towns or other places related to the topics at hand.

Regarding Standard No. 12

Local official entities and private nonprofit institutions may participate in, collaborate with, and support binational committees related to issues they handle.

Regarding Standard No. 13

The parties shall adopt General Rules of Procedure to govern the activities of the Neighborhood Commission, as well as individual Rules of Procedure for each of the binational committees.

Regarding Standard No. 14

Border integration shall take place in the geographical area known as the "Border or Binational Integration Zone," comprised of the provinces, departments, municipalities, states or otherwise denominated political districts on the border.

One country's integration zone districts do not necessarily have to equal the other party's, in terms of either area or population size, although a certain balance will be sought.

Regarding Standard No. 15

Experience has shown that successful border integration processes arouse interest in national political districts not initially included. They will exert pressure to become part of the process and their petitions should be granted in the interest of both sides.

The development and expansion of the Border or Binational Integration Zone will culminate with the inclusion of each party's entire territory and the achievement of binational integration.

Regarding Standard No. 16

Island states may and must benefit from expedited border integration mechanism, taking advantage of the fact that they have a maritime, rather than a land border.

Regarding Standard No. 17

The chief beneficiary of any integration process is the individual: the subject and object of any juridical construct.

To facilitate exchange, mobility, trade, services and tourism in the border integration or binational zone, passports, visas, military service Identity Cards, police certificates and the other paraphernalia usually required for international travel should be done away with. Visitors shall simply carry their Identity Cards with them.

National filters or screening shall be moved to the outer confines of the border integration zone.

Regarding Standard No. 18

Every year, the Neighborhood Commission shall approve the plans, projects, and actions to be implemented in the Border or Binational Integration Zone; monitor compliance and shortcomings; and apply corrective measures.

Regarding Standard No. 19

Border or binational integration must be broad and all its actors and beneficiaries must be sufficiently familiar and in agreement with it in order to preempt unnecessary or predictable resistance to it; especially on the part of official institutions, such as customs, the armed forces, police, migration, immigration, and other authorities accustomed to a closed border approach.

It will also be essential to inform and persuade the vested interests that have exploited enclaves and established *de facto* monopolies exclusively for their own gain-- especially in freight and passenger land transportation services --of the obvious advantages of border integration.

Regarding Standard No. 20

The parties shall standardize rates charged for public utilities in the Border or Binational Integration Zone, and use the currency denominations of both countries to express them, while continuing to be guided by a "domestic rate" criterion.

Regarding Standard No. 21

Apart from being ineffective, the treatment regularly delivered by officials to visitors from neighboring countries, as if they were all criminals, is humiliating and likely to make them want to stay away. A more intelligent and practical approach is to keep track of persons wanted by the justice system and warn the neighboring country of a pending visit by them.

Regarding Standard No. 22

Collaboration and assistance in judicial matters cannot be left up to the good will of the judiciaries. Rather, it must be an obligation expressly entered into by the parties, in order to avoid pretexts for rejecting or discriminating against the inhabitants of the neighboring country.

One initiative that is easily implemented and effective in the rehabilitation of convicted persons is to agree to their being transferred to penitentiaries in their country and close to where they live: it is more expeditious for evidence to travel from one country to another than it is for the distressed family members of the detainee.

Regarding Standard No. 23

Borders are favorite areas for organized criminal activities, mafias, terrorism, and illegal trafficking. Therefore, the parties need to coordinate full-time in order to counter those activities, dismantle them, and discourage their presence.

Regarding Standard No. 24

Border patrols, which are indispensable, will be more effective if they are joint, that is to say, if they comprise personnel from both parties. That will also introduce an element of self-supervision and diminish cases of misuse of authority.

Regarding Standard No. 25

Fixed checkpoints on highways slow down traffic, encourage corruption, and are ineffective, because those who want to elude them know where they can do so.

The authorities will be able to set up mobile and random checkpoints.

Regarding Standard No. 26

For every official crossing point there are several clandestine paths built by locals with their own resources to access adjoining settlements and sell their products.

Such cross-over points should be legalized and their infrastructure improved.

Regarding Standard No. 27

Restricted opening hours at border cross-over points hamper traffic and trade and are a source of corruption.

The idea is for official border crossing points to operate 24/7 throughout the year.

Regarding Standard No. 28

In principle, all works to be carried out in the border integration area will be "binational" in order to avoid duplication and ensure that they are complementary; in order to ensure that they are open for the use and enjoyment of the inhabitants of both sides of the border; in order to maintain uniform technical standards, to save money; to cater better, and as a matter of priority, to the pressing needs of marginal and marginalized population groups; and in order to take advantage of international financing facilities.

Regarding Standard No. 29

Binational works in the border integration area shall be carried out with a view to alternation and complementarity. That is to say: if a construction job is completed in one party's territory, the next one will be in the other party's territory; and if a hospital or university in one of the parties specializes in certain areas, those of the other party will specialize in different one and, where possible, complementary areas.

The main binational works possible in this scenario include, for instance, ports, airports, arterial highways, international bridges, silos, underwater cables, universities, schools, hospitals, and health centers.

Regarding Standard No. 30

Another reason for alternation in the execution of binational works is so that tasks and responsibilities can be shared. It will also ensure that each party's law is applied in turn, given that both legal systems cannot be applied at the same time to the same work.

In a binational work, if one party was entrusted with the design, the bidding will be done by the other; if the former will be in charge of construction, the latter will supervise.

Regarding Standard No. 31

A major factor in the day-to-day life of the inhabitants of a border integration area will be freedom to use either party's currency.

Regarding Standard No. 32

Ever since people were cruelly divided by borders, small-scale smuggling of low-cost products from one country to another in which they are either scarce or non-existent has been one way in which the inhabitants of border zones have earned a living or improved their standard of living. Economically, such petty smuggling has an insignificant impact on tax revenue and should definitely be legalized, using a "family basket" criterion.

Regarding Standard No. 33

An effective mechanism for overcoming friction and mistrust between business associations in neighboring countries is helping them to partner in joint enterprises with a high likelihood of increasing profits and broadening the scope of their activities.

As an incentive for binational enterprises, the parties shall eliminate double taxation and allow equipment, machinery, and implements to be imported tax-free.

Regarding Standard No. 34

Private enterprise is called upon to play an active part in the integration process by initiating rapprochements with peers in the neighboring country, arranging meetings, and reaching mutually beneficial understandings.

Regarding Standard No. 35

Open-air markets are an expeditious mechanism for settlers to obtain food and staple products and for producers to sell their wares.

The parties shall provide premises and shall establish schedules of weekly markets on different days in cities and settlements in the border integration zones, with the participation and consent of the inhabitants.

Regarding Standard No. 36

The parties shall draw up an annual calendar of multiple or specialized fairs and expos at alternating venues in cities in the zone, to attract entrepreneurs, industry leaders, importers, exporters, suppliers, investors, producers, and the general public. These border fairs will provide a welcome opportunity to introduce folk groups, artists, musicians, singers, orchestras, theatrical works, and other cultural events inside and outside the zone.

Regarding Standard No. 37

One current blight is vehicle theft, with the stolen cars being sold across the border. This is a matter that merits joint and resolute action.

Regarding Standard No. 38

The fact that the local population inevitably moves back and forth over the border, for varying periods of time, complicates and impairs the education of the children, due to discrimination in enrollment and unwillingness to recognize studies, grades, diplomas, and degrees.

One very efficient move to strengthen integration will be to enable children to start or continue their studies in any educational establishment in the border integration zone, regardless of nationality.

Regarding Standard No. 39

One party's refusal to recognize the studies, diplomas, and degrees awarded by the other is not just a waste of money, it also seems totally illogical.

Regarding Standard No. 40

Educational integration will mean that binational and, where necessary, bilingual teachers will have to be trained.

Regarding Standard No. 41

When a worker moves to a neighboring country, the change of address in practice entails losing his status as a member of the social security system and an interruption of contributions, with obvious negative consequences.

Regarding Standard No. 42

Particular heed shall be paid to culture in the border integration area, where the parties should strengthen it, preserve values, foster talent, and encourage research.

Regarding Standard No. 43

It has rightly been said that sport brings peoples together and, apart from being a source of entertainment, constitutes a major factor in the physical and mental health of the population.

Regarding Standard No. 44

Interconnection of utility services in the Border or Binational Integration Zone will help bring together scattered areas on either side of the border and substantially improve the quality of life of those living in border areas.

Regarding Standard No. 45

The parties shall be duty-bound to show solidarity in times of disaster or risk.

Regarding Standard No. 46

Disease respects no borders, so that it would be pointless and wasteful for a country to conduct health campaigns only so far as the border with its neighbor, when sources of infection may be just a meter away.

It is important that the parties pool their resources, cover the border with health centers and health posts, manned by professionals of both nationalities, and facilitate the provision of generic medicines.

Regarding Standard No. 47

Getting rid of red tape, eliminating unnecessary requirements, adopting the same formats, and recognizing the validity of each other's documents all greatly facilitate transportation, mobility and exchange.

Regarding Standard No. 48

The controls needed for the international carriage of passengers, groups of tourists, and freight should be carried out at the beginning and end of their journeys. They should be eliminated at the border where they are unnecessary, hamper traffic, and foster corruption.

Regarding Standard No. 49

Binational road axes are the stitches that join the loose parts of the same blanket, bring an end to the isolation of peoples, shorten distances, streamline trade, generate employment, and significantly improve the quality of life. Major road axes can and should be built as binational projects.

Regarding Standard No. 50

One way to optimize the use of border or neighboring ports and airports is to make them "alternative" in the sense that they can be used by ships and planes of both countries, with the other side's being accorded the same treatment as domestic carriers.

Regarding Standard No. 51

The parties have an obligation to repair the damage done to indigenous populations and ethnic minorities by the division caused by the border.

Regarding Standard No. 52

Environmental issues are very important given their impact on the two neighboring countries that have different regulations; all projects to be executed in the Border or Binational Integration Zone must be screened by the binational technical committee in order to examine their usefulness, priority, location, characteristics, adverse effects, and remedies.

* * *

4. Inter-American legal cooperation

Document

CJI/doc.428/13 rev.1	Report from Inter-American Juridical Committee. Inter-American Judicial Cooperation

During the 81st regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August, 2012), the Committee agreed to establish a rapporteurship on Inter-American Judicial Cooperation in the context of its discussions on private international law.

This initiative is aimed at disseminating knowledge of the provisions of Private International Law through cooperation networks among judges, operators, and experts, given the exponential increase in judgments and existing *lacunae*.

The Committee asked Dr. Fernando Gómez Mont Urueta and Dr. Elizabeth Villalta to participate as co-rapporteurs and to present a proposal at the next session of the Committee.

At the 82nd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2013), the co-rapporteur for the topic, Elizabeth Villalta Vizcarra, presented document CJI/doc.428/13, dated February 18, 2013. This document contains general reflections on International Judicial Cooperation mechanisms, including issues related to the central authorities, international and Inter-American judicial cooperation within the framework of integration processes and the Inter-American Specialized Conferences on Private International Law (CIDIP).

Among her conclusions, co-rapporteur for the topic Elizabeth Villalta Vizcarra expressed the view that International Judicial Cooperation can address the significant increase in international proceedings and the development of international criminal networks. In this context, she urged states to remove unnecessary barriers; harmonize procedures and laws; pursue greater coordination and training among central authorities and other authorities responsible for International Judicial Cooperation. Finally, she suggested that new International Judicial Cooperation mechanisms be adopted to address to 21st century realities.

Commending co-rapporteur Elizabeth Villalta's document, Dr. Fabián Novak Talavera thanked her for it, noting it sheds light on the State of affairs with cooperation in the Hemisphere. He noted that there were cooperation networks within the OAS, for Criminal Law as well as Family and Child Law. In that regard, he asked the other members about the importance of the Committee's work in this area.

Dr. David P. Stewart thanked co-rapporteur Elizabeth Villalta Vizcarra for the in-depth treatment her document gives to the issue of cooperation in Private and Criminal Law. He expressed the view that the Committee should be engaged on the issue and should facilitate implementation of a new CIDIP, if possible. Another approach would be to identify whether there is room for a new initiative or a new convention, or to improve on what already exists. A third option would be to see how the Committee's work relates to what is being done by other organizations specializing in this area. If something is already in place at the international level, it would be useful to work on something for the Americas. He also proposed giving thought to drafting a new Bustamante Code. Finally, he said it was important to separate criminal matters from those dealing with Private International Law.

Committee Chairman João Clemente Baena Soares, asked the rapporteur about the new mechanisms cited in her oral presentation. On this matter, the co-rapporteur spoke about the OAS' new International Judicial Cooperation networks, and the importance of the effort to promote information so that national authorities engaged in the issue can be better informed. She said that there were already developments in the area of mutual legal assistance in criminal matters and extradition and called for efforts on civil and commercial matters in the light of new developments such as free trade agreements, recognition of foreign judgments arising from arbitration proceedings and even migration movements.

Dr. Gélin Imanès Collot urged the rapporteur to take into account the differences in regimes in the Hemisphere, where Civil Law and Common Law coexist. He mentioned as well the Hague

Cconventions on cooperation and asked the rapporteur about the issue of organized crime. Co-rapporteur Elizabeth Villalta Vizcarra explained that she did not intend to describe each country's system, but rather to demonstrate how the model laws have evolved since the Common Law countries joined the OAS. She explained that the CIDIP system has had more Common Law incorporated, beginning with CIDIP-VI, when model laws began to appear. She felt that CIDIP should be kept and strengthened as a forum for codifying, given that it is a natural process for the OAS Member States. In relation to transnational organized crime, the co-rapporteur explained that the aim was not to eradicate the crimes, but to train justice officials and to promote existing tools in this field. National bureaucracy can have a harmful effect on crime-fighting when individuals are not familiar with the cooperation mechanisms.

Dr. Miguel Pichardo Olivier proposed asking the other co-rapporteur for the topic, Dr. Fernando Gómez Mont Urueta, about his intention to continue discussion on this topic.

The Chairman endorsed Dr. Pichardo Olivie's proposal to share this document with co-rapporteur Gómez Mont Urueta, and to wait until the next session, in August, to follow up on the issue.

Dr. Elizabeth Villalta, one of the rapporteurs for the topic, provided an explanation on the document she had presented during the 82nd regular session in March 2013. She mentioned the wish to have a clear, easy, efficient and effective search conducted by central authorities. In this context, the training of judges, justice operators and staff seems crucial. She also mentioned the obligations that prevail in the civil, criminal and commercial spheres, which demand redoubled efforts for the dissemination of information. She highlighted the existence of the OAS judicial-cooperation assistance networks (such as the family and childhood network and the criminal mutual-assistance network) and spoke on the urgent need to feed these networks in order to avoid impunity. Among her recommendations she underlined the need to train State agents in general, so that they become well acquainted with international agreements and with already developed mechanisms.

Dr. Fernando Gómez Mont Urueta apologized for his omission regarding this topic. He reported that after the visit of Prof. Adriana Dreyzin de Klor, from the National University of Cordoba, a mandate was defined involving a study whose discussion is still ongoing even after Dr. Villalta´s presentation. Accordingly, the report presented would comprise information on the current legal framework, without a diagnosis of the operationality of the different instruments and their deficiencies.

Dr. Fabián Novak Talavera noted the difficulties entailed in conducting a review of the judicial reality in the countries of the Hemisphere in order to make a diagnostic assessment. In this regard he suggested discontinuing the task, which had originated in the Committee as opposed to being mandated by the States. Dr. Fernando Gómez Mont Urueta observed that the document presented by Dr. Villalta indeed reflects the reality; it is therefore necessary to identify a problem and then look for specific solutions. However, he agreed with Dr. Novak, that the topic should be closed.

Dr. José Luis Moreno proposed that a cooperation instrument be drafted to fill the empty spaces created by the Hemisphere’s legal needs. In this regard, Dr. Dante Negro explained that there were a number of conventions on cooperation in the Inter-American system. Thus, the problem was not a lack of norms, but of the need for states to ratify and accede to those instruments. The difficulties with regard to states that were already parties had to do with efforts to stimulate the flow of cooperation.

Dr. Gélin Collot proposed taking up a review study of the Bustamante Code in view of the relevance of the topics addressed.

Dr. Fabián Novak Talavera observed that cooperation may in fact be slow and even lack efficiency, so this involves an important thematic area. However, the difficulties encountered in following up its current format represent certain challenges.

The Chairman then proposed the presentation before the Assembly General of the study conducted by Dr. Villalta and the comments made by Dr. Gómez Mont.

The mentioned report follows:

CJI/doc.428/13 rev.1

REPORT FROM THE INTER-AMERICAN JURIDICAL COMMITTEE.
INTER-AMERICAN JUDICIAL COOPERATION

I. MANDATE

At its 81st regular session, held in Rio de Janeiro, Brazil, from August 6 to 11, 2012, the Inter-American Juridical Committee decided that Inter-American Judicial Cooperation would be item 6 on the agenda for its 82nd regular session, to be held in Rio de Janeiro, Brazil, from March 11 to 15, 2013. It designated as rapporteurs for the topic Dr. Fernando Gómez Mont Urueta and Dr. Ana Elizabeth Villalta Vizcarra.

Thus the following report's submitted.

II. REPORT

This report is divided into various sections, dealing with how the concept of International Judicial Cooperation arose, then focusing on Inter-American Judicial Cooperation and its growing necessity in the region.

SUMMARY: a) General remarks; b) Mechanisms of International Judicial Cooperation and Central Authorities; c) International and Inter-American Judicial Cooperation and Integration Processes; d) The Inter-American Specialized Conferences on Private International Law (CIDIP's) and Inter-American Judicial Cooperation, and e) Conclusions.

a) General remarks

The endless movement of goods and people, the gradual liberalization of commerce, the increase in litigation before the courts, and other factors that bring foreign elements into the processes create a need for Judicial Procedural Cooperation at the international level.

Judges have found in these cases that, in order for justice to be served, they must request assistance from their counterparts in other countries -in other words, international assistance in processing subpoenas abroad; serving notices of procedural actions to the parties; implementing precautionary measures; legalizations; the taking of evidence abroad (including documentary evidence, testimony, statements by the parties, expert evidence, etc.), and applying verdicts, other judicial decisions, and arbitral awards abroad.

Consequently, International Procedural Law has become a component of Private International Law that settles conflicts of procedural law. Professor José Luis Siqueiros has defined international Procedural Cooperation as follows: "It is a part of International Procedural Law, which, in turn, is an important and complementary branch of Private International Law. It contains rules on jurisdiction and competence and on the solidarity and assistance rendered mutually by courts of various countries in the administration of justice."

Today, International Judicial Cooperation is often called: International Procedural Cooperation, International Juridical and Judicial Cooperation, International Judicial Cooperation, International Juridical Assistance, and Mutual Judicial Assistance, among other names. In this report, we will refer to International Judicial Cooperation and Inter-American Judicial Cooperation.

It has been said that the world is becoming smaller and more globalized every day, with the intensification of communications and integration processes. This generates increased movement of persons and therefore an increase in juridical matters that may have cross-border aspects, making new solutions in the context of International Judicial Cooperation necessary.

The development of all means of international communications contributes to the free circulation of goods and people; increased international business conducted remotely without requiring the parties to travel; rapid evolution of integration processes, and growing economies and globalization. Increased dealings between individuals of different countries have increased

International Judicial Cooperation. Today, International Judicial Cooperation is based on practice generally accepted by the States and on the duty to provide international juridical assistance.

Today's integration processes must include, as a main agenda item, International Judicial Cooperation mechanisms to provide appropriate juridical certainty. International Judicial Cooperation has become essential to the rule of law, to the protection of the rights and interests of individuals, and to achieving harmony and respect for values in societies. Strengthening International Judicial Cooperation and making it more agile and effectively strengthens trade relations, exchange, and international business.

Reality has shown us that, in globalization, the more international trade grows and develops, the more conflicts of an international nature arise among persons of different countries. This poses a challenge to integration arrangements, which must respect and guarantee civil, political, social, economic, cultural, and ecological rights.

An integration process, in order to be built on juridical certainty, must have a suitable system of judicial cooperation among Member States. International Judicial Cooperation thus becomes essential not only to markets but also to the protection of individual rights.

In the beginning, International Judicial Cooperation was based on Mutual Assistance, which was based solely on the principle of reciprocity. Today, globalization and internationalization in the lives of individuals require states to agree on mechanisms to protect the rights and interests of individuals in private situations of an international nature.[1]

It is necessary to strengthen and facilitate International Judicial Cooperation, removing unnecessary barriers and obstacles, gradually harmonizing procedures and law through increased cooperation among the central authorities, competent authorities, and operators charged with conducting International Judicial Cooperation, making the best use of new technologies, and thus building information mechanisms, databases, and Mutual Judicial Assistance Networks to expedite those processes and make International Judicial Cooperation more efficient, expeditious and effective.

International Judicial Cooperation consists of any activity intended to facilitate the jurisdictional exercise of foreign justice at all levels. The general basic principles underlying International Judicial Cooperation include usefulness; international courtesy (comitas gentium); reciprocity; equity, and justice. Today, International Judicial Cooperation is based on two principles accepted by the international juridical community: the juridical equality of legal systems of states; and good faith in administrative and judicial actions among states.

In this globalized world, International Judicial Cooperation has become one of the most effective and necessary tools for fighting transnational organized crime and for any judicial assistance activity arising from the continuous daily transit of persons between states. This has caused it to evolve and incorporate new structures and mechanisms of International Judicial Cooperation that facilitate the application of existing International Instruments on International Judicial Cooperation, in order to improve, simplify and expedite it.

As for International Judicial Cooperation in criminal matters, we should bear in mind that International Criminal Law consists of the body of juridical provisions that determine under what conditions states must render mutual assistance in the administration of justice. Such cooperation arises because, while a society protects itself against crime mostly within certain boundaries (the territorial principle), crime knows no borders and spreads among countries.

International Judicial Cooperation in criminal matters can be defined as a set of actions of a jurisdictional, diplomatic, or administrative nature that involves two or more states and are intended to investigate and solve a crime that has taken place within the territory of at least one of those states.

Therefore, International Judicial Cooperation is based on the fight against organized crime. States must cooperate so that criminals may not find impunity in one country while accused by another country. International Judicial Assistance requires greater speed in pursuing and

1. FERNÁNDEZ ARROYO, D. P. **Derecho internacional privado.** Córdoba: Advocatus, 1998.

prosecuting the perpetrators of offenses defined in the criminal codes of the various international legislative bodies.

International Judicial Cooperation is now growing with the evolution of communications and increased liberalization of borders. This has generated a notable increase in Private International Law cases involving international trade and transportation, families, minors, support payments, the international removal of minors, etc.[2]

There is a growing number of cases involving divorcing spouses living in different countries, the recognition of children, claims for support payments among parties living in different jurisdictions, petitions for the international return or removal of minors, and litigation on international hiring, among others.

In the American Hemisphere, this has caused a significant increase in letters requisitorial or rogatory, as well as the recognition of foreign judgments or arbitral awards, increasing the International Judicial Cooperation workload of central authorities.

Today it is normal to perform procedures abroad, such as issuing notices and summonses, arranging for a precautionary measure abroad, or enforcing a judgment in another country. Thus the need for ever more agile and effective International Judicial Assistance to keep borders from becoming obstacles to the administration of justice when they should become agile and flexible.

In the criminal arena, fighting all forms of crime requires juridical tools that strengthen International Judicial Cooperation to facilitate Mutual Legal Assistance in connection with investigations, trials, and judicial actions, given the growth in transnational organized crime, which has devised ever more sophisticated ways to evade justice.

It is necessary to strengthen national systems of justice and International Judicial Cooperation so as to effectively fight crimes such as drug trafficking, money laundering, corruption, terrorism, arms trafficking, human trafficking, and crimes against humanity, among others. We must remember that crime today is international and knows no boundaries.

International Judicial Cooperation is collaboration or Mutual Legal Assistance among States for the purpose of performing the necessary procedures to execute a procedure in the territory of another state.

Cooperation may involve a large number of measures, such as information exchange; judicial actions; location and identification of persons and property; the taking of evidence from or questioning of defendants, witnesses, or experts; the transfer of detained persons to give evidence in another country, and the attachment, seizure, or forfeiture of goods, among others.

International Judicial Cooperation is based preferentially on bilateral or multilateral International Instruments and, in their absence, requires application of the principles of judicial cooperation, the domestic law of the requested state, and, in particular, the principle of reciprocity.

The development of law and of International Judicial Cooperation is necessary to facilitate and strengthen integration processes, since the growing economic integration of States, the need to preserve a sustainable environment, progress in telecommunications, science, and technology, mass migration, and the combined war against drug trafficking, corruption, terrorism, arms trafficking, human trafficking, and organized crime in general have created the necessary conditions for increased cooperation among states.

International Judicial Cooperation has become, in the era of globalization, one of the most effective and necessary means of fighting transnational organized crime. For this reason, cooperation among states has been evolving to include new structures and mechanisms that facilitate the application of existing international instruments, resulting in the establishment of International Judicial Cooperation networks.

These networks facilitate International Judicial Assistance to improve, simplify and expedite International Judicial Cooperation. They become a model of good practices, as well as permanent forums for discussion and analysis of judicial cooperation problems in international litigation, such as the domestic law of other countries, the International Instruments to which they

2. TELLECHEA BERGMAN, E. **Dimensión judicial del caso privado internacional**, OAS XXXIV, 2007. p. 211-260.

are parties and how they are applied, their linguistic conventions, etc. Thanks to International Judicial Assistance, States can give each other mutual assistance and support in solving international problems.

We must bear in mind that borders are of ever less importance to criminals; judicial systems must not remain passive in the face of international organized crime. Similarly, in the civil, commercial, family, and child arenas, there are also larger problems that must be addressed through a system of direct communication between authorities and support in the form of International Judicial Cooperation based on a network of judicial operators.

In the European arena, this judicial network is based on a judicial context of freedom, security and justice. The aim is to address all litigation having a bearing on other states, thus facilitating effective access to justice.

b) Mechanisms of International Judicial Cooperation and Central Authorities

These networks are designed to improve and simplify mutual judicial assistance and make it more efficient and effective, to maintain an up-to-date public information database, and to improve the effective and practical application of international instruments among the states parties to the network.

Technology plays a vital role in International Judicial Cooperation systems. In place of the conventional slow and formal channels, it provides more modern technological means of communicating more quickly through less formal structures. These are the contact points, persons tasked with resolving all the complications that may arise in a request for International Judicial Cooperation and with facilitating coordination among the various authorities.

It is essential to adopt a new International Judicial Cooperation System that is responsive to this century's realities, in which judicial assistance should be rendered directly by the actual parties involved. This absolutely requires a climate of mutual trust, creating an agile and specific structure that is also based on information and communications technologies.

International Judicial Cooperation can prevent borders from becoming barriers to justice and an advantage for those who violate the law. Judicial assistance is a necessity today because it allows fluid and effective collaboration among states in justice matters.

International Judicial Cooperation is essential, to allow integration processes to result in large united economic areas and to lend certainty to commercial transactions. International Judicial Cooperation is important in view of new types of transnational organized networks, challenges to trade in the globalization process, and an interrelated society.

The Central Authorities are bodies specializing in International Judicial Cooperation--technical offices that are making International Juridical Assistance expeditious and effective, allowing fluid communication among authorities.

Before Central Authorities were established in the Mutual Legal Assistance arena, such assistance was conducted through diplomatic channels, the primary means of communication among states, i.e., traditional international relations. This system was criticized as too bureaucratic. Usually, it involved the ministries of justice and foreign affairs of the states involved, making the system slow. Nevertheless, it is still used by many states, which have endeavored to make it more agile and effective. The Central Authorities direct the International Judicial Cooperation function and issue and receive requests for judicial cooperation.

In order to correct deficiencies in the processing of requests for assistance, the states created the Central Authorities as the main system of communication. That system is now used by The Hague Conference on Private International Law, the Council of Europe, the Organization of American States and the Ibero-American Network for International Legal Cooperation, making the Central Authorities a means of International Cooperation among authorities that is exclusive to international law, with greater efficacy and legal certainty.

c) International and Inter-American Judicial Cooperation and Integration Processes

International Judicial Cooperation in the MERCOSUR framework has developed a set of Regional Judicial Assistance Standards based on respect for the sovereignty of each country and the substantive law in effect in each state. This has led, in chronological order, to the Las Leñas Protocol on Jurisdictional Assistance and Cooperation Regarding Civil, Commercial, Labor and

Administrative Matters, concluded in Mendoza, Argentina, in May 1992; the Ouro Preto Protocol on Preventive Measures, signed in Brazil in December 1994, and the San Luis Protocol on Mutual Judicial Assistance in Criminal Matters, concluded in Argentina in 1996.

These three protocols are based on the function of the Central Authorities. Later, in December 1998, the MERCOSUR Extradition Treaty was concluded in Brasilia, Brazil. International Judicial Cooperation in MERCOSUR is increasingly used in the administration of justice beyond borders.

In the Central American Integration System (SICA), International Judicial Cooperation has developed more in the criminal arena. In October 1993, in Guatemala, the Treaty on Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama was concluded to strengthen and facilitate International Judicial Cooperation among the justice administration bodies of the region. In December 2005 in Nicaragua, the Central American Simplified Extradition Treaty was adopted to make extradition procedures more effective and expeditious.

In December 2007 in Guatemala, the Central American Convention for the Protection of Victims and Witnesses was adopted to facilitate judicial cooperation mechanisms and fight transnational organized crime.

In the area of civil law, the Summit of Heads of State and Government of the Central American Integration System (SICA), held in Guatemala in 2005, adopted a very innovative convention called the Central American Regional Mortgage Treaty, which provides greater legal certainty for real estate investment in the region, by broadening access to credit, with backing for mortgages in any country in which the treaty is in force, and also standardizing transactions and costs.

The Inter-American system, in the context of the Organization of American States (OAS), has been organizing, since 2000, the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition (the Network) to increase and strengthen information exchange among OAS Member States in the area of mutual assistance in criminal matters and make it more agile and effective. It is based mainly on the 1992 Inter-American Convention on Mutual Assistance in Criminal Matters and the 1933 Inter-American Convention on Extradition.

The Network has the following three components: a public Internet site, a private Internet site, and a secure electronic communications system.

The public site provides leged information related to mutual assistance in criminal matters and extradition among OAS Member States. It provides each country's procedures for Mutual Legal Assistance in criminal matters and extradition and a list of bilateral and multilateral International Instruments to which each country is a party.

The private site contains information for persons directly involved in mutual assistance in criminal matters and extradition, such as information on meetings, contact points, a glossary of terms, etc.

The secure electronic communications system is intended to facilitate information exchange among Central Authorities who process mutual assistance in criminal matters and extradition. This system, in addition to secure and immediate electronic correspondence, provides a forum for online meetings and the exchange of information and documents.

At present, the Organization of American States (OAS) is developing a hemispheric network for juridical cooperation in matters of Family and Child Law, known as “the Network,” which includes Judicial Cooperation and Mutual Assistance in these areas and is based mainly on the 1989 Inter-American Convention on Support Obligations, the 1989 Inter-American Convention on the International Return of Children, the 1989 Inter-American Convention on International Traffic in Minors, and the 1984 Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors.

This network also has three components: a public Internet site, a private Internet site and a secure electronic communications system.

The public Internet site provides free access to information on how to protect and enforce the rights of children and families, as well as information on laws and competent authorities in the Inter-American system.

The private Internet site provides qualified users with private and restricted information and can be used to exchange information and documents.

The secure electronic communications system makes possible the exchange of authentic and confidential information among authorities appointed to the network, as well as a forum for online meetings and document exchange.

In the Ibero-American arena, an Ibero-American Legal Assistance Network, known as IberRed, was established in Cartagena de Indias (Colombia), in October 2004. It consists of the Ministries of Justice, Offices of Attorneys General, and judicial bodies of the countries of the Ibero-American Community of Nations. The purpose is to optimize judicial cooperation in criminal and civil matters among countries of that community, providing an Ibero-American judicial forum for more fluid and effective judicial cooperation among Ibero-American states.

d) The Inter-American Specialized Conferences on Private International Law (CIDIP's) and Inter-American Judicial Cooperation

The important contribution of the Inter-American system to the development of Private International Law in the Hemisphere is undeniable. One manifestation of this is the codification process, which has facilitated the development and adoption of juridical instruments of shared interest, thus strengthening International Cooperation in the Hemisphere.

The 1996 Declaration of Panama on the Inter-American Contribution to the Development and Codification of International Law, which states:

> The Organization of American States is the principal and irreplaceable forum in which states, on an equal footing, adopt legal provisions in both public and private international law to govern their relations at the hemispheric level […]. This has allowed the development of a rich regional legal heritage, which has been a valuable contribution by the Organization of American States to the consolidation of a peaceful, just, and equitable international order.

Judicial cooperation and codification have always played an essential role in the Organization.

The codification process in the Organization of American States began at the Second International Conference of American States, held in Mexico in 1902, with the conclusion of the Convention for the Formation of Codes of Public International Law and Private International Law in the Americas.

It was at the Sixth International Conference of American States, held in Havana, Cuba, in 1928, where the Convention on Private International Law, or Bustamante Code, was adopted in honor of Cuban jurist Antonio Sánchez de Bustamante. This was the first complete code on this discipline, consisting of 437 articles that broadly govern International Civil Law, International Trade Law, International Criminal Law, and International Procedural Law. The Bustamante Code is a particularly important frame of reference for the development of Private International Law in the American Hemisphere.

In 1950, the Inter-American Juridical Committee was tasked with studying the possibility of revising the Bustamante Code, as appropriate, in the light of the Montevideo Treaties of 1889-1890 and 1939-1940, and of the Restatement of the Law of Conflict of Laws, developed by the American Law Institute of the United States of America. The purpose was to harmonize these three codes, analyze their structural and technical differences, and also consider the reservations to the Bustamante Code lodged by States. In this study, the Inter-American Juridical Committee consulted national codification commissions, bodies engaged in studying Private International Law, and leading scholars on the subject.

In 1951, the Inter-American Juridical Committee prepared its first report on codification methods. In a second report, the Inter-American Juridical Committee found that the Code could be revised for improvement at various points to promote uniformity among the provisions of private international law in the various American countries, especially the law applicable to the marital

status and capacity of persons. The Committee also performed a comparative analysis of the provisions of the Bustamante Code, the Montevideo Treaties, and the provisions of the Restatement of the Law of Conflict of Laws and presented it to the governments for their consideration and observations. It received observations only from the United States and Ecuador.

In response, the Inter-American Juridical Committee recommended: (a) limiting the unification effort to the Bustamante Code and the Montevideo Treaties; (b) identifying an efficient way of clearly establishing the position of non-ratifying countries, or of countries ratifying with reservations, in terms of the various legal relationships, and (c) that governments examine the oft-cited comparative analysis and all or some of the issues discussed therein.[3]

In 1959, the Inter-American Council of Jurists adopted a new resolution urging the Inter-American Juridical Committee to continue its revision in order to harmonize rules on Private International Law in the American states and also address the reservations made to the Code.

In 1965, at the fifth meeting of the Inter-American Council of Jurists, held in San Salvador, El Salvador, it was recommended that a **Specialized Conference on Private International Law** be convened in 1967 to revise certain parts of the Bustamante Code, including those on general rules, International Civil Law, and International Trade Law. The Colombian delegate, Dr. José Joaquín Caicedo Castilla, drafted a proposed new code of Private International Law to replace the Bustamante Code, which also contained comments on the aforementioned amendments to the Code. With respect to the Inter-American Juridical Committee, it recommended that the draft be considered by the governments and the Specialized Conference on Private International Law.

After consultation with the Member States, on April 23, 1971, at its seventeenth plenary session, the OAS General Assembly convened a Specialized Conference on Private International Law to discuss specific topics in this area, thus launching a second phase of codification of private international law in a sectoral and progressive manner.

This was the origin of the Inter-American Specialized Conferences on Private International Law, known as the CIDIP Process.

On that basis, the OAS General Assembly, in its Resolution AG/RES. 48 (I-O/71), on April 23, 1971, convened the **First Inter-American Specialized Conference on Private International Law (CIDIP-I),** instructed the Permanent Council to prepare the draft agenda and draft rules of procedure of the Conference, and instructed the Inter-American Juridical Committee to "prepare the studies, reports, and draft conventions necessary for the use of the aforementioned specialized conference."

The OAS Permanent Council, in its Resolution CP/RES. 109 (120/74) of March 20, 1974, designated Panama City as the venue for the First Inter-American Specialized Conference on Private International Law.

The importance of the Panama specialized conference was that it launched the process of harmonizing rules on conflicts of law in the Americas, with the adoption of six Inter-American conventions: (a) the Inter-American Convention on Letters Rogatory; (b) the Inter-American Convention on Conflict of Laws Concerning Bills of Exchange, Promissory Notes, and Invoices; (c) the Inter-American Convention on Conflicts of Laws Concerning Checks; (d) the Inter-American Convention on the Taking of Evidence Abroad; (e) the Inter-American Convention on the Legal Regime of Powers of Attorney to Be Used Abroad, and (f) the Inter-American Convention on International Commercial Arbitration. All these conventions were signed by the delegates of the OAS Member States on January 30, 1975, and were based on the corresponding draft conventions prepared by the Inter-American Juridical Committee.

The Inter-American Conventions on Letters Rogatory, on the Taking of Evidence Abroad, and on the Legal Regime of Powers of Attorney to Be Used Abroad are of interest to us as we consider international procedural law with special attention to International Judicial Cooperation.

3. Archives of the Inter-American Juridical Committee.

This Conference requested the General Assembly of the Organization of American States (OAS), at its fifth regular session, to be held in April 1975, to convene the Second Inter-American Specialized Conference on Private International Law, which was to continue to study and consider those topics which the OAS Member States considered most important.

By Resolution AG/RES. 187 (V-O/75), adopted by the General Assembly of the OAS on May 19, 1975, the **Second Inter-American Specialized Conference on Private International Law (CIDIP-II)** was convened for April 23 to May 8, 1979, in Montevideo, Uruguay.

The OAS General Assembly instructed the Permanent Council and the Inter-American Juridical Committee to prepare the draft agenda and draft rules of procedure for the conference and the studies and reports on its topics.

This Second Inter-American Specialized Conference on Private International Law adopted the following conventions: (1) the Inter-American Convention on Conflicts of Laws Concerning Checks; (2) the Inter-American Convention on Conflicts of Laws Concerning Commercial Companies; (3) the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards; (4) the Inter-American Convention on Execution of Preventive Measures; (5) the Inter-American Convention on Proof of and Information on Foreign Law; (6) the Inter-American Convention on Domicile of Natural Persons in Private International Law; (7) the Inter-American Convention on General Rules of Private International Law, and (8) the Additional Protocol to the Inter-American Convention on Letters Rogatory. These conventions were based on drafts prepared by the Inter-American Juridical Committee.

Of interest to us in this discussion are the Inter-American Conventions on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, on Execution of Preventive Measures, and on Proof of and Information on Foreign Law, along with the Additional Protocol to the Inter-American Convention on Letters Rogatory.

The Second Specialized Conference requested the OAS General Assembly to convene the Third Inter-American Specialized Conference on Private International Law (CIDIP-III) and to consider the advisability of institutionalizing the **Inter-American Specialized Conference on Private International Law (CIDIP)**, which would meet every three years. It also recommended to the OAS General Secretariat that it continue to prepare technical and background documents on the agenda items to facilitate the work of the Third Conference and that it provide secretariat services.

By Resolution AG/RES. 505 (X-O/80), adopted by the OAS General Assembly on November 27, 1980, the **Third Inter-American Specialized Conference on Private International Law (CIDIP-III)** was convened. In that resolution, the General Assembly instructed the Inter-American Juridical Committee to prepare the necessary reports, draft conventions, and supporting arguments for the Conference. It also recommended that the OAS Permanent Council prepare the draft agenda and draft rules of procedure for CIDIP-III. And it requested the General Secretariat to prepare the technical and background documents on the agenda items and provide secretariat services. The Permanent Council of the OAS set La Paz, Bolivia, as the venue for CIDIP-III, to be held in 1984.

The Third Inter-American Specialized Conference on Private International Law (CIDIP-III) began on May 15, 1984, with delegates from 18 OAS Member States in attendance. This conference adopted the following conventions: (1) the Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors; (2) the Inter-American Convention on Personality and Capacity of Juridical Persons in Private International Law; (3) the Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments, and (4) the Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad.

Of interest to us for this topic are the Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments and the Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad.

There is a close relationship between International Judicial Cooperation and the Conventions on International Civil Law: the Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors and the Inter-American Convention on Personality and Capacity of Juridical Persons in Private International Law.

This conference adopted various resolutions as well, including a request to the OAS General Assembly to convene the Fourth Inter-American Specialized Conference on Private International Law (CIDIP-IV).

By Resolution AG/RES. 771 (XV-O/85) of December 9, 1985, the OAS General Assembly convened the **Fourth Inter-American Specialized Conference on Private International Law – CIDIP-IV**. It instructed the Inter-American Juridical Committee to prepare the necessary draft conventions and supporting arguments for the Conference; instructed the OAS Permanent Council to prepare the draft agenda and draft rules of procedure for CIDIP-IV, and instructed the OAS General Secretariat to prepare the technical and background documents on the agenda and provide secretariat services.

In Resolution CP/RES. 496 (731/88), the Permanent Council decided that Montevideo, Uruguay, would be the venue for CIDIP-IV, to be held in 1989.

The Fourth Inter-American Specialized Conference on Private International Law was held from July 9 to 15, 1989, in Montevideo, Uruguay, and attended by delegates from 17 OAS Member States. The Fourth Conference adopted three conventions: (1) the Inter-American Convention on the International Return of Children; (2) the Inter-American Convention on Support Obligations, and (3) the Inter-American Convention on Contracts for the International Carriage of Goods by Road. The Conference also laid the foundations for studying the law applicable to international contracts.

For our topic of International Judicial Cooperation, we are particularly interested in the Inter-American Convention on the International Return of Children and the Inter-American Convention on Support Obligations, because they govern international civil law.

By Resolution AG/RES. 1024 (XIX-O/89), the OAS General Assembly convened the **Fifth Inter-American Specialized Conference on Private International Law (CIDIP-V).** It instructed the OAS Permanent Council to prepare the draft agenda; instructed the Inter-American Juridical Committee to prepare a draft Inter-American Convention on the Law Applicable to International Contracts, a study on the development of provisions to govern International Juridical Transactions that so require and international contracts, and general guidelines concerning a draft Inter-American Convention against International Traffic in Minors; and instructed the General Secretariat to prepare the corresponding documents. It also convened a meeting of experts on international contracts.

At this Fifth Inter-American Specialized Conference, two meetings of experts were held, one in Oaxetepec, Morelos, Mexico, from October 13 to 26, 1993, on trafficking in children, which produced a draft Inter-American Convention on International Traffic in Minors; and one in Tucson, Arizona, from November 11 to 14, 1993, on international contracts.

On May 20, 1993, the Permanent Council, at a special meeting, set Mexico City as the venue for CIDIP-V, to be held on March 14, 1994. The conventions adopted at the Fifth Specialized Conference were (1) the Inter-American Convention on the Law Applicable to International Contracts and (2) the Inter-American Convention on International Traffic in Minors, which is of interest to us as we address this topic. The Conference recommended that the OAS General Assembly convene the Sixth Inter-American Specialized Conference on Private International Law.

By Resolution AG/RES. 1339 (XXIX-O/96), the OAS General Assembly convened the **Sixth Inter-American Specialized Conference on Private International Law (CIDIP-VI),** which was held in Washington, D.C., from February 4 to 8, 2002. The preparatory documents included a presentation and report by the Inter-American Juridical Committee entitled “CIDIP-VII and Beyond” (CJI/doc.74/01); document CIDIP-VI/doc.10/02; the report of the Secretariat for Legal Affairs of the OAS General Secretariat entitled "History of the CIDIP Process" (CIDIP-VI/doc. 11/02); and the findings of the meetings of the expert delegations to CIDIP-VI.

This conference, as well as the **Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII),** held from October 7 to 9, 2009, in Washington, D.C., dealt with the topic of secured transactions.

The greatest challenge facing the CIDIP process today in the Inter-American system is reconciling Civil Law and Common (Anglo-Saxon) Law. This means that the OAS codification

process involves adopting not only conventions but also model laws to harmonize the two legal systems and thus bring about hemispheric legal integration, both of the Civil Law System, mainly in the Latin American countries, and of the Common Law System, mainly in the United States, Canada, and the Caribbean countries. This interest in standardization began with CIDIP V, to which Canada and the United States sent large delegations.

The CIDIP process also cooperates with The Hague Conference on Private International Law. In the preparation of the draft Inter-American Conventions, account has always been taken of the Hague conventions, so as not to duplicate efforts unless a new regional convention is warranted.

Nevertheless, there is always a certain rivalry between the two codifying forums, especially if we consider that codification in the Americas preceded codification in Europe. The first treaty codifying Private International Law in the American Hemisphere was the 1989 Lima Treaty, followed by the Montevideo Treaties of 1889-1890, while The Hague conferences began in 1893. Today there is a great deal of coordination among these two codifying organizations.

e) Conclusions

The present international climate is characterized by mass migrations. It is normal for people to cross international borders, generating countless legal situations of a private international nature. This has meant a significant increase in international litigation, which can be resolved through International Judicial Cooperation; it is a duty of states to render cooperation, because justice must not be thwarted by international borders.

A request for International Juridical Assistance today is based on the duty of states to provide it, especially with this undeniable process of globalization. Increasing globalization generates increasing international trade, which brings about increasing conflicts of an international nature. The technological revolution and the diversification of means of transportation and communication have made humanity more mobile than ever before.

This has caused criminal organizations to become international, with borders acting as an impediment to justice and an advantage to crime and criminals. We need more agile and effective International Judicial Cooperation among states. International Judicial Cooperation in civil matters is also essential in order to establish unified economic areas that can be given juridical certainty.

Consequently, new Mechanisms of International Judicial Cooperation that are responsive to 21st-century realities are needed. Judicial assistance will be provided ever more directly by the actual parties to a proceeding, in an environment of mutual trust, in which networks of people play a central role.

It is advisable that the States of the region take measures to facilitate Inter-American Judicial Cooperation. So it is essential to eliminate unnecessary obstacles; to harmonize procedures and bodies of law, and to achieve increased coordination and training among central authorities and other authorities charged with operating International Judicial Cooperation.

The internationalization of people's lives today means that States must agree on mechanisms to protect their interests in private international situations. Mutual Legal Assistance based on reciprocity is no longer sufficient. We must adopt new mechanisms of International Judicial Cooperation, which are being implemented successfully in the American Hemisphere, through the Organization of American States, with the implementation of the Network for Mutual Legal Assistance in Criminal Matters and Extradition and, now, with the Network for Hemispheric Legal Cooperation in the Area of Family and Child Law, thus creating Inter-American Judicial Cooperation in the region.

* * *

5. Corporate Social responsibility in the field of human rights and the environment in the Americas

Document	
CJI/doc.436/13	Corporate social responsibility in the field of human rights and the environment in the Americas (presented by doctor Fábian Novak Talavera)

At the 82nd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2013) Dr. Fabián Novak Talavera proposed a new issue for the Inter-American Juridical Committee to work on; he also expressed interest in serving as rapporteur and consulted the members about including it on the agenda for August. The issue would be entitled "Corporate social responsibility in the field of human rights and the environment in the Americas". In explaining his rationale, Dr. Novak Talavera said he had observed many OAS resolutions on the subject, but with no major developments in the Inter-American system. He thus undertook to produce a preliminary report in August. It would include a summary of the OAS resolutions, IDB conference on the subject, and an analysis of the jurisprudence of the Inter-American Court of Human Rights (notably cases in which international responsibility has been determined because of the fault of companies that have violated Human Rights Laws). He also proposed that a questionnaire be sent to countries to get information on specific laws in this area.

The Chairman suggested the drafting of a guide on conduct – not a model law – on the matter.

Dr. David P. Stewart noted that the UN had principles on corporate social responsibility and asked what this proposal would bring to the issue. Dr. Fabián Novak Talavera said that the UN as well as various international forums and laws in some countries contain statements on the matter, but that there was nothing in the Inter-American system. The aim was not to copy what exists but have something that is in keeping with hemispheric reality.

The Chairman put the appointment of Dr. Fabián Novak as rapporteur for the topic to the plenary, which approved it by acclamation. Dr. Novak asked the Department of International Law to collect from States' domestic laws in this area as well as any other documents deemed relevant.

By note verbale No. OEA/2.2/24/13 dated April 18, 2013, the Department of International Law sent the permanent missions to the OAS a request for information on their laws and other relevant documents.

At the 83rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2013) Dr. Fabián Novak Talavera presented document (CJI/doc. 436/13) in which he informed the members of the drafting of an initial study to serve as a basis for the adoption of Guideline of Principles on the matter. The preliminary report contains the following five parts:

- Regulations in the regional sphere containing an inventory of the resolutions of the General Assembly of the OAS, which confirm the absence of a regional (binding or regulatory) document on the issue.
- Analysis of the Inter-American conferences on entrepreneurial social responsibility, organized by the Inter-American Development Bank.
- Analysis of national regulations, supported by consulting the States that have not received support (save for three answers). In this context, research has been carried out on the Latin-American level, but it is still necessary to know the position of North America and the Caribbean. This analysis allowed for the assertion that some countries have been including binding legislation for companies that operate in those countries, many of which promote foreign investment.
- Analysis of positive entrepreneurial practices.

- Analysis of negative entrepreneurial practice. Observing the coming of judicial litigation of such cases in virtue of constitutional and environmental norms that protect Human Rights. The importance of the jurisprudence of the Commission of the Inter-American Court of Human Rights deserves mentioning, having established some principles concerning the responsibility of States with regard to violation of life, property, health, work, and so on, resulting from actions of companies in their territories, and when the States fail to comply with the necessary control to be observed vis-à-vis these companies.

Dr. Fernando Gómez Mont Urueta mentioned the difficulty to balance the economic freedom and cost level (social benefit) associated with people`s welfare and identifying the concept of social responsibility of companies. He suggested limiting the analysis of the theme so as to distinguish the environmental discourse from egalitarian distribution. He likewise alluded to the cost associated with productive activity, which should affect various community interests – such as collective actions, impugnation of acts of authority, etc.

The Rapporteur on the theme, Dr. Fabián Novak, remarked on the complexity of the theme and the importance of distinguishing legitimate complaints from those that obstruct the projects. In this sense, he underscored the importance of creating a guideline of principles to serve the organization, as do other organizations. He also indicated the importance of countries relying on a system of inspection and follow-up of concessions.

Dr. Elizabeth Villalta expressed thanks for the inclusion of references to Human Rights in his document.

Dr. José Luis Moreno commented on the necessity to put into place basic general norms that are consistent with human rights. Furthermore, he commented on the lessons learned with the Texaco Case in Ecuador.

Dr. Gélin Imanès Collot urged for making a distinction between the concepts of social responsibility and responsibility for the publicity carried out. He also referred to the protection of consumers and respect for human rights. Finally, he mentioned the principle of responsibility of those who contaminate the environment.

Dr. Novak, thanked El Salvador and Jamaica for sending the national legislation on the topic, noting that it would be added to the document that he would submit in March 2014. Considering Dr. José Luis Moreno’s explanation, he urged the members of the Committee to forward any information they considered pertinent to the matter. In answer to Dr. Gélin Collot, he explained that topics related to malicious information would not be pursued, neither would prosecutorial considerations; however, consumer rights would be included. The text of Dr. Fabián Novak Talavera’s document is as follows:

CJI/doc.436/13

CORPORATE SOCIAL RESPONSIBILITY IN THE FIELD OF HUMAN RIGHTS AND THE ENVIRONMENT IN THE AMERICAS

(presented by Dr. Fabián Novak Talavera)

1. Scope of Mandate

During the 82nd ordinary period of sessions of the OAS Inter-American Juridical Committee, held in Rio de Janeiro, Brazil, the members of this main body of the Organization unanimously decided, upon the vice chairman's request, to include the topic of "Corporate Social Responsibility in the Field of Human Rights and Environment in the Americas" in their agenda, based on the competence granted to the Committee under article 100 of the Charter, 12(c) of the Statute and under article 6(a) of the Regulation thereto, to initiate, under its own initiative, the studies and works it deems convenient for the region.

It was considered of the utmost importance to develop a report on the current status of corporate social responsibility in the region, so it could be used as an input to later prepare a set of Guiding Principles to be made available to the OAS Member States.

To that end, the Juridical Committee Secretariat was requested to support the Rapporteur on the topic, Dr. Fabián Novak, in asking the Member States to provide the existing domestic legislation on the matter and any other documentation that might be deemed relevant to this end.

2. Preliminary Remarks

In starting this report, we must begin by pointing out that there is certain consensus that there is no one-size-fits-all definition for social responsibility, as there is not only one kind of social responsibility. Social responsibility reaches the different players, such as the State, corporations, NGOs, universities, unions, consumers associations, among others, with different features.

Nevertheless, this study will only refer to corporate social responsibility understood as a new manner of doing business, in which enterprises try to find a balance between the need to reach their economic and financial goals and, at the same time, have a positive social and environmental impact through their business[1].

Moreover, this topic will be addressed exclusively from the regional perspective and the reality of the Americas. This first report will basically focus on Latin American and Caribbean countries[2] (as this issue has had significant developments in countries such as the United States or Canada, without that implying that they are free of troubles or that they will be excluded from the Guiding Principles that will be prepared). Many of the Latin American countries that are OAS members have had a particularly positive economic development in the last few years, which in turn has led to their adoption of policies and legislation on corporate social responsibility.

In fact, in Latin American practice there has been a gradual transition from a social responsibility approach associated with philanthropy—which is rooted in Catholic traditions and institutions—to a long-term commitment linked to corporate strategy. As Mejía and Newman put it:

Crisis, both political and economic, the region's integration into the international market, a more aware and participatory civil society, and enterprises acting in a more competitive field, have brought about a definitive shift in Latin America towards corporate social responsibility.[3]

Latin American enterprises have gradually followed this trend for several reasons: for some, social responsibility is part of their culture, others are convinced of it, so they adopt the

1. OLCESE, Aldo. **El Capitalismo Humanista**. Madrid: Marcial Pons Ed. Jurídicas y Sociales, 2009, p. 40-59.
2. From this point on, our analysis will concentrate on Latin American countries given the lack of information made available to the Rapporteur by the Caribbean countries by this report's closing date.
3. MEJÍA, Marta and Bruno NEWMAN. **Responsabilidad Social Total**. México D.F.: EFE, 2011, p. 38.

practice; some others bring it in to emulate other enterprises, and others do it for competitive reasons, out of consumer pressure or as a reaction to a crisis. Nonetheless, if one was to establish the main cause for this, it could be said that, due to the insertion of many Latin American enterprises into the world economy as a result of the entry into free trade agreements[4], enterprises are faced with pressure from foreign clients, governments and consumers, who demand not only they deliver that specific quality of products or services, but also that the production standards meet legal and ethical requirements, thus strengthening the incorporation of corporate social responsibility into their business strategies.[5]

In this regard, we could say that corporate social responsibility in Latin America has made notable progress, all the more in countries with relatively more developed industrial sectors and with more corporations in their economies, in which the emerging notion of responsibility has been tied to aggregate value. But the weakness of the process is due to the slim oversight or follow-up capacity by the authorities, enterprises' resistance to accepting normative regulations on the matter[6], and the lack of dissemination strategies and incentives.

In Latin America, there is also a difference in practice between large enterprises and small and medium enterprises. As Mayer explains:

> Large multinational enterprises are in a better position to implement socially-responsible policies. They mainly apply the guidelines that have been defined by their headquarters and they generally have established standards. These multinational enterprises are usually recognized for their actions, but they are perceives as being disconnected from the local situation. The perception is that they just replicate initiatives without taking into consideration the expectations and interests of local associations. Many large private Latin American enterprises are deeply rooted in the communities where they operate (examples include Bimbo in México and Gerdau in Brazil) and their managers are public personalities. These enterprises are generally positively perceived by the communities in which they operate.
>
> […]
>
> Small and medium enterprises have a lower incorporation of responsible practices, as they are perceived to entail financial contributions to society-at-large. It is thus considered that enterprises with fewer resources are more restrained to afford responsible actions.[7]

Another relevant feature worth noting in Latin America is the work of unions, religious organizations, NGOs and other organizations, which act and protest against the violation of employment rights or practices against human rights or failure to preserve the environment by the enterprises. These entities are useful not only to draw the authorities' attention to possible abusive practices by the enterprises but also to demand from the enterprises respect for the norms and a closer relationship with the place in which they carry out their business[8]. However, these organizations also face criticism—sometimes justified—, as they may sometimes stand for extremist ideologies or interests that work against any kind of investment and development projects.

In any case, it is a work in progress that, while it is not free from difficulties and resistance, it is still making positive progress reaffirming the region's certainty that business development implies a production process that respects human rights, labor norms, and the environment.

3. Regional regulation

3.1 Resolutions by the Organization of American States (OAS)

4. *Ibid.*, p. 40.
5. *Ibid.*, p. 41.
6. MAYER, Charles. **Responsabilidad Social y Ambiental: El Compromiso de los Actores Económicos**. Paris: Diffusion, 2006, p. 174-175.
7. *Ibid.*, p. 177.
8. *Ibid.*, p. 181.

No regional regulations (mandatory or voluntary) on social responsibility have been established in Latin America, and there are only a few OAS resolutions, recommendations, that refer to the issue.

In fact, at the Inter-American level, the issue of corporate social responsibility has been a matter of concern since the beginning of the 21st century and the OAS General Assembly has several consecutive resolutions on the matter.

So the OAS General Assembly started to address the matter in 2001, when Resolution AG/RES. 1786 (XXXI-O/01) was approved, requesting the OAS Permanent Council to analyze the matter, in order to detail its contents and scope so it can inform the OAS Member States and disseminate in them its elements.

On the following year, that is June 4, 2002, the OAS General Assembly approved Resolution AG/RES. 1871 (XXXII-O/02) stating the need for OAS Member States to exchange experiences and information on the matter and to share them with other multilateral organizations, international financial institutions, the private sector and civil society organizations, with a view to coordinating and strengthening cooperation activities in the field of corporate social responsibility.

Then, on June 10, 2003, the General Assembly approved Resolution AG/RES. 1953 (XXXIII-O/03) and Resolution AG/RES. 2013 (XXXIV-O/04) on June 8, 2004, which describe the efforts made by other international organizations and multilateral financial entities to study the topic and establish certain principles that can be applied by the enterprises.

One June 7, 2005, the OAS General Assembly approved a new resolution on the matter, Resolution AG/RES. 2123 (XXXV-O/05) which shifts away from statements and starts making recommendations to Member States on corporate social responsibility, although they were still general recommendations. Member States were encouraged to "develop, promote and encourage broader dissemination, experiences and information exchange of, training and outreach in the area of corporate social responsibility". States are also encouraged to facilitate "adequate participation and cooperation of the private sector, business associations, unions, academic institutions and civil society organization in these efforts". It also recommends the governments of the Americas "to play on active role in the negotiations under way in the International Standards Organization to establish a standard for corporate social responsibility (ISO 26000)". Finally, it recommends Member States "to become knowledgeable about existing voluntary internationally recognize principles and guidelines, as well as private sector initiatives to promote corporate social responsibility and as appropriate to their circumstances, support such internationally voluntary principles and guidelines and private sector initiatives".

Further OAS resolutions have had similar purposes. Thus, Resolution AG/RES. 2194 (XXXVI-O/06) of June 6, 2006 urges the Member States to promote corporate social responsibility programs and initiatives. Resolution AG/RES. 2336 (XXXVII-O/07) of June 5, 2007 even points out to certain documents prepared by other organizations, and calls the Member States "to promote the use of corporate responsibility guidelines, tools and best practices, including the International Labor Organization's (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the Voluntary Principles on Security and Human Rights".

Then, on June 4, 2009, the General Assembly passed Resolution AG/RES. 2483 (XXXIX-O/09), which states not only the measures that had been adopted on the matter by the G8, the Asia Pacific Economic Cooperation (APEC), the Organization for Economic Cooperation and Development (OECD) the Summit of the Americas and the United Nations Organization, but it also urges the Member States a follow the ILO directives set out in the aforementioned resolution and added others, such as the "OECD Guidelines for Multinational Enterprises, the United Nations Global Compact and the Voluntary Principles on Security and Human Rights, and the principles contained in the ILO Resolution on the Promotion of Sustainable Enterprises and the United Nations Millennium Development Goals". This resolution contains an interesting item on our issue of interest, as it urges the Member States that actively exploit natural resources to "promote best environmental protection practices, particularly in exploitation of natural resources and manufacturing sectors, to promote the Voluntary Principles on Security and Human Rights, and to take part in the Extractive Industries Transparency Initiative (EITI)".

Then, Resolution AG/RES. 2554 (XL-O/10) of June 8, 2010 and Resolution AG/RES. 2687 (XLI-O/11) of June 7, 2011 were passed. Both resolutions urge the Member States "to support initiatives tending to strengthen their management capacities and natural resources development in an environmentally-sustainable manner and with social responsibility". In addition, they stress the importance of "the best social responsibility practices being applied with the participation of the interested parties".

Finally, Resolution AG/RES. 276 (XVII-O/12) of the OAS Inter-American Council for Integral Development of May 15, 2012 and Resolution AG/RES. 2753 of the General Assembly of June 4, 2012. The former acknowledges enterprises' responsibility "to promote and respect the observance of human rights in the course of their business", adding that enterprises should honor the principles of "respect for labor and environmental regulations". On the other hand, the second resolution encourages dialogue on social responsibility between the private sector and national congresses, as well as the Member States to train and advise their small and medium enterprises so they get involved in corporate social responsibility initiatives.

In short, corporate social responsibility has been a matter of concern to the OAS, and while it has not established a binding regulation or a recommendation on the matter, it has accepted the validity of the directives, principles, and initiatives proposed by other international forums, and has recommended their implementation by the OAS Member States. Likewise, it has shown special concern for small and medium enterprises to also adhere to the trend of bringing forward a corporate social responsibility policy, particularly in the field of human rights and the environment. Finally, the OAS has developed some studies on the matter, which have been made available to the States so they learn and act on them.[9]

3.2 The Inter-American Conferences

Since 2002, the Multilateral Investment Fund of the Inter-American Development Bank (BID) has held periodical Inter-Americanconferences on corporate social responsibility. These conferences were created as a consequence of the mandate of the III Summit of the Americas, which took place in Quebec in April 2001.

It was then that in 2002, the first Conference was held in Miami, United States of America, and they started to be numbered after the following conference. Thus, the I Conference took place in Panama in 2003; the II Conference in Mexico in 2004; the III Conference in Chile in 2005; the IV Conference in Brazil in 2006; the V Conference in Guatemala in 2007; the VI Conference in Colombia in 2008; the VII Conference in Uruguay in 2009, the VIII Conference in Paraguay in 2011; and the IX Conference in Ecuador in 2012.[10]

These meetings are attended by authorities, specialists, businessmen, students and institutions engaged in the matter, and several presentations are made on different corporate social responsibility topics, seeking at all times to highlight the benefits for the society and the enterprises obtained from applying a social responsibility policy, without overlooking the limitations and difficulties present in the region for their full implementation, and the way to overcome them.

While these Inter-American conferences have not produced binding or voluntary regulations, they have served to inform the countries of the region and to learn about the statistical and field works that have been taken into consideration by the participating countries in building their own internal corporate social responsibility regulations, as we will see below. This has also stimulated the organization of other national and international events, which have contributed to the adoption of responsible practices in the enterprises.[11]

3.3 National regulations

As we have said before, at the Inter-American level, countries have not sought to develop a regional standard, guideline or directive on corporate social responsibility, but have rather

9. See, for example, OAS UNIT FOR SUSTAINABLE DEVELOPMENT AND ENVIRONMENT. *Sustainable agriculture, corporate social responsibility (CSR) & the private sector of the financial services industry*. Washington: OAS, November 22, 2006.
10. Available at: <http://cumpetere.blogspot.com/2012/05/diez-anos-de-la-conferencia.html>
11. Available at <http://www.esramericas.org>.

accepted as valid or applicable in the relevant countries—of course, with a voluntary nature—the universal documents prepared by different organizations, such as the 1997 Global Reporting Initiative[12], 2000 United Nations Global Compact,[13] the 2006 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,[14] and 2010 ISO 26000.[15]

However, many of the countries of the region have issued, in parallel and progressively, internal binding legal norms on the matter, while others are debating their approval with the national congresses, convinced that this issue is of the utmost importance to ensure regional industrial and business development that respects the environment, the employment norms and human rights.

In this regard, we can refer to some examples from North, South and Central America:

a) Argentina

For many authors, Argentina is the pioneer Latin American country in the implementation of corporate social responsibility. Argentinean enterprises have incorporated and developed this culture for several years now.[16]

While this country does not have a main agency that leads the social responsibility agenda from the civil society standpoint, it does have a Foundation Board (Consejo de Fundaciones) that in practice plays that role.[17] Likewise, the Argentine Republic has a set of constitutional and significant legal rules on the matter. Thus, article 48 of the Constitution of the Autonomous City of Buenos Aires, specifically provides that: "It is the policy of the State that the economic activity enhances personal development and is based on social justice. The City of Buenos Aires promotes public and private economic activity under a system that ensures social welfare and sustainable development".

It was under this constitutional framework that is replicated in the rest of the country, that Law Nº 25877 – the Law on Labor Order of June 2004—was enacted, which in Chapter IV, title II, provides that domestic or foreign enterprises with a certain number of workers have to prepare

12. This initiative seeks to provide a set of guidelines to facilitate and improve the quality of reporting on corporate social responsibility throughout the world, based on comparability, credibility, rigor, periodicity and authenticity of the information contained in sustainability reports.
13. This was an initiative launched by former US Secretary General, Kofi Annan, to contribute to enhance the values and principles that humanize the market, and to attain an inclusive and sustainable economy by respecting labor laws, human rights and the environment. Those principles are: 1. Businesses should support and respect the protection of internationally proclaimed human rights; 2. Businesses should make sure that they are not complicit in human rights abuses; 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; 4: the elimination of all forms of forced and compulsory labour; 5: The effective abolition of child labour; 6: The elimination of discrimination in respect of employment and occupation; 7: Businesses should support a precautionary approach to environmental challenges; 8: Undertake initiatives to promote greater environmental responsibility; 9: Encourage the development and diffusion of environmentally friendly technologies; and 10: Businesses should work against corruption in all its forms, including extortion and bribery. This Compact is inspired in the Universal Declaration of Human Rights, the International Labor's Organization's Declaration of Fundamental Principles and Rights at Work, the Rio Declaration on the Environment and Development, and the United Nations Convention against Corruption. See DURÁN, Gemma. **Empresa y Medio Ambiente. Políticas de Gestión Ambiental**. Madrid: Pirámide, 2007, p. 68-69. And, FERNÁNDEZ, Roberto. **Administración de la Responsabilidad Social Corporativa**. Madrid: Universidad de León/Thomson, 2005, p. 39-ss. In 2006, approximately 45% of the Global Compact participants were from Latin America. On the latter, see OFFICE OF THE UN GLOBAL COMPACT. *IV Global Compact Local Networks Annual Forum*. Barcelona, September 26-27, 2006, p. 10.
14. The principles contained in this international instrument provide employment, training, working conditions, life and employment relations orientation to enterprises, governments, employees and workers. Available at: <http://www.ilo.org/wemsp5/groups/public>. While this Declaration was originally adopted in 1977, it was amended in 2000 and then in 2006.
15. Standard ISO 26000 was approved and prepared by the International Standards Organization in November 2010 with the purpose of establishing a set of corporate social responsibility standards and the form of implementing them in the organization.
16. MAYER, Charles. *Ob. cit*., p. 178.
17. AGÜERO, Felipe. **La responsabilidad social empresarial en América Latina: Argentina, Brasil, Chile, Colombia, México y Perú.** Miami: Universidad de Miami, 2002, p. 43.

an annual social balance statement for the company. In furtherance of this obligation, Law Nº 2594 of December 6, 2007 was enacted and then published on January 28, 2008, in the Official Gazette of the City of Buenos Aires. This law governs the content and scope of the Social and Environmental Responsibility Balance Statement.

This obligation has been imposed on industrial, commercial and service enterprises residing in Buenos Aires, with over 300 employees and billing above the level set by Provision SEPyME Nº 147/06. These enterprises have to submit this statement annually, which consists on a financial statement of the company's actions on the social and environmental fields. This disclosure allows for their comparison and quantification, and also allows interest groups, and not only the state, to oversee them.[18]

On the other hand, enterprises that are not included in the scope of the norm but that voluntarily submit this statement will enjoy certain benefits in connection to access to credit, incentives for technology innovations and others established by the authorities.

Finally, the Law provides that breach of this norm, for example, by failure to submit the statement, misrepresentation or omission of information, etc., will cause removal of the company from the list of conforming enterprises and will be classified as non-compliant company, while incentives will be withdrawn from enterprises that make voluntary submissions and fail to perform their obligations.[19]

b) Brazil

Brazil has a very extensive and powerful business and industrial sector, and also has legal norms linked to corporate social responsibility, particularly for the control of contaminant gas emissions.

In this regard, it is worth mentioning Río de Janeiro Municipal Law Nº 4969 on climate change and sustainable development of January 2011, which sets a greenhouse gas emissions reduction goal of 20% by 2020, provides for the obligation to recycle, reuse or treat waste, and encourages the use of motor transportation, with an aim to improving the environmental conditions of the city through the responsible actions of enterprises and citizens in general.

Another pioneering statute is São Paulo Municipal Law Nº 14933 on climate change of June 2009, which contains similar provisions to the Río legislation, but it is more ambitious in that it set the goal of reducing greenhouse gas emissions by 30% in 2020.[20]

It is also of the utmost importance that we point out to certain voluntary documents that have been developed and approved within the scope of the prestigious Instituto Ethos[21] of Brazil, an NGO created in 1998 by Brazilian businessmen in order to help enterprises develop their business in a socially-responsible manner. This institute started out with 11 enterprises and in 2005, ant it has now more than 1,000 affiliates that account for more than 30% of the gross domestic product of Brazil.[22]

Such regulations include the Declaration of the CEO Meeting on Corporate Social Responsibility and Human Rights of June 24, 2008, subscribed, among others, by the presidents of Grupo Telefônica de Brasil, Banco Real, Wal-Mart, Alcoa, Petrobras, Bindes, Caixa Econômica Federal, HP de Brasil, Banco Itaú, Banco HSBC, among other important businessmen, signed this document in which they committed to respect human rights and the environment in their business, thus assuming the need to progressively implement a set of actions, particularly promoting gender

18. FABRIS, Lorena. ***La responsabilidad social empresarial y la Ley 2594 de la ciudad de Buenos Aires***. In: *CODIGO R***, Portal de las Responsabilidades y el Desarrollo Sostenible**. Buenos Aires, 2009.
19. PALADINO, M., A. MILBERG, and F. SANCHEZ IRIONDO. **Emprendedores Sociales y Empresarios Responsables**. Buenos Aires: Temas, 2006, p. 49.
20. See "Río de Janeiro fija por Ley la reducción del cambio climático" In: *Comunicación de responsabilidad y sustentabilidad empresarial. Comunicarse.* February 15, 2011.
21. In this regard, it is worth mentioning other similar institutions, such as the Group of Institutes, Foundations and Enterprises (Grupo de Institutos, Fundaciones y Empresas (GIFE)) and the Brazilian Institute for Social and Economic Analysis (Instituto Brasileño de Análisis Sociales y Económicos (IBASE)). Brazil also has a good number of academics in management schools and companies that are working in developing business ethics. See AGÜERO, Felipe. *Ob. cit.*, p. 25 and 34.
22. MEJÍA, Marta and Bruno NEWMAN. *Ob. cit.*, p. 38.

equality at the workplace, maintaining racial equality at the workplace, eradicating slave work, inclusion of the handicapped and favor the rights of children, teens and youth.[23]

Then, in 2012 the Business Charter for Human Rights and the Promotion of Decent Work was issued. It emphasizes the need to include respect to human rights in all business processes, including top management, creating follow-up mechanisms on the delivery of commitments, supporting the government in the implementation of measures that ensure decent employment, according to the ILO provisions, among others.

c) Chile

In the case of Chile, corporate social responsibility has been driven not only from the State but also from private organizations, as is the case of Acción Empresarial, created in May 2000; Generación Empresarial, an organization that brings businessmen together with the purpose of promoting a person-centered business culture; and Prohumana, created in 1998, as a non-profit organization destined to promote social responsibility through active citizenship.[24]

There are no specific domestic provisions on corporate social responsibility, but the matter it is referred to in a scattered fashion in several different regulations. For example, DFL Nº 1046-Law on extraordinary work of December 20, 1977; Law Nº 18985-Law on donations for cultural purposes of June 28, 1990; Law Nº 19247-Law on donations for educational purposes of September 15, 1993; Law Nº 19284-Law on the social incorporation of the disabled of January 14, 1994; Law Nº 19300-Law on the Basics of the Environment of March 9, 1994; Law Nº 19404-Law on Hard Labor of August 21, 1995; Law Nº 19505-Law on special leaves of workers in the event of grave disease of their minor children of July 25, 1997; Law Nº 19988-Law on seasonal workers of December 18, 2004; and Law Nº 19712-Law on donations for sports purposes on February 9, 2011; among others.[25]

To all these standards, one should add voluntary norms, such as ISO 9000, ISO 14000 and in particular ISO 26000 on social responsibility, that have been implemented by several Chilean enterprises.[26]

d) Colombia

Colombia is one of the countries in which the interest for corporate social responsibility is more advanced. There are several innovating business experiences that have introduced this culture in the organizational matrix. At first, the tax laws allowed that donations from individual and corporations to non-profit organizations could be deducted from income tax. The concept was subsequently adopted by academics and businessmen, who started to realize the benefits of this new business culture.[27]

In the case of Colombia, there are several laws that refer to social responsibility directly or indirectly. That is the case of Law Nº 9 on Protection of 1979, Law Nº 99 of 1993, Law Nº 344 on Resources of 1996, Law Nº 430 on Hazardous Waste of 1998, Law Nº 685 or Mining Code of 2001, Law Nº 697 on Energy of 2001, Law Nº 1014 on Entrepreneurship Promotion of 2006, and Laws Nº 1328 and 1333 of 2009.

From all of the above, it is worth mentioning Law Nº 1328 of July 15, 2009, which has created a social balance statement program to disclose the impact of the responsible activities that financial entities undertake voluntarily. This standard has been in turn regulated by Decree Nº 3341 of 2009.

However, for several years (2006), Bill Nº 70/10 has been discussed in the Colombian Congress. This bill defines a set of norms on corporate social responsibility, destined to child protection, eradication of child work, eradication of poverty, respect for human rights and to stimulating responsible environmental behavior based on prevention and remediation of environmental damage caused.

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23. Available at: <www3.ethos.org.br>.
24. AGÜERO, Felipe. *Ob. cit.,* p. 36 and 41.
25. ACCIÓN RESPONSABILIDAD SOCIAL. Available at: <www.accionrse.cl/contenidos.php?id=45&normas-y-estandares-RSE.htm>.
26. *Idem*.
27. CARAVEDO, Baltazar. **Empresa, Liderazgo y Sociedad**. Lima: Ed. Perú 2021, 1996, p. 33.

e) Costa Rica

As for Costa Rica, in addition to the laws indirectly connected with the matter—as is the case of the General Public Administration Law on Institutional Transparency or the Law on the Inclusion and Protection of Disabled Persons--, we also have the Framework Law on Corporate Social Responsibility and the Law on Corporate Social Responsibility in Tourism, both approved in June 2010.

The Framework Law on Corporate Social Responsibility provides for the obligations of enterprises established in Costa Rica with more than 200 workers, to submit a social balance statement of their activities. This commitment must also be undertaken by any company that wishes to take part in public bids or obtain public funds. The Law also provides that the balance statement must take into consideration the policies, practices and programs implemented to enhance human and sustainable development of workers, etc. These balances are public and will be followed-up by the Ministry of Economy, Industry and Trade. Finally, incentives will be given to enterprises that stand out for compliance with this norm, such as tax exemptions and receiving the annual award to excellence.

As regards the Law on Corporate Social Responsibility in Tourism, it intends to stimulate the sector enterprises to take part in social responsibility programs aimed at fighting sexual tourism, child exploitation, promote the care for the environment, among others, by stimulating them to taking part in several benefit programs, such as preferred promotion at the national and international level and obtaining the Corporate Social Responsibility Certificate. Finally, the Law introduces the concept of social tourism, such as a new way of understanding business management and their relationship with society, and rewards the enterprises that offer tour packages that favor indigenous communities, disabled people, senior citizens and children, etc.

f) Mexico

After the approval of NAFTA, several regulatory requirements from the United States and Canada were imposed on Mexico in order to implement in state-managed enterprises and in private report enterprises, practices that were compatible with respect for the environment and human rights, which would give them more opportunities to sell their products to countries from these two countries.[28]

This has permitted the integration of corporate social responsibility into a series of Mexican domestic norms and to introduce social responsibility badges that assess and grade the commitment of enterprises to this responsibility[29] culture, as the one granted by the Mexican Center for Philanthropy (Centro Mexicano para la Filantropía (CEMEFI)),[30] the most important organization regarding corporate social responsibility, organizational sustainability and civil involvement. Another organization is the Mexican Confederation of Employers (Confederación Patronal de la República Mexicana (COPARMEX)), which brings together enterprises from throughout the country and advocates for a market economy with social responsibility based on the human person and in a liberty system inspired in Christianity. There is also the National Committee for Technology Productivity and Innovation *(Comité Nacional de Productividad e Innovación Tecnológica, COMPITE)*, which promotes the matter among small and medium enterprises.[31]

Mexico has several norms that contain provisions that seek corporate social responsibility, particularly in the spheres of employment and the environment. By way of example, there is the Federal Labor Law, the Federal Law to Prevent and Eradicate Discrimination, the General Law for the Disabled, the Income Tax Law, among others, which provide for corporate obligations aimed at safeguarding the rights of the workers and also for incentives to those enterprises that implement protection measures, especially for vulnerable groups.

Additionally, Mexico promotes the implementation of the Social Responsibility Guidelines-NMX-SAST-26000-IMNC-2011/ISO 26000:2010. This Mexican standard contains the

28. EPSTEIN, Marc. **Sostenibilidad Empresarial.** Bogotá: ECOE Ed. 2009, p. 61-62.
29. MEJÍA, Marta and Bruno NEWMAN. *Ob. cit.*, p. 10.
30. *Ibid.*, p. 39.
31. AGÜERO, Felipe. *Ob. cit.*, p. 18, 20 and 24.

principles and topics enshrined in the concept of social responsibility, thus helping the organization, regardless of their size and location, to contribute to sustainable development and to adopt positive social decisions.

g) Peru

Corporate social responsibility has begun to grow significantly in the country, mostly after the entry into effect of free trade agreements with various countries throughout the world and the significant amount of foreign investment received in the last decade. Even back in the 1990s, a private organization called Peru 2021 was created, which aimed at promoting corporate social responsibility as part of the new national vision that they intend to promote, through several incentives — such as the creation of a national award—aimed at promoting enterprises, that integrate this issue into their organizational strategy.[32]

As a supplement to this, on September 20, 2011, the State issued Supreme Decree N°015-2011-TR, which provided for the creation of the *Perú Responsable* program within the scope of the Ministry of Labor and Employment Promotion, as part of the process to deploy inclusive policies and dialogue between the State, society and the private sector. With the *Perú Responsable* program, the Ministry of Labor and Employment Promotion began designing corporate social responsibility public policies that would generate decent employment. *Perú Responsable* undertook the challenge of an across-the-board concept of corporate social responsibility from the perspective of promotion, articulation and certification.[33]

In the last few years, a set of provisions—although not a specific regulation—on this matter have also been issued in Peru. However, we will not point out or analyze them here because the topic will be broadly addressed in our next study.

In any case, from the aforementioned internal regulations, one may conclude that many of the countries in our region—particularly those that have attained a higher level of relative development— have incorporated corporate social responsibility matters in their domestic legislation, whether through a specific regulation or a generic one. Hence, they assume that the issue has to have clear and binding rules for the enterprises and the State has to play an oversight and a promotion role.

Additionally, in several of these countries civil society organizations associations have emerged to promote corporate awareness, whether by granting national awards or by assuming ethical commitments, all of which has given rise to a set of positive corporate practices, which will be the topic addressed below.

4. Positive regional business practice

In the Inter-American context, the issue of corporate social responsibility has been gradually incorporated in many enterprises practices those, which are convinced of the benefits for their country's society and for the economy and the prestige of their business organization.

We could refer to many positive examples from throughout the region which evidence that, while there is still a long way to go in this issue significant progress has been made towards developing corporate social responsibility. There are several examples that are worth mentioning just from the financial field, as is the case of Bancolombia, which has a development strategy in the communities it operates in, which includes giving priority to environmental and social aspects, developing educational programs, reducing the impact of business over the environment, and recruiting volunteers to develop high-impact social projects.[34] Banamex has culture and welfare promotion and environmental protection divisions. Banco de Chile supports education and rehabilitation of disabled persons; Itaú Unibanco supports several efforts in the fields of education, health and environmental protection, among others.

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32. *Ibid.*, p. 47-50.
33. Available at: <http://www.trabajo.gob.pe/mostrarContenido.php?id=863&tip=850>.
34. COLUMBIA UNIVERSITY SCHOOL OF INTERNATIONAL AND PUBLIC AFFAIRS TEAM. **Corporate Social Responsibility in Latin America: The Financial Services Perspective**. 2012, p. 12, 15 and 19.

However, there are examples of other socially responsible enterprises beyond the exclusive financial sphere, to wit:

a) San Cristóbal Coffee Importers (SCCI) and *Cafés Sustentables de México (CSM).* These two enterprises, one in production and the other one trading, have managed to very successfully place their *premium* coffee in the North American market, the same which the coffee growers from Nayarit take part.[35] The company's policy is to pay the growers fair prices for their coffee and even paying above (0.09 US dollars per kilogram) the average price paid by their purchasers. Furthermore, the company advises the growers so that they can form cooperatives and improve their crop yields. The company also provides them with the material and equipment that permits growers add more value to their product, as well as with training and education to improve product quality and be able to get better prices. A special concern during the training course delivered by the company to growers is the need to reconcile the growth of coffee crops with environmental protection and preservation with special care placed on the products used in growing the coffee. The company's philosophy is respect for the workers' human rights and fair profit distribution throughout the production chain, which in turn ensures that the company will operate sustainably in the long term.[36]

b) Palí in Costa Rica and Nicaragua. This is a discount supermarket chain whose target population is the low-income socioeconomic sectors in Costa Rica and Nicaragua. The company has developed a program *(Tierra Fértil)* aimed at supporting small and medium-size farmers that supply fruits, vegetables and cereals to the supermarkets.[37] Pali contributes to the economy of the poorest households, to the creation of direct and indirect employment, to narrow the exclusion gap between population sectors, but also to the training of small and medium-size farmers under a partnership scheme based on the agronomist. Farmer relationship, where care for the environment and respect for their workers' human rights are among the company's main concerns.[38]

c) Ingenios Pantaleón of Guatemala. Pantaleón is the main agro-industrial sugar producer in Central America, known for being an efficient company and with a corporate social responsibility approach as part of their competitive strategy. This company does not only have an environmental protection policy for sugar production in place, but also integrates programs to improve the health, education, nutrition, and working conditions and systems of employees, aimed at attaining a more productive and competitive sugar production process in its different stages. The company also invests a significant amount of money in workplace safety and security, in creating consumption cooperatives and savings banks, and in implementing rural housing and health programs. This has contributed to making Guatemala one of the main sugar exporters in the world, offering the most competitive price in the Mesoamerican region.

d) British Petroleum in Trinidad and Tobago. Here we have before an oil company that has started a series of activities to promote local social and economic development through a series of programs and initiatives that have contributed to the domestic oil industry and to the country's sustainable development. The company not only implements employee training programs in the communities

35. SCHROEDER, Kira and Bernard KILIAN. "San Cristóbal Coffee Importers y Cafés Sustentables de México apuntan al mercado de cafés diferenciados". In: FLORES, Juliano et al. **El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe**. Washington: Inter-American Development Bank, 2007, p. 31.
36. *Ibid*., p. 47.
37. LEGUIZAMÓN, Francisco et al. *"La RSE y los negocios con los sectores de bajos ingresos: Los casos de Palí y Tierra Fértil"*. In: FLORES, Juliano et al. **El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe.** Washington: Inter-American Development Bank, 2007, p. 49.
38. *Ibid*., p. 81.

in which it operates, but also brings high-school students into entrepreneurship and business programs seeking to promote the creation and development of new local businesses that can be competitive worldwide. It also has environmental protection programs in order to develop a sustainable production, which has contributed to improving the image of the energy sector in the country.[39]

e) Banco ABN AMRO Real de Brasil. This is the third largest private financial institution of Brazil, as measured by its assets. From its foundation, the organization was established with the objective of including environmental sustainability as part of the company's everyday business. Thus, all of the bank's divisions manage socio-environmental programs. In fact, it was the first Latin American private Bank to launch a socially-responsible investment fund and credit lines specifically aimed at promoting sustainability. It was also the first financial institution in the region to create a socio-environmental risk studies section to grant financing to business customers. Finally, it was a pioneer in promoting microcredits and in the intermediation of carbon credit transactions among enterprises globally.[40] All of these practices have caused the bank to be positioned as the "green bank" of the Brazilian financial system.

f) RECYCTHE Chile S.A. This is the first company in Chile and Latin America to be environmentally authorized for the recycling of technology waste (computers, printers, mobile phones, copying machines and scanners, game boxes, etc.). They are known for bringing in social programs and respect for their workers' human rights at all company levels, thus creating a work atmosphere with a highly willing and motivated team. It has also created programs for the reinsertion of former convicted individuals. This practice has attracted the interest of the academics, who have participated in improving their business model. In addition to the positive environmental impact of the company's line of business, this has also allowed the company access to state sources of financing and to potential business partners in other countries of the region.[41]

g) Pelambres mining company in Chile. The Pelambres mining company is the fifth largest copper producer in Chile and one of the ten largest deposits in the world. The company has shown major concern for environmental protection, and more specifically for water and air protection. To this end, it has developed a social responsibility policy aimed at protecting their workers and the communities in which it operates (Salamanca, Illapel and Los Vilos) on the one hand, and to maintaining international environmental production standards, on the other. So, through the Los Pelambres Mining Company Foundation, it provides productive education aimed at creating an environment of partnership, and seeks to improve the quality of soil for farmers in the valley of Choapa. The company also carries out activities so that when it finishes its activity in the zone, other capacities, such as agriculture and fisheries, would have been installed in the area. It also helps build housing that will benefit some 700 families and promotes corporate

39. GONZÁLEZ, Connie and Lawrence PRATT. "BP Trinidad y Tobago". In: FLORES, Juliano et al. **El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe.** Washington: Inter-American Development Bank 2007, p. 143 and 160.
40. SCHARF, Regina and Lawrence PRATT. "Sostenibilidad rentable: La experiencia del Banco ABN AMRO Real". In: FLORES, Juliano et al. **El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe.** Washington: Inter-American Development Bank, 2007, p. 87. On the Brazilian practice, see OSORIO, Miguel (coord.). **Empresa y Ética. Responsabilidad Social Corporativa.** Madrid: Vozdepapel, 2005, p. 83-87.
41. CORTES, Cristián and John ICKIS. "Recycla Chile S.A.". In: FLORES, Juliano et al. **El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe**. Washington: Inter-American Development Bank, 2007, p. 131 and 142.

citizenship and corporate volunteering. Its production process includes environmental protection and prevention measures, among other actions.[42]

h) Cementos Lima. This is the largest cement producer in Peru. The company has a responsible human resources management and a responsible outreach program to approach the community and other interested groups. To this end, it has implemented a series of infrastructure, education and economic development projects and programs in favor of the community in which it carries out its business. These programs include coverage of basic needs, such as running water and sewage, as well as training to create more job opportunities. This has to be added to Cementos Lima's activities aimed at reducing the environmental impact of its operations.[43]

i) EPM Medellín. Empresas Públicas de Medellín is the result of a merger of three independent entities that provided utility services (energy, water and sewage and telephony) to the Municipality of Medellín in Colombia. Its purpose is to provide services at differentiated rates depending on the user's economic capacity and to develop an aggressive policy to provide services in very poor marginal neighborhoods in the city. The company has also developed a series of social programs for its workers, which has allowed 84% of them to be homeowners thanks to the loans granted by the company at rates below the market. The company also acts as household products supplier, which allows the workers to save in domestic expenses and hose-cleaning products. Finally, the company also offers healthcare and specialty training, all of which reflects the company's commitment to its employees and respect for their fundamental rights.[44]

j) PROPAL S.A. PROPAL paper company is one of the largest enterprises in Colombia and is engaged in the manufacture of white printing and writing paper from sugarcane fiber. This company established Fundación PROPAL, which is destined to developing social programs in favor of their workers and of the other community members in the locations where it operates. Thus, the foundation brings self-managed development programs, such as community health, with the aimed of reducing the population's mortality for controllable diseases; the education program, which consists in grants, loans and training of teachers; business management, which consists in training the workers' families as micro businesspeople; environment improvement, whose purpose is to increase the amount of households with running water and adequate environmental conditions.[45] To this, we must add the medical centers dedicated to providing the community with better healthcare at the lowest prices. PROPAL also has environmentally-friendly paper manufacturing process at all production stages.[46]

While these ten cases are not the only examples of the American corporate social responsibility universe, their geographical diversity shows how the matter has been undertaken by several enterprises in the region with the seriousness and commitment that it deserves. Almost all countries in the region have positive business practices that are worth mentioning due to their level of commitment to the economic and social development of the communities in which they operate

42. MILET, Paz. "Corporate Social Responsibility in the large mining sector in Chile: Case Studies of Los Pelambres and Los Bronces". In: **Corporate Social Responsibility in America Latina. A collection of research papers from the UNCTAD Virtual Institute**. Network. UNCTAD, 2010, p. 7-28.
43. FLORES, Juliano and John ICKIS. "La responsabilidad social de Cementos Lima y sus efectos en la creación de valor para el negocio y en la gestión del riesgo". In: FLORES, Juliano et al. *El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe*. Washington: Inter-American Development Bank, 2007, p. 165 and 181.
44. CABALLERO, Karina and Francisco LEGUIZAMÓN. "Empresas Públicas de Medellín: 50 años creciendo con la gente". In: FLORES, Juliano et al. **El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe**. Washington: Inter-American Development Bank, 2007, p. 189, 206 and 225.
45. AGÜERO, Ana, Juan Luis MARTÍNEZ and Cristina SIMÓN. **La acción social de la empresa. El caso español y latinoamericano**. Madrid: Prentice Hall, 2003, p. 168-172.
46. On this case, also see CARAVEDO, Baltazar. *Ob. cit*., p. 38-42.

and for their concern with their workers' human rights and with maintaining clean production in harmony with the environment.

However, it is also fair to recognize that there is still a good amount of enterprises in the region that have not yet undertaken corporate social responsibility commitments and continue to carry out negative human right or environmental practices, as we will see below

5. Negative regional business practices: cases brought to the IACHR and the Inter-American Court for Human Rights

While at the Inter-Americanlevel progress has been made towards corporate social responsibility, a series problems yet persist, which has caused the activity of several enterprises, human rights violations, employment rights violations, and violations to the right of a healthy and balanced environment

In many cases, these violations have brought about violent protests from the affected people[47] and communities and in other cases, such violations have been brought as judicial claims under the relevant domestic law and the national courts. But many of these cases have also been brought to Inter-Americanhuman rights protection instances, that is, before the Commission and the Inter-American Court for Human Rights, after considering that the national courts have failed to deliver on their function to protect these rights.

In this regard, it is worth mentioning that while the processes and accusations were brought against a State and not enterprises, it is also true that it was corporate activities against human rights and the environment that caused the claims that were brought to these protection agencies; hence the importance of reviewing and analyzing these processes.

The following cases are presented in chronological order:

a) Yanomami vs. Brazil (1985)

Yanomami natives live in the Brazilian State of Amazonas and in the territory of Roraima. According to the Brazilian Constitution, they have the permanent and inalienable right of ownership on the territories on which they live and the exclusive use of the natural resources found there.

The first problem emerged in the 1960s, when the Brazilian government carried forward a natural resource exploitation and development program in the zone, and in the 1970s it built highway BR-210 (Rodovia Perimetral Norte) which went through Yanomami territory. This work forced the Yanomamis to abandon their territories and seek shelter in other areas. This caused disease and death (from epidemics) without the Brazilian government adopting the necessary measures to prevent them.

The second problem arose when rich mineral deposits were discovered in the Yanomami territories (Couto de Magalhães, Uraricäa, Surucucus and Santa Rosa), which attracted mining enterprises and independent explorers (*garimpeiros*), whose activities caused a new displacement and damages to their property (the lands) and the environment in which these natives lived.

What we have described caused the Yanomamis to resort to the IACHR, making the Brazilian State responsible for violating their rights (right to life, to health, to wellbeing, to property (among others) as a consequence of the activities pursued by the building and mining enterprises that were operating in the area. After analyzing the case, the IACHR declared the responsibility of the Brazilian State for "failing to adopt timely and effective measures to protect the human rights [property, live, health, etc.] of the Yanomamis".[48]

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47. Only by way of example, we have the cases of Peru and Chile, two countries that encourage foreign investment and that have suffered several social protests against projects that are fundamental for their development. In the case of Peru, the Conga project, the largest mining project in the country's history, was paralyzed. In the case of Chile, a village of artisans and fishermen rioted to stop the construction of the largest thermal power station in South America, a plan of the Brazilian millionaire Eike Batista. Both cases were due to fear of environmental threats. Available at: <http://m.gestion.pe/movil/noticia/2000991>.
48. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. Report 12/85. Case 7615, ***Yanomami vs. Brasil***, March 5, 1985, see paragraph. 11; see also 2, 3, and 7.

b) Maya Indigenous Communities vs Belize (2000)

The Maya Indigenous Communities of Toledo resorted to the IACHR stating that the State of Belize had been granting several concessions to timber and oil companies that extended over more than a half million acres of lands that were the traditional settlement of those communities. Such were the concessions granted to the Malay timber enterprises Toledo Atlantic International Ltd. and Atlantic Industries Ltd., and the concession to the oil company AB Energy Inc. The behavior of these enterprises—as the communities sustain - "threatens [to cause] long term and irreversible damage to the natural environment upon which the Maya depend. [This] threat is intensified by the alleged inability or unwillingness of the State of Belize to adequately monitor the logging and enforce environmental standards".[49] Additionally, the Mayas sustain that the State of Belize has systematically ignored consulting them on the granting of concessions, which threatens their right to property, maintaining their health and wellbeing, and the preservation of their environment.

In this regard, the IACHR established that:

> [T]he right to use and enjoy property may be impeded when the State itself, or third parties [enterprises] acting with the acquiescence or tolerance of the State, affect the existence, value, use or enjoyment of that property without due consideration of and informed consultations with those having rights in the property. In this regard, other human rights bodies have found the issuance by states of natural resource concessions to third parties [enterprises] in respect of the ancestral territory of indigenous people to contravene the rights of those indigenous communities.
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> […]
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> Such damage resulted in part from the fact that the State failed to put into place adequate safeguards and mechanisms, to supervise, monitor and ensure that it had sufficient staff to oversee that the execution of the logging concessions would not cause further environmental damage to Maya lands and communities.[50]

Thus it was concluded that the State of Belize should refrain from any act that could affect the existence, value, use or enjoyment of the property located in the geographical area occupied and used by the Mayan people, and shall also repair the environmental damage caused by the concessions granted by the State.[51]

c) Mayagna (Sumo) Awas Tingni Community vs. Nicaragua (2001)

The Mayagna community is settled in the North Atlantic Autonomous Region of Nicaragua and is integrated by some 600 individuals that survive from farming, hunting and fishing, which activities they perform within a territory according to their traditional community organization scheme.[52]

En 1996, the State of Nicaragua granted a 30-year logging concession to SOLCARSA over an area of approximately 62,000 hectares over the Wawa River and Cerro Wakambay. One year later, it finds that the company carried out works without an environmental authorization, including logging in the community's site. Even the Constitutional Chamber of the Supreme Court of Justice of Nicaragua declared the unconstitutionality of the concession granted to SOLCARSA. Before all these facts, the Mayagna community carried out several actions to have the Nicaraguan authorities defined and delimited their lands, so that they did not continue to stand the abuse and damage caused by the enterprises operating in the area under the concession. However,

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49. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. Report 40/40. Case 12.053, **Maya Indigenous Communities vs. Belice**, October 12, 2000, paragraphs 34 and 35.
50. *Ibid*., paragraphs 140 and 147.
51. TANGARIFE, Mónica. **La Estructura Jurídica de la Responsabilidad Internacional de las Empresas Transnacionales y otras Empresas Comerciales en Casos de Violaciones a los Derechos Humanos**. México: Flacso, p. 81.
52. INTER-AMERICAN COURT OF HUMAN RIGHTS. **Mayagna (Sumo) Awas Tingni Community vs. Nicaragua,** Judgement of August 31, 2001 (Merit, Reparations and Costs), paragraph 103.

these actions were to no avail, so the community resorted to the IACHR and then to the Court seeking protection of their rights.

The Inter-American Court for Human Rights finally decreed the obligation of the State of Nicaragua to delimit the Community's property and to refrain from (whether directly or through third-party enterprises operating under a concession) any actions that could impair the value or enjoyment of the community's property,[53] including the land on which they live and the resources found in them, as is the case of their trees and forests.[54]

d) Legal Condition and Rights of Undocumented Migrants (2003)

This case is about an advisory opinion requested by Mexico to the Inter-American Court of Human Rights regarding the impairment of the use and enjoyment of certain employment rights by migrant workers and the compatibility with the American States' obligation to guarantee such rights, in particular respect for the principle of equality and non-discrimination.

In this regard, the Inter-American Court establishes very clearly the need to respect the human rights of undocumented migrant workers, not only when the State is the employer but also when the employer is a private company. Thus:

> In an employment relationship regulated by private law, the obligation to respect human rights between individuals should be taken into consideration. That is, the positive obligation of the State to ensure the effectiveness of the protected human rights gives rise to effects in relation to third parties (erga omnes). This obligation has been developed in legal writings, and particularly by the Drittwirkung theory, according to which fundamental rights must be respected by both the public authorities and by individuals [enterprises] with regard to other individuals.
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> […]
>
> The State should not allow private employers to violate the rights of workers, or the contractual relationship to violate minimum international standards.[55]

Therefore, the Court concludes States are internationally responsible not only when the human rights of undocumented migrant workers are violated by national authorities, but also by the enterprises.

In short, employment relationships that occur between migrant workers and third-party employers could give rise to international responsibility of the State in several forms. First, the States have the obligation to see that all the employment rights stipulated under their laws are recognized and enforced in their territories, as well as the rights arising from international instruments or the internal norms. Moreover, the "States are responsible internationally when they tolerate third-party [enterprises] actions and practices that harm migrant workers, whether because they do not recognize that they are entitled to the same rights as national workers or because the same rights are granted but with a certain degree of discrimination."[56]

e) Ximenes Lopes vs. Brazil (2006)

This case was brought before the IACHR, and consists of a claim against Brazil for the lack of health protection. The specific argument was that the Brazilian State had failed to fulfill its duty to prevent and control private health centers (clinics), so that they do not abuse or behave arbitrarily against their customers.

The complaint was specifically against a private psychiatric care center, *Casa de Repouso Guararapes*, for having abused and threatened against the integrity of a patient, Damião Ximenes Lopes, a person with a mental disability.

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53. *Ibid*., paragraph 153.
54. TANGARIFE, Mónica. *Ob. cit.*, p. 75-78.
55. INTER-AMERICAN COURT OF HUMAN RIGHTS. **Advisory Opinion OC-18 - Condición jurídica y derechos de los migrantes indocumentados.** 2003, paragraphs 140 and 148.

56 *Ibid.*, paragraph 153.

In this regard, the IACHR considered that the claim was valid and was brought to the Inter-American Court of Human Rights, which stated that the State's international responsibility also occurs when the State fails to fulfill its duty to prevent that private enterprises (clinics) breach the rights of patients. It was specifically said that:

> […]State´s liability may also result from acts committed by private individuals which, in principle, are not attributable to the State. The effects of the duties erga omnes of the States to respect and guarantee protection norms and to ensure the effectiveness of rights go beyond the relationship between their agents and the individuals under the jurisdiction thereof, since they are embodied in the positive duty of the State to adopt such measures as may be necessary to ensure the effective protection of human rights in inter-individual relationships.
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> […]
>
> As to the persons who are under medical treatment, and since health is a public interest the protection of which is a duty of the States, these must prevent third parties from unduly interfering with the enjoyment of the rights to life and personal integrity, which are particularly vulnerable when a person is undergoing health treatment.
>
> […].
>
> The failure to regulate and supervise such activities gives rise to international liability, as the States are liable for the acts performed by both public and private entities which give medical assistance, since under the American Convention international liability comprises the acts performed by private entities acting in a State capacity, as well as the acts committed by third parties when the State fails to fulfill its duty to regulate and supervise them.[57]

f) Saramaka people vs. Suriname (2007)

The IACHR presented this case before the Inter-American Court of Human Rights denouncing that the State of Suriname had failed to comply with a series obligations in connection with the Saramaka people, in particular because it granted a series of concessions on the land of this people, which violated their right to use and enjoy the natural resources.

The Court considered that the logging concessions, granted by the State on the lands of the higher region of the Suriname River to private enterprises, damaged the environment and had a negative impact on the lands and natural resources that the Saramaka people have traditionally used for their survival. From this, it was concluded that:

> [I]n order to guarantee that restrictions to the property rights of the members of the Saramaka people by the issuance of concessions within their territory does not amount to a denial of their survival as a tribal people, the State must abide by the following three safeguards: First, the State must ensure the effective participation of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan (hereinafter "development or investment plan")127 within Saramaka territory. Second, the State must guarantee that the Saramakas will receive a reasonable benefit from any such plan within their territory. Thirdly, the State must ensure that no concession will be issued within Saramaka territory unless and until independent and technically capable entities, with the State's supervision, perform a prior environmental and social impact assessment. These safeguards are intended to preserve, protect and guarantee

57. INTER-AMERICAN COURT OF HUMAN RIGHTS. **Ximenes Lopes vs. Brasil.** Sentence of July 4, 2006, paragraphs 85, 89 and 90.

the special relationship that the members of the Saramaka community have with their territory, which in turn ensures their survival as a tribal people.[58]

g) Pediatrics clinic in the Lagos region vs. Brazil (2008)

In this case, the Brazilian State was accused of liability for the death of 10 new-borns resulted from alleged malpractice by the personnel of the Pediatrics Clinic in the Lagos Region, city of Cabo Frio, in the State of Rio de Janeiro, in 1996.[59]

The petitioners before the IACHR argued that while it was a private clinic, the State failed to fulfill its duty to inspect and evaluate and to supervise such clinic's operations.

Before that, the IACHR estimated that the petition could be sustained as the alleged failure by the State could be a violation of the right to life stipulated in article 4.1 of the American Convention on Human Rights.[60]

h) Xákmok Kásek indigenous community vs. Paraguay (2010)

In this case, the Inter-American Court for Human Rights declared that Paraguay was internationally liable for violating the rights of the Xákmok Kásek indigenous community, settled in the region of the Paraguayan Chaco, where up to 17 different indigenous communities reside.

The State of Paraguay is specifically made responsible of violating the community's right to community property, as several portions of their territory (10,700 hectares) to private owners, including enterprises, so the community's territory and the use of the territory they kept were constrained, as there were guards controlling entrance to and exit from the territory, banning fishing and collection of foods, as had been their custom.[61]

i) Kichwa of Sarayaku indigenous people vs. Ecuador (2012)

The Inter-American Court for Human Rights declared that Ecuador was internationally liable for breaching the consultation rights, private property and cultural identity of the Kichwa of Sarayaku indigenous people, by permitting a private oil company (the consortium integrated by Compañía General de Combustibles S.A. and Petrolera Argentina San Jorge S.A.) to perform oilfield exploration works in their territories since the end of the 1990s without previously consulting them and causing damage to the environment.[62]

It was also found responsible for jeopardizing the right to life and personal integrity of the community, by permitting the oil company to load 477 wells with approximately 1,433 kilograms of the explosive called pentolite, which destroyed at least one special site important for the spiritual life of the Sarayakus; for the destruction of caves, water sources and underground rivers that are necessary for consumption by the community, for logging of trees and plants with a high environmental value and necessary for community survival, and for the suspension of ancestral acts and ceremonies of the Sarayakus.[63]

In short, from all these cases we can see that the region still sees several enterprises that have not undertaken their obligation to respect human rights, their workers' employment rights and the environment. In this token, the Inter-American Commission and the Court of Human Rights have contributed significantly to the development of corporate social responsibility in the region, by making it clear to the States and the enterprises, through their jurisprudence, that international responsibility may arise when the State tolerates that private enterprises violate their workers' or users' human rights (life, integrity, health, property, work, non-discrimination, etc.) or

58. INTER-AMERICAN COURT OF HUMAN RIGHTS. **Saramaka People vs. Suriname**, Judgment on Preliminary Objections, Merits, Reparations and Costs of November 28, 2007, paragraph 129.
59. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. **Report Nº 70/08**, Petition 12.242, 16 de October de 2008, paragraphs 1 y 2.
60. *Ibid.*, paragraph 50.
61 INTER-AMERICAN COURT OF HUMAN RIGHTS. **Xákmok Kásek Indigenous Community vs. Paraguay,** Judgment on Merit, Reparations and Costs of August 24, 2010, paragraph 107 ss.
62 INTER-AMERICAN COURT OF HUMAN RIGHTS. **Kichwa of Sarayaku Ingigenous People vs. Ecuador,** Judgment on Merit and Reparations of June 27, 2012, paragraph 127.
63 *Idem.*

those of the communities in which they operate, when the State fails to oversee the concessions granted to private enterprises.

Thus, it is necessary that the States implement efficient policies to oversee enterprises during the normal course of their business, in addition to the enterprises themselves establishing policies that guarantee respect of human rights and of the environment during their operations. It is also important that they integrate these landmark cases in the settlement of judicial processes in their domestic courts, as is actually happening.

6. Conclusions and preliminary recommendations

From all of the above, we may conclude the following:

a. Corporate social responsibility in the region has seen notable progress, all the more so in countries with relatively a more developed industrial sector and a more corporations in their economies, in which the emerging notion of responsibility is starting to be tied to creating value. As many Latin American enterprises insert themselves into the world economy as a result of their entry into various free trade agreements, they are faced with pressure from foreign customers, governments and consumers, who demand not only that specified quality of products or services be delivered, but also that their production processes standards meet legal and ethical requirements, thus strengthening the incorporation of corporate social responsibility into their business strategies. The weakness of the process lies on the slim oversight or follow-up capacity of the authorities, the enterprises' resistance to accepting normative regulations on the matter, and the lack of dissemination strategies and incentives by the States.

b. Another relevant aspect is the work of unions, religious organizations, NGOs and other organizations, which act and protest against the violation of employment rights or practices against human rights or failure to preserve the environment by the enterprises. These entities are useful not only to draw the authorities' attention to possible abusive practices by the enterprises, but also to demand from enterprises respect to the norms and a closer relationship with the location where they carry out their business. However, these organizations also face criticism—sometimes justified—, as they sometimes stand for extremist ideologies or interests that work against any kind of investment and development projects.

c. No regional regulations (mandatory or voluntary) on corporate social responsibility have been established in Latin America. However, corporate social responsibility has been a matter of concern to the OAS, and while it has not established a binding regulation or a recommendation on the matter, it has accepted the validity of the directives, principles and initiatives proposed by other international forums and has recommended their implementation by the OAS Member States. Likewise, it has shown special concern for small and medium enterprises to also adhere to the trend of bringing forward a corporate social responsibility policy, particularly in the field of human rights and the environment. Finally, the OAS has developed some studies on the matter, which have been made available to the States so they learn and act on them.

d. Parallel Inter-American conferences on corporate social responsibility have been organized by the Inter-American Development Bank, in which no binding or voluntary regulations have been produced. However, they have served to inform the countries of the region and to learn about the statistical and field works that have been taken into consideration by the participating countries in building their own internal corporate social responsibility regulations. This has also stimulated the organization of other national and international events, which have contributed to the adoption of responsible practices in the enterprises.

e. As for domestic legal ordinances, in absence of a regional international regulation, the countries in the region—particularly those that have attained a higher level of relative development— have incorporated corporate social responsibility matters in their domestic legislation, whether through a specific

regulation or a generic one. Hence, they assume that the issue has to have clear and binding rules for the enterprises.

f. Additionally, in several of these countries civil associations have emerged to promote corporate awareness, whether by granting national awards or by assuming ethical commitments, all of which has given rise to a set of positive corporate practices in the business arena

g. In practice, it is possible to find in the region several enterprises that approach corporate social responsibility with the seriousness and level of commitment the matter deserves. Almost all countries in the region have positive business practices that are worth mentioning given their level of commitment to the social and economic development of the communities in which they operate, for their concern for their workers' human rights and to maintain clean and environmentally-friendly production processes.

h. It is also fair to recognize, however, that there is still a good amount of enterprises in the region that have not yet undertaken corporate social responsibility commitments and continue to carry out negative human right or environmental practices, which have led to protests and claims in national and international jurisdictions.

The Commission and the Inter-American Court of Human Rights have contributed significantly to the development of corporate social responsibility in the region, by making it clear to the States and the enterprises, through their jurisprudence, that international responsibility may arise when the State tolerates that private enterprises violate their workers' or users' human rights (life, integrity, health, property, work, non-discrimination, etc.) or those of the communities in which they operate, when the State fails to oversee the concessions granted to private enterprises.

In this regard, with the purpose of strengthening the progress in corporate social responsibility matters already attained in the region and to overcome the existing obstacles and weaknesses, we believe it is pertinent that the Guiding Principles to be prepared by the Inter-American Juridical Committee on RSE, shall take into consideration the following preliminary recommendations:

a. Strengthening domestic follow-up, oversight and control of compliance with employment rights and other human rights and environmental protection requirements by the enterprises. This necessarily implies that the States implement efficient policies to oversee enterprises during the normal course of their business, in addition to the enterprises themselves establishing policies that guarantee respect of human rights and of the environment during their operations.

b. This has to be supplemented with the establishment of incentives or other forms of acknowledgement that benefit or reward the enterprises that are actively committed to corporate social responsibility.

c. Likewise, the principles of corporate social responsibility and good business practices that have brought benefits to the communities where they operate must be publicized, as must also be the positive impacts for the enterprises themselves. Corporate social responsibility must be part of a culture that is shared and assumed by businessmen, so training and raising awareness among businessmen is critical.

d. Other players must take part in this endeavor, including universities and research centers, to provide knowledge and ideas to improve the behavior of enterprises, as well as NGOs, unions, media and churches, which could serve as pressure or reporting entities, as well as support and collaboration partners.

e. Finally, trade associations can become key player in strengthening the conscious and voluntary adoption of corporate social responsibility, by providing technical advisory and training, by establishing information and experience exchange networks among enterprises, creating incentives and awards, among other actions.

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6. Electronic warehouse receipts for agricultural products

	Documents
CJI/doc.427/13	Electronic warehouse receipts for agricultural products (presented by doctor David P. Stewart)
CJI/doc.437/13	Proposed principles to warehouse electronic receipts (presented by doctor David P. Stewart)

During the 81st regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August, 2012), Dr. David P. Stewart proposed developing a standard law on electronic customs warehouse receipts relating to the transportation of agricultural products. He explained that many countries use antiquated procedures at various stages in the chain of production.

Dr. Gómez Mont Urueta then asked Dr. Stewart to act as the rapporteur on the subject. Dr. Stewart accepted. Dr. Jean-Michel Arrighi asked Dr. Stewart to look into the scope of the Inter-American Convention on Contracts for the International Carriage of Goods by Road.

The Chair asked the rapporteur to submit his report at the next session of the Committee.

At the 82nd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March, 2013), the rapporteur of the topic, Dr. David P. Stewart, presented document CJI/doc.427/13, dated January 31, 2013, entitled "Electronic warehouse receipts for agricultural products."

Besides explaining the objective of his proposal, Dr. Stewart offered a general analysis of the issue. He explained that, within the distribution chain, products sent to domestic and international markets are subject to warehousing, which can vary in cost and can lead to indebtedness. In this context, he expressed interest in having an instrument that gives States a form of secure, efficient transaction that is negotiable and has a value; and in modernizing the system to make it electronic.

Both UNCITRAL and UNIDROIT have embarked on global efforts in this arena, but the Committee's work may be relevant at the hemispheric level. He noted as well that the OAS has the advantage of being able to act more quickly than other forums as it already has an instrument on secured transactions. The rapporteur therefore proposed two approaches: a set of draft principles or a model law. In both cases the support of experts would be needed as this was not an area he is used to handling in his work. Dr. Fabián Novak Talavera and Dr. Gélin Imanès Collot both supported the idea of a model law to assist national efforts. The rapporteur noted that while a number of instruments were already dealing with secured transactions, this proposal would fill a gap in this area. Besides, States would find a model law more acceptable over a binding instrument.

The Chairman asked the rapporteur to submit a proposal model law for the August meeting. He also requested the Secretariat to consult or survey the States on existing legislation in this area.

By note verbale OEA/2.2/33/13 of July 2, 2013, the Department of International Law sent the permanent missions to the OAS a request for information on existing legislation.

At the 83rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2013), the rapporteur for the topic, Dr. David P. Stewart, presented a first draft of the document titled “Proposed Principles for Establishing an Electornic Warehouse Receipts System” (registered as document CJI/doc.437/13) and asked the Committee members to convey their proposals and suggestions by December 2013, with a view to submitting final draft in March 2014.

The rapporteur considered that the focus of model law should be on agricultural products, and that it should be consistent with the Model Law on Secured Transactions, including both electronic and paper receipts. He also noted that he would take into account the work done by UNIDROIT and UNCITRAL as well as the latest developments at the international level. Finally, he said that the

document should emphasize the need for government supervision of the whole process. The documents presented by Dr. David Stewart are as follows:

CJI/doc.427/13

ELECTRONIC WAREHOUSE RECEIPTS FOR AGRICULTURAL PRODUCTS

(presented by Dr. David P. Stewart)

Mandate

The Inter-American Juridical Committee decided by consensus at its meeting held on August 9, 2012, during its 81st regular session, CJI/RES. 196 (LXXXI-O/12), under the powers vested in it in Article 12, c) of its Statutes, to include on the agenda for its next session the study of electronic warehouse receipts for agricultural products with a view to determining whether it might usefully contribute to the discussion of this subject through the subsequent development of a set of recommended principles or a model law. At that same meeting, a rapporteur was appointed to submit a preliminary document to the Juridical Committee for analysis and debate.

Context

In many countries, the agricultural sector continues to be dominated by small-scale operations in which a majority of producers cultivate only a few hectares and lack ready access to financial credit. In such situations, producers are often forced to sell their fruits, vegetables and other crops immediately after harvest in order to get money to pay expenses and to buy supplies for the next planting.

The sale of produce immediately after harvest can saturate the market, leading to low prices. Farmers may be forced to accept these low prices because they cannot get financing from commercial banks, which view them as high risk. Without loans, farmers are not likely to be able to pay for storage at warehouses. Moreover, warehouses are often located far from the farms and transportation costs can be high for distant producers.

Improving the performance of the agricultural sector is critical for economic growth and poverty reduction in many regional economies. A system is needed that enables farmers to store some of their grain after harvest and to use it as collateral for loans based on the market value of their commodities, thus generating funds to cover immediate expenses and to help prepare for the next harvest. Assured of financing, farmers can wait for market prices to improve before selling their products. As a result, they can obtain a higher average price, which in turn will increase their annual incomes.

Definition and Benefits

Warehouse receipt financing is a form of asset-based lending that allows farmers, producers, and traders of agricultural commodities to obtain bank loans by pledging their warehouse receipts issued against commodities deposited in warehouses. Warehouse receipts are issued by accredited warehouses to farmers and traders; the receipts serve to acknowledge the quantity and quality of the produce deposited with the warehouses. On the basis of these receipts, the farmers can raise money from banks willing to accept the receipts as collateral.

A warehouse receipt serves as a document of title and provides proof of ownership of a specific quantity of products with specific characteristics and stored in a specific warehouse goods held in inventory. When issued in negotiable form and backed by the necessary legal guarantees, it gives the holder the right to transfer ownership while the goods are still in the possession of the warehouse. It can also serve as collateral, and can be sold, traded or used for delivery against financial instruments including futures contracts.[1]

1. Generally, see WORLD BANK. **Expanding Post-Harvest Finance through Warehouse Receipts and Related Instruments.** *Agricultural and Rural Development Notes*, n.8, March 2006; USAID. Warehouse Receipts: Financing Agricultural Producers. *Technical Notes*, n. 5, Oct. 2000. Available at: <http://pdf.usaid.gov/pdf_docs/PNACQ697.pdf>.

An effective warehouse receipt system can help farmers obtain access to better credit and avoid distress sales as well as safeguard financial institutions by mitigating risks inherent in extending credit to farmers. It can also help to increase the overall efficiency in the relevant commodity market, smoothing the supply and prices in the market, improving incomes and reducing losses.

A modern *electronically-based* system of warehouse receipts can significantly increase the speed of transactions without increasing the risk, thereby permitting small producers (especially those who produce perishable commodities) to participate in markets much farther from their own locations.

Initiatives/Examples

Warehouse receipts systems have been implemented in recent years in Poland, Hungary, Slovakia, Bulgaria, Turkey, Indonesia, Uganda, Ghana, and South Africa, to name a few. In Ukraine, the European Bank for Reconstruction and Development (EBRD) funded a Grain Warehouse Receipt Program aimed at creating the necessary legal environment for a grain warehouse storage and receipt program to function.

In Ethiopia, a Warehouse Receipts Financing Initiative of the International Financial Corporation (IFC) has helped to expand access to financing for farmers, traders, and cooperatives and develop agricultural commodities markets since 2009. The Initiative has increased the availability of warehouse receipt financing in the country. A symposium on the program was held in Addis Ababa in June 2012.

In India a new Warehousing (Development and Regulation) Act, 2007 came into effect in 2010. The Act makes warehouse receipts negotiable.

In the United States, warehouse receipts are supported by federal legislation, the Warehouse Receipts Act of 2000, which replaced a legislation enacted in 1916.[2] It permits the issuance and use of EWRs. By the end of the 1990s, almost 90% of all stored cotton had been covered by electronic warehouse receipts. One of these issuers, eGrain, established in 2006, facilitated the issuance of EWRs for grain and rice worth over USD $3 billion.

The Problem

In a number of countries in Central and South America, the practice continues in general to be based on a dual set of documents issued by the warehouseman. The documents are (1) the pledge certificate (*certificado de prenda*), also referred to in some jurisdictions as an ownership certificate (*certificado de propiedad*) or title of ownership (*título de propiedad*) and (2) the pledge bond (*bono de prenda*).

The first of these documents (the pledge certificate) is supposed to act as a receipt for the stored goods; it is issued by the warehouseman in the name of the depositor as owner of the deposited goods. This certificate (receipt) is also supposed to stay with the depositor until the goods are ready to be retrieved by him or by his assignee or pledgee. The second document (the pledge bond) is designed to be endorsed or delivered stet by the depositor to the financier upon receiving the latter's loan. With that pledge bond the holder (usually a bank) can claim the goods from the warehouseman provided that their depositor also releases them by delivering his certificate of pledge or of ownership.

However, this method of securing loans is clearly unsuited for an increasingly faster logistical chain. Today, for example, many agricultural products are moved quickly after harvest to warehouse “A,” where they remain for only a few hours or days before being sent toward their destination. From “A” they might be taken to warehouse “B” and stored briefly before being put into a container and placed on board an ocean-going vessel, or an airplane, a truck or railroad car and sent to a foreign destination. Upon arrival, a similar sequence of storage and transportation may take place. It is clearly inefficient to require the release of a certificate of ownership or of

2. The Federal Warehouse Receipts Act, Aug. 11, 1916, c. 313, Pt. C, § 2, as amended Nov. 9, 2000, Pub.L. 106-472, Title II, § 201, 114 Stat. 2061, codified at 7 U.S.C. 241-277.

deposit from a distant depositor or bailor each time the endorsement of pledge bond is made by its latest holder in a different location or country. Doing this in paper form is even more inefficient.

While documentary trade instruments have historically not been common in Central and South America, several countries have introduced modern warehouse receipts systems in recent years, including Argentina and Brazil. In addition, some jurisdictions in the hemisphere have begun using electronic warehouse receipts (hereinafter EWR). Brazil, for example, adopted laws and regulations conducive to the issuance and transfer of EWRs called certificates of deposit and warrants. Brazilian Law No. 11.076 of December 2004 authorized the issuance of agribusiness certificates of deposit and agribusiness warrants, and has even created a clearing system for warehouse receipt transactions, although its electronic receipts for some unexplained reason continues to rely on two paper based or electronic documents, messages or records.

Mexico sought to enact a new warehouse receipt law in 2008 that still relied on the two document method, even though it has become abundantly clear that a single document or electronic message or record is the most effective and safe method of conveying possessory interests in the stored collateral.

Pre-Conditions

An effective warehouse receipts system can reduce uncertainty and increase efficiency in agricultural markets. But its success depends on several pre-conditions. Clearly, a surplus of the relevant commodities must exist (otherwise, there can be no products for the producer to sell). There must also be accessible markets (otherwise, there can be no place for the producer to sell). The necessary infrastructure must exist to connect the producer to the markets (specifically, warehouses and an effective transportation system).

Banks must be prepared to offer the necessary financing. This, in turn, requires a reliable legal structure which establishes and regulates the system of warehouse receipts and guarantees the enforceability of the receipts in case of default. Without credibility among financial institutions, a warehouse receipts scheme is worthless because it cannot help farmers to get a loan. Besides mandating the negotiability of warehouse receipts, the system must also prescribe the form and manner of registration of warehouses and issue of negotiable warehouse receipts, including the legitimacy of electronic records and transfers.

The system must also provide effective government monitoring and oversight. Warehouses must be inspected and licensed (by governmental agencies or non-governmental bodies such as trade groups) according to established standards, and some form of regulatory authority is needed to protect the interests of holders of warehouse receipts against negligence, malpractices and fraud.

The Legal Framework

The legal framework for an effective system of electronic warehouse receipts must rest on two pillars. First, it must recognize modern forms of secured transactions and methods of secured financing, including negotiable warehouse receipts. Second, it must recognize and give effect to electronically-created and stored records on the same basis as paper records.

(1) *Secured Transactions*. Within the OAS, the basis for an effective system of secured financing already exists, in the 2002 OAS Model Law on Secured Financing. The text of that Model Law is available at *http://www.oas.org/dil/CIDIP-VI-securedtransactions_Eng.htm*. Prepared within the CIDIP-VII process, the Model Law provides the necessary legal framework for domestic implementation. In particular, it provides in Article 1 that a State which adopts the Model Law "shall create a unitary and uniform registration system applicable to all existing movable property security devices in the local legal framework, in order to give effect to this Law." A central registry serves the critical purpose of standardizing the documentation required to provide proof of title to the property in question, which is a critical step in establishing it as acceptable collateral for bank lending.

The Model Law has been supplemented by the OAS Model Registry Regulations, which were prepared and approved by CIDIP-VII on October 9, 2009.[3] A number of countries in the hemisphere, including Peru, Guatemala, and Honduras, have enacted modern secured transactions laws (*Ley de Garantías Mobiliarias*). In 2010 Mexico put into operation its moveable assets registry (*Registro Único de Garantías*).[4]

(2) *Electronic records.* Traditionally, paper receipts have been used as evidence of ownership, deposited at banks to cover financing activities and held as collateral against the transaction. But paper documents are cumbersome, costly and inefficient, especially since they must be physically transferred between the growers, the warehouses, the banks or other lien holders, etc. Electronic warehouse receipts eliminate the need to store paper files. They are safer, faster and more economical. It is therefore important to remove any legal barriers that might prevent the legally effective use of electronic communications.

The importance of electronic communications was in fact recognized in Article VII of the OAS Model Law, which states that the written security contract "may be manifested by any method of communication that leaves a permanent record of the consent of the parties to the creation of the security interest, including telex, telefax, electronic data interchange, electronic mail, and any other optical or similar method, according to the applicable norms on this matter and taking into account the Resolution of this Conference attached to this Model Law (CIDIP-VI/RES. 6/02)."

In this regard, reference should also be made to the Uniform Inter-American Rules for Electronic Documents and Signatures (October 3, 2001).[5] These rules were adopted in light of the development of the Model Law and were intended to provide basic enabling provisions for electronic transactions to assist OAS Member States in preparing standardized commercial documentation for international transportation.

While electronic record-keeping is now recognized and endorsed in principle in various international instruments, there is general agreement that more specific and detailed rules are required to implement those principles in specific economic sectors. For example, the 2005 UN Convention on the Use of Electronic Communications in International Contracts does set out a general rule of "functional equivalence," but by its explicit terms it does not apply to warehouse receipts. The 2008 UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the "Rotterdam Rules") also recognizes the validity of electronic communications in the area of ocean transport, including "negotiable electronic transport records," but its success will of course depends on effective domestic implementation.

More recently, UNIDROIT has begun to consider the role of a modernized agricultural financial system in the development of sustainable and profitable agricultural markets.[6]

UNCITRAL has taken the lead in addressing the need for countries to modernize their laws by accepting electronic communications as the equivalent of written communications. In 1996, UNCITRAL adopted a Model Law on Electronic Communications, which together with its subsequent Guide to Enactment provide a basis for modernization of domestic law. A number of countries around the world have in fact relied on the 1996 Model Law in whole or in part. Among

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3. CIDIP-VII/RES.1/09 rev.2, OEA/Ser.K/XXI.7. Resolution available at: <http://www.uncitral.org/pdf/english/colloquia/3rdSecTrans/John_Wilson_MR.pdf>.
4. Generally, see KOZOLCHYK and WILSON. **The New Model Law on Secured Transactions**. *Uniform Law Review*, n. 262, 2002; WILSON. **Model Registry Regulations under the Model Inter-American Law on Secured Transactions.** *Uniform Law Review*, n. 515, 2010; KOZOLCHYK. **Implementing the OAS Model Law in Latin America: Current Status**. *Arizona J. Int'l Comp*, n. 28, L. 1, 2011; AKSELI, Orkun. **International Secured Transactions Law: Facilitation of Credit and International Conventions and Instruments.** Routledge, 2011.
5. Available at: <http://www.oas.org/dil/CIDIPII_topics_futures_cidips_electroniccommerce_signatures_3oct2001.htm>.
6. See GABRIEL, Henry Deeb. **Warehouse Receipts and Securitization in Agricultural Finance**. *XVII Uniform Law Review*, UNIDROIT, n.369, 2012.

others, Canada, Australia, Korea, Japan, the United States and Columbia have updated their laws in recent years.

Most recently, the discussion has continued in UNCITRAL's Working Group IV on electronic commerce. In August 2012, the Governments of Columbia, Spain and the United States submitted a paper on the legal issues relating to the use of electronically transferable records. See UN Doc. A/CN.9/WG.IV/WP.119 (Aug. 3, 2012) (copy attached).[7]

In paragraph 48, that paper specifically addressed the advantages and benefits of electronic warehouse receipts for agricultural economies. As indicated in the official report of the Working Group's October 2012 meeting, consideration is being given to the preparation of a model law on electronically transferable records, and the Working Group will again discuss the matter at its next meeting in May 2013.[8]

Recommendation

The Inter-American Juridical Committee may wish to consider how it might best contribute to the development of an effective system of electronic warehouse receipts in the hemisphere, for example by preparing (i) a set of draft principles for consideration in the formulation of a model law on the subject of electronic warehouse receipts, or (ii) the text of a draft OAS Model Law.

It may also wish to consider conducting a survey of Member States of the OAS regarding their law on secured transactions and electronically transferrable records, based on the relevant OAS and international instruments.

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7. Available at: <http://www.uncitral.org/uncitral/en/commission/working_groups/4Electronic_Commerce.html>.
8. See UNCITRAL. **Report of the Working Group IV (Electronic Commerce).** 46th session, Vienna, 29 October-2 November 2012, UN Doc. A/CN.9/761 (Nov. 5, 2012). Available at: <http://www.uncitral.org/uncitral/en/commission/working_groups/4Electronic_Commerce.html>.

CJI/doc.437/13

PROPOSED PRINCIPLES FOR ELECTRONIC WAREHOUSE RECEIPTS

(presented by Dr. David P. Stewart)

An earlier paper on this topic described in general the potential benefits of adopting a system of electronically-issued warehouse receipts ("EWR") allowing farmers to store some of their commodities after harvest and to use the receipt as collateral for loans based on the market value of their commodities. That paper proposed the preparation of a possible model law encouraging the development of an effective system of electronic warehouse receipts in the hemisphere. This paper outlines the basis for a set of draft principles for consideration in the formulation of a possible OAS Model Law on the subject of electronic warehouse receipts.

Background

As indicated in the earlier paper, a warehouse receipt serves as a document of title and provides proof of ownership of a specific quantity of products with specific characteristics and stored in a specific location, such as warehouse. A *negotiable* warehouse receipt is more than proof of ownership; it also gives the holder the right to transfer ownership while the goods are still in the possession of the warehouse. It can also serve as collateral, and can be sold, traded or used for delivery against financial instruments including futures contracts.

Warehouse receipt financing is a form of asset-based lending that allows farmers to obtain bank loans by pledging warehouse receipts issued to them against commodities deposited in warehouses. Warehouse receipts are issued by accredited warehouses to the farmer; the receipt acknowledges the quantity and quality of the produce deposited with the warehouse and typically contains the terms of the storage contract between the farmer and the warehouse. On the basis of these receipts, the farmer can raise money from banks willing to accept the receipts as collateral.

A modern *electronically-based* system of warehouse receipts can significantly increase the speed of transactions without increasing the risk, thereby permitting small producers (especially those who produce perishable commodities) to participate in markets much farther from their own locations.

General Conditions

An effective warehouse receipts system can reduce uncertainty and increase efficiency in agricultural markets. But its success depends on several conditions. Clearly, a surplus of the relevant commodities must exist; otherwise, the producer will have no products to sell. There must be accessible markets; otherwise, the producer will have no place to sell the products. The necessary commercial infrastructure (warehouses and an effective transportation system) must exist to connect the producer to those markets.

Of course, a strong warehouse receipt system needs to be tied to effective financing mechanisms. Banks must be prepared to offer the necessary financing. This, in turn, requires a reliable legal structure regulating the system of warehouse receipts and guaranteeing the enforceability of the receipts in case of default. Besides mandating the negotiability of warehouse receipts, the system must also prescribe the form and manner of registration of warehouses and issue of negotiable warehouse receipts, including the legitimacy of electronic records and transfers.

The system must also provide effective government monitoring and oversight. Warehouses must be inspected and licensed (by governmental agencies or non-governmental bodies such as trade groups) according to established standards, and some form of regulatory authority is needed to protect the interests of holders of warehouse receipts against negligence, malpractices and fraud.

Specific Considerations

Scope of Application

In the first instance, the proposed principles should focus on the market in agricultural products generally (although they might eventually be expanded to cover other commercial sectors). For the moment, it is not suggested to include fisheries or forest products, or to make the principles "commodity specific" (for example, by addressing cotton or flowers).

OAS Model Law on Secured Transactions

The principles (and the Model Law) must be consistent with the 2002 OAS Model Law on Secured Financing (which has been adopted in Guatemala and Honduras, partly implemented in Mexico and Peru, and is under consideration in Colombia and Costa Rica) as well as its Model Registry Regulations. They must also take account of the 2001 Uniform Inter-American Rules for Electronic Documents and Signatures.

Paper vs. Electronic Receipts

Some countries in the hemisphere have not yet enacted the necessary legal provisions to recognize electronically transferrable records. As a consequence, the principles (and any subsequent Model Law) should accommodate both paper-based and electronically-based records and take account of the problems of making the transition from one to the other.

Other International Efforts

The principles should take account of the continuing work on electronically-transferrable records in other international fora. In particular, UNCITRAL's Working Group IV is continuing to study electronically transferrable records and has given emphasis to principles of non-discrimination, technological neutrality and functional equivalence (writing and signature). See, e.g., the Report of the Working Group on its forty-seventh session (New York, 13-17 May 2013), UN doc. A/CN.9/768. In the past several years, the FAO has also undertaken a review of the legal frameworks for warehouse receipt financing worldwide, and UNIDROIT is currently considering the preparation of a Legal Guide on Contract Farming as "an inclusive model of investment" that should be consistent with the Principles for Responsible Agricultural Investment.

Cross-Border Coordination

The principles should take into account existing mechanisms of warehouse receipts at the domestic level. For the system to work well on a regional basis, the principles should provide for cross-border coordination and "connectivity" in the recognition of transactions.

Nature and Contents of the EWR

In the most basic sense, the warehouse receipt operates as a receipt for storage of identified goods. More broadly, it should be a standardized contractual agreement between the initial owner of the goods (the "bailor") and the warehouse operator (the "bailee") providing for storage of a specific quantity of goods with specific characteristics in a specific warehouse goods for a specified period.

The receipt should therefore set forth the respective rights and obligations of the owner/depositor and the warehouse operator, obligating the latter to store the goods in certain conditions and to release the goods or to transfer their ownership upon demand by the owner or receipt holder upon certain conditions.

It should also be valid both as a statement of ownership rights (functionally equivalent to a document of title) and as a statement of security interests -- in other words, combining the functions of a certificate of deposit or title and a pledge bond.

It should be valid both in paper and electronic form -- in other words, an EWR should be the "functional equivalent" of a paper form.

The principles should cover both negotiable and non-negotiable EWR's. The receipt itself must state whether or not it is negotiable. A negotiable warehouse receipt is one providing that the goods are deliverable either to the person named in the receipt or to the bearer.

The Warehouse

The warehouse operator should be required to keep appropriate records of the relevant transactions. The operator must be commercially responsible and must exercise a general duty of care as a "bailee" or custodian.

Warehouses should be accredited and licensed to store goods by an appropriate, independent governmental or trade authority. The accreditation and license should be for a stated period of time, renewable under certain conditions. The appropriate governmental or trade authority should have continuing responsibilities of supervision, inspection and regulation, with rights of access to monitor the warehouse operation.

The warehouse must be insured against loss of and damage to products in its custody. The operator may be required to post a performance bond.

Rights of Parties to the EWR

Holders of receipts must have the right to receive stored goods or their fungible equivalent if the warehouse defaults or its business is liquidated. The principles should explicitly recognize a *pro-rata* interest in commingled, undifferentiated stored commodities.

When the EWR is negotiable, the rights, duties and liabilities of each party to the receipt (producer, warehouse, transferees such as a bank, etc.) must be clearly defined. Ideally, receipts should be freely transferable by delivery and endorsement.

The principles must address the issue of security interests. For example, the warehouse operator who stores the goods typically charges for the cost of storage (and possibly other services such as cleaning) and should therefore be entitled to a possessory lien against the goods in order to secure payment. The operator is also entitled to protection against fraud.

The goods may be encumbered with pre-existing claims when deposited or may become encumbered with subsequent claims. For example, the lender may be exposed if the warehouse operator exercises a lien for storage costs, if a *bona fide* buyer acquires the goods from the warehouse operator, or if the goods are subject to attachment by other instruments. Before granting the loan on the basis of a negotiable EWR, lenders should be able to determine if there is a competing claim.

Priorities may be created by law, such as claims for taxes or employee salaries, or pursuant to an intervening bankruptcy. The principles should require clear procedures in case of bankruptcy of the warehouse operator and for the administration of financial performance guarantees.

The "holder" (the original depositor, a lender, or buyer) is entitled to receive the goods in exchange for the receipt or to appropriate payment in lieu of the goods, as well as protection (priority) in the event of fraud in the issuance of the receipt or bankruptcy of the warehouse operator.

The holder of the receipt may be required to "perfect" its security interest or to take additional steps to establish priority over claims by third parties.

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7. Alternatives for regulating the use of narcotic psychotropic substances and preventing drug addiction

At the 83rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2013) Dr. Fernando Gómez Mont Urueta proposed a new theme for the Inter-American Juridical Committee to address, entitled "Alternatives for regulating the use of narcotic psychotropic substances and preventing drug addiction," (CJI/doc.441/13). Dr. Gómez Mont noted the importance that this topic has acquired in the OAS, bearing in mind recent mandates from the OAS General Assembly and the special session of the General Assembly to be held in 2014 specifically to deal with the issue. After a brief discussion on the title and scope of the theme, the plenary supported the proposal and named Dr. Fernando Gómez Mont Urueta as rapporteur. Dr. Gómez Mont pledged to submit a draft at the next session.

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8. Guidelines for migration management in bilateral relations

At the 83rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2013) Dr. José Luis Moreno Guerra proposed a new issue for the Inter-American Juridical Committee to work on, entitled "Guidelines for migration management in bilateral relations," (CJI/doc. 442/13). After noting the existence of an earlier study by the Committee on a related topic, the plenary supported the proposal and appointed Dr. Moreno Guerra as rapporteur for the subject. Dr. Moreno Guerra said that he would present a draft at the next session.

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9. Access to public information and protection of personal data

At the forty-third regular session of the OAS General Assembly (La Antigua, Guatemala, June 2013), the Inter-American Juridical Committee was instructed by Resolution AG/RES. 2811 (XLIII-O/13) "to prepare proposals for the Committee on Juridical and Political Affairs on the different ways in which the protection of personal data can be regulated, including a model law on personal data protection, taking into account international standards in that area.".

At the 83rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2013) the Chairman requested Dr. David P. Stewart to be the rapporteur for the topic, which he accepted. Dr. Hyacinth Lindsay asked to work with the rapporteur on this topic.

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CHAPTER III

OTHER ACTIVITIES

ACTIVITIES CARRIED OUT BY THE INTER-AMERICAN JURIDICAL COMMITTEE DURING 2013

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

Documents

CJI/doc.432/13	Presentation of the annual report of the Inter-American Juridical Committee for the year 2012 to the Committee on Juridical and Political Affairs of the Organization of American States (April 11, 2013, Washington D.C.) (presented by Dr. David P. Stewart)
CJI/doc.434/13	2012 Report on the work and activities of the Inter-American Juridical Committee (June 6, 2013, La Antigua) (presented by Dr. João Clemente Baena Soares)
CJI/doc.435/13	Report of the Inter-American Juridical Committee to the United Nations Commission of International Law (May 9, 2013, Geneva) (presented by Dr. Miguel A. Pichardo Olivier)

During the 83rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2013), Dr. David Stewart expanded on his presentation before Committee on Juridical and Political Affairs, which took place on April 11, 2013, concerning the Annual Report (CJI/doc. 432/13). There, Dr. Stewart referred to the two regular sessions of the CJI in 2012, the first in March and the second in August, at its headquarters in Rio de Janeiro, Brazil. He mentioned the reports that had been adopted and the studies under way. He also provided information about the activities of the CJI in recent months and the preparations for the 40th Annual Course on International Law.

This year, the CJI had proposed that its Chairman, Dr. Baena Soares, participate in the plenary of the OAS General Assembly. However, due to health-related issues, he was unable to travel to Guatemala. Nevertheless, the report of the Chairman was read at the plenary and is part of the official documents of the General Assembly. This document describes the issues addressed by the Committee, its work, and its activities in 2012.

Dr. Miguel Pichardo summarized his presentation to the United Nations International Law Commission (ILC). On the subject of immunity of States and international organizations, the ILC requested that consideration be given to the United Nations convention on the subject. He also mentioned that he had discussed the issue of the model law on protection of cultural property in the event of armed conflict as well as interaction with the International Committee of the Red Cross. Finally, he noted that there had been consultations on the type of relations that existed between the CJI and OAS Member States. He also observed great interest in the work of the CJI on promotion of international law through its Course on International Law. Dr. Pichardo noted the ILC's intention to establish more regular contact between the two bodies, through their respective Secretariats, given that it lacked sufficient funds in its budget to send its members to Rio de Janeiro.

The Chairman and the Vice Chairman invited all the members to reflect on ways to strengthen relations with institutions such as the ILC. Chairman Baena Soares suggested contacting the members of the ILC who were nationals of OAS Member States. Dr. David P. Stewart expressed his interest in the matter and stressed the importance of relations not only with the ILC, but also with regional entities such as the African Union and international law commissions in Asia. At the end of the discussion, the

Chairman suggested, as a first step, that a formal letter be drafted from the Chairman of the CJI to the Chairman of the ILC, inviting him to take part in future sessions.

The texts of the reports by Dr. David P. Stewart to the Committee on Juridical and Political Affairs of OAS (CJI/doc.432/13); by Dr. Miguel Pichardo to the United Nations International Law Commission (CJI/doc.434/13); and by Dr. Baena Soares to the OAS General Assembly (CJI/doc.435/13) are as follows:

CJI/doc.432/13

PRESENTATION OF THE ANNUAL REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE FOR THE YEAR 2012 TO THE COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS OF THE ORGANIZATION OF AMERICAN STATES
(Washington, D.C., April 11, 2013)

(presented by Dr. David P. Stewart)

Thank you, Mr. Chairman.

It is an honor to present the Annual Report of the Inter-American Juridical Committee for the year 2012. Our Chairman, Ambassador João Clemente Baena Soares, and our Vice Chairman, Professor Fabián Novak Talavera, have asked me to convey to you and to this Committee their warmest greetings and their regret at not being able to attend this meeting in person. They have also asked me to assure you that the Inter-American Juridical Committee has had a very active and productive year, working on an agenda of timely and relevant subjects of importance to our hemisphere.

This Committee has before it a very detailed report of the work of the Inter-American Juridical Committee during the year 2012, adopted in document CJI/doc. 425/12 of August 10, 2012. It has been distributed as CP/doc.4826/13 of February 26, 2013. I will summarize only certain aspects of our full report but will be pleased to respond to any questions the members of this Committee may have about the annual report.

Membership

The composition of our Juridical Committee changed at the end of the year, with the departure of Ambassador Jean-Paul Hubert of Canada, who served as Vice Chair of the Committee from 2004-2006 and as Chair from 2006-2008, and who previously served as his country's first ambassador to the Organization. At last summer's General Assembly in Cochabamba, Bolivia, the Member States elected Dr. Gélin Imanès Collot of Haiti, and we were delighted to welcome him to the Committee at our most recent meeting last month.

Substantive Agenda

Turning now to the substantive work of the Committee, we held two regular sessions during 2012: the 80th regular session, which took place in Mexico City from March 5 to 9 at the invitation of the Government of Mexico, for which we have previously expressed our great gratitude; and the 81st regular session, held from August 6 to 10 at the Committee's headquarters in Rio de Janeiro, Brazil.

Over these sessions we adopted six final reports, of which four were in compliance with requests from the General Assembly and two on the basis of mandates we adopted on our own. I will briefly describe these six reports.

- The first report is on "Strengthening the Inter-American system for the Protection and Promotion of Human Rights," adopted in CJI/RES. 192 (LXXX-O/12), and CJI/doc.400/12 rev.3. Undertaken at the request of the OAS General Assembly, this study contains analyses, comments, and suggestions on how the

work of the American Court and Inter-American Commission might be strengthened, with specific attention to such topics as friendly settlement of cases, issuance of precautionary measures, the universal coverage of the system, the funding of its agencies, compliance with judgments, procedural considerations, and other matters (including the full-time functioning of the court and commission), all of which are intended to guarantee a human rights protection system in our hemisphere that is transparent, safe, predictable, and responsive.

- Second, in the area of personal privacy and data protection, the Committee adopted a "Proposed Statement of Principles for Privacy and Personal Data Protection in the Americas," which offers a set of principles and measures to ensure respect for people's privacy, reputations, and dignity that states can incorporate in their domestic laws. See CJI/RES. 186 (LXXX-O/12) and CJI/doc.402/12 rev. 2. These principles include *lawfulness of collection, transparency, consent, and confidentiality, together with parameters for accessing and correcting data, handling sensitive information, accountability and the responsibilities of the individuals and agencies in charge of information, cross-border use, and exceptions to publication.* The Declaration includes references to developments in communications technologies and new forms of digital information.

- In a third action, the Committee prepared and adopted a "Guide to Principles Regarding Cultural Diversity in the Development of International Law," adopted in CJI/RES. 185 (LXXX-O/12). This Resolution sets out the role that, in the Juridical Committee's view, should be played by states and social organizations in promoting and protecting cultural diversity, in working for its constitutional and legal recognition, and in creating institutions and mechanisms for its protection and preservation. The fourteen principles were developed in response to the request of the General Assembly concerning cultural diversity in the development of international law.

- Fourth, on the topic of access to justice in the Americas, the Committee adopted a "Guide to Principles of Access to Justice in the Americas" that establishes new forms of ensuring the autonomy of legal systems and of guaranteeing that rights are upheld and are accessible to all citizens. CJI/RES. 187 (LXXX-O/12) and CJI/doc.405/12 rev.2. The Resolution endorses a report of the Committee containing proposals on the training and selection of judges, the modernization and autonomy of the judicial system, respect for effective judicial remedies, guarantees of equal access to justice in different areas of a country's judicial system, mechanisms for alternative justice, attending to vulnerable groups, and the recognition of multiculturalism.

- Fifth, in CJI/RES. 188 (LXXX-O/12) and CJI/doc.380/11 corr. 1, the Committee adopted a "Project of Model Act on Simplified Stock Companies" (*sociedad por acciones simplificada*). This model law contemplates a hybrid form of corporate organization that reduces the costs and facilitates formalities for the incorporation of formal companies at the level of micro- and small-businesses, making use of Colombia's successful experiences in this area. The Committee believes that the inclusion of these corporate models in countries' domestic laws can serve to further the formalization of companies in the nations of the Hemisphere and to promote their economic and social development.

- Sixth, and finally, the Committee adopted a "Guide for regulating the use of force and protection of people in situations of internal violence that do not qualify as armed conflict". CJI/doc.401/12 rev. 4. The Guide offers a legal framework for situations of internal violence that cannot be classified as either

peace or war. This document deals with the legitimate use of force in relation to those rights that are considered non-derogable, in order to establish a balance between the enforcement of the law by security forces and respect for human rights. Among its important conclusions and recommendations are the following:

- Democracy is indispensable for the effective exercise of fundamental freedoms and human rights.
- The State has the right and the obligation to provide protection when the security of persons living within its territory is threatened by situations of violence.
- When using force, law enforcement officials must at all times respect the principles of legality, necessity and proportionality.
- States have an obligation to guarantee the right to humane treatment of persons involved in or affected by situations of internal violence and must respect the personal liberty rights and the privacy rights of persons involved in or affected by situations of internal violence
- The States must make provision for effective judicial remedies that ensure that the measures taken by police and prosecutorial authorities are respectful of the individual rights protected under the Convention. It is therefore recommended that controls be established to ensure that detentions and infringements of privacy rights are done according to law.

Other Mandates

During the past year, the Committee also set up four rapporteurships to deal with new mandates on which it has embarked: these include general guidelines for borderland integration; state immunity; electronic warehouse receipts for agricultural produce; and Inter-American judicial cooperation.

(1) The draft general guidelines for border integration seek to explore models and legal frameworks to facilitate bilateral integration.

(2) The proposal on state immunity seeks to clarify the law in the hemisphere on the immunity of states and their agencies from suits by private citizens, as well as the immunity of government officials, in crossborder situations.

(3) The aim of the initiative on electronic warehouse receipts for agricultural and other products is to provide a model law by which states might seek to modernize their domestic legislation in this important sector which is vital to continued economic development.

(4) Finally, the goal of the mandate on Inter-Americanjudicial cooperation is to strengthen ties between the players involved in that area of endeavor and to improve the dissemination and awareness of the many decisions handed down by different venues.

The Committee also decided to continue with its treatment of sexual orientation and gender identity and expression, pursuant to a mandate adopted by the General Assembly in June 2011, as well the development model legislation for the protection of cultural assets at times of armed conflict.

Course on International Law

As you know, Mr. Chairman, the Juridical Committee also continues its efforts to promote international law in the region. As part of those efforts, and in conjunction with the Department of International Law, we organized the 39th Course of International Law in Rio de Janeiro, Brazil, which was held August 6 to 24, 2012. The central topic of the Course was “Law

and Current International Relations." The aim of this course is to reflect, discuss, and provide updates on different topics in the area of public and private international law.

The panelists included renowned law professors from both the Americas and Europe, legal advisors from the foreign ministries of Member States, and officials from international organizations, including the OAS. The course was attended by 20 fellowship recipients from various countries of the Hemisphere funded by the OAS and by 15 Brazilian and foreign participants who covered the costs of their own participation. At the inaugural session of the course speaking on behalf of the Inter-American Juridical Committee, Dr. Ana Elizabeth Villalta Vizcarra paid homage to the memory of Salvadoran jurist Dr. Reynaldo Galindo Pohl.

Most Recent Session

Finally, at its most recent working session, held last month in Rio de Janeiro, the members of the Committee evaluated a total of six mandates: general guidelines for border integration; electronic warehouse receipts for agricultural products; model legislation on protection of cultural property in cases of armed conflict; Inter-Americanjudicial cooperation; sexual orientation, gender identity and expression; and immunity of the States.

The Committee ended its discussion on the theme "Model Legislation on Protection of Cultural Property in Case of Armed Conflict," and the resulting report will be presented to the Permanent Council. This document proposes, among other things, concrete measures concerning signaling, identifying and listing cultural property, besides presenting ways of promoting skill-building and diffusion of policies in this area. The document also addresses how to determine responsibility and aspects related to monitoring and enforcement of obligations.

Mention should be made of the Committee's decision to send to the Permanent Council a preliminary report on "sexual orientation, gender identity and expression," a study that conceptualizes the various categories and explains the legal implications of these notions, while also consecrating respect for the principle of non-discrimination established in international, regional and universal instruments. The developments regarding the work done in March of this year will be integrated in the 2013 annual report.

The next meeting of the Inter-American Juridical Committee will be held at its headquarters in the city of Rio de Janeiro, Brazil, in August 2013. This meeting will coincide with the inauguration of the 40th edition of the Course in International Law, which as I have mentioned is organized each year by the Committee together with the Department of International Law.

Budgetary and Administrative Matters

As you are well aware, Mr. Chairman, the sessions of the Committee continue to get shorter, as an unfortunate result of financial and budgetary constraints. From a traditional four week session, we have been forced to reduce our sessions to one week in length. This shortening of our regular sessions means that our work is pressured and constrained, especially in light of the General Assembly's growing number of mandates and the technical nature of the requests which are made to the Committee.

There is also concern that the increased costs of meeting in Rio de Janeiro are not necessarily taken into consideration in the budget of the Committee. As I mentioned in reporting to this Committee last year, we welcome invitations from Member States to meet away from our Rio headquarters: that is one way to ease the burden on the Committee's budget, since the host country defrays some of the costs.

Having said all that, Mr. Chairman, it should be apparent to everyone that the Committee continues to work actively, intensively and positively on a wide range of highly relevant topics of current importance to the Member States. The Committee has made, and continues to make, very substantial contributions to political, economic and legal progress in the hemisphere as well as to the work of this Organization. It continues to be, in my humble opinion, an essential resource for the Member States and an activity of which all OAS members can justifiably be proud. It was in that spirit that I had the honor of presenting the Committee's report to the International Law

Commission in Geneva last summer, and the response from the members of that body was uniformly positive.

I want to stress the the outstanding work of our small secretariat, including those in Rio de Janeiro as well as those in the Department of International Law here at headquarters, who support the Committee's endeavors. This body should be aware of the superb support provided by the Department of International Law, in particular its Director Dante Negro and his colleague Luis Toro, under the direction of the Organization's Secretary for Legal Affairs Jean Michel Arrighi, as well as our small staff in Rio de Janeiro. The Organization has much to be proud of in these professionals and the work they perform.

Thank you very much. I am happy to respond to any comments or questions.

Annex

THE PROPOSED MODEL ACT ON SIMPLIFIED STOCK CORPORATIONS

Mr. Chairman,

In CJI/RES. 188 of March 9, 2012, the Inter-American Juridical Committee approved a report containing a proposed model act on the simplified stock corporation for consideration and approval by the Permanent Council and the OAS General Assembly. I had the honor of describing the proposal to this Committee last year and am very pleased to do so again. It is a worthy initiative, Mr. Chairman, and merits the approval of this body and the careful consideration of Member States.

Members of this Committee may be familiar with the emergence over the past decade of new forms of hybrid corporate organizations in various countries around the world. They are known by different names, but essentially involve a blending of two business forms – partnerships and corporations. They have proven to be of special importance with respect to micro-business as well as small and medium-sized enterprises.

The proposed model law or statute would permit Member States to recognize, in their domestic law, the establishment of these new forms of hybrid corporate organizations at the level of micro- and small business and to benefit from the significant contributions these entities can make to economic development in a number of economic sectors.

The proposal is based on the positive experience which Colombia has had with these entities. It reflects the analysis and research of a distinguished Colombian professor, Dr. Francisco Reyes, in his book entitled "A New Policy Agenda for Latin American Company Law: Reshaping the Closely-Held Entity Landscape." That book reviewed in detail the background of a law adopted by the Congress of the Republic of Columbia in December 2008 (Colombia Law 1258), and it argued strongly in favor of the adoption of similar legislation by other countries in our hemisphere. Our Committee had the opportunity to consider Prof. Reyes' work, and in fact to hear from him in n person at our 79th period of sessions and to receive his comments (as well as those of others) on the text of the proposed Model Act. We believe he has made a very strong and sensible case for the adoption of a model law recognizing simplified stock corporations.

The term "simplified stock corporation" comprises two types of businesses: limited partnerships and joint stock companies (also known in some legal systems as "closely held" corporations or *sociétés par actions simplifiée*). The model law is intended to provide the benefits of incorporation for businesses at the smallest end of the economic scale, as well as its protections, by eliminating costs and facilitating the procedures to establish them. The act of incorporation could be accomplished by a relatively simple private or electronic document (as opposed to an expensive notarial deed of incorporation).

Shareholders are provided with limited liability (except when using the corporate veil to perpetrate acts of fraud or abuse of the corporate form). At the same time, the proposed law would allow a limited duration to be selected for the company and would provide for effective and

inexpensive oversight by external auditors. From a corporate capital standpoint, this type of company allows more contractual freedom, affording shareholders the possibility of issuing various categories or series of stocks. It could thereby provide increased access to capital needed for business growth. Liquidation and dissolution, on the other hand, involve fairly simple rules.

Recognizing these innovative business forms would promote economic development. The lack of a progressive legislative framework permitting simpler and more modern business associations is often described as a major impediment to economic growth within Latin America. The advantages of flexibility and freedom of contract make these hybrid business forms especially suitable for family-owned firms, start-ups, professional undertakings. As Prof. Reyes argues, the widespread adoption of the Model Act would promote a degree of convergence in countries that require a higher level of legal integration and could foster innovation and foreign investment..

The Inter-American Juridical Committee believes this is a worthy initiative, Chairman, and deserving of careful consideration by Member States. I will not take your time to review the lengthy analysis which supports our recommendation or the specific provisions of the proposed Model Act; they are set out for all to read and consider in the document attached to our Resolution. We hope that your Committee agrees that this is a useful proposal, deserving of the careful consideration of national legislatures and other domestic authorities.

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CJI/doc.434/13

2012 REPORT ON THE WORK AND ACTIVITIES OF THE INTER-AMERICAN JURIDICAL COMMITTEE

(presented by Dr. João Clemente Baena Soares)[i]

Mr. President,
Mr. Secretary General,

I have the great honor of presenting to the ministers of foreign affairs, heads of delegation, and representatives of the Member States gathered at this session of the General Assembly of the 2012 report on the work and activities of the Inter-American Juridical Committee, an OAS organ devoted for over 100 years to the law (CP/doc.4826/13).

I am delighted that the General Assembly is in Guatemala, a country where I spent happy times during my diplomatic career, which holds fond memories for me, and for whose people and culture I have great respect.

Inter-American Juridical Committee

In the period covered by this report, took part in the Committee the jurists Fabián Novak Talavera (Vice Chair), Freddy Castillo Castellanos, Jean-Paul Hubert, Hyacinth Lindsay, Miguel Aníbal Pichardo Olivier, David Pentland Stewart, Ana Elizabeth Villalta Vizcarra, Fernando Goméz Mont Urueta, José Luis Moreno Guerra, Carlos Alberto Mata Prates, and João Clemente Baena Soares, its Chair.

At its regular session in June last year, the General Assembly, by acclamation, elected Dr. Gélin Imanès Collot from Haiti and re-elected Drs. David Stewart from the United States and Fabián Novak Talavera from Peru to serve terms of four years that began on January 1 this year.

The Committee lost a excellent secretary with the death of Dr. Manoel Tolomei Pereira Gomes Moletta. It expressed its condolences in a special Resolution [CJI/RES. 193 (LXXXI-O/12)] and unveiled a portrait of him in the session chamber as a tribute of friendship and respect.

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i. Former Secretary General of the Organization of American States (OAS), Chair of the Inter-American Juridical Committee of the OAS.

It also paid homage to Dr. Luis Marchand Stens [CJI/RES. 194 (LXXXI-O/12)], the former Minister of Foreign Affairs of Peru, who contributed greatly to the IAJC with his legal knowledge and political experience.

The Committee praised Dr. Jean-Paul Hubert, its former Vice Chair and then Chair, whose term ended on December 31st, 2012, and staff member Maria Conceição de Souza Gomes who retired after many years of dedicated service [CJI/RES. 189 (LXXX-O/12)].

Technical and administrative support was provided by Dr. Jean-Michel Arrighi, OAS Secretary for Legal Affairs; Dante M. Negro, Director of the Department of International Law; Dr. Luis Toro Utillano, Principal Legal Officer; Maria Lúcia Iecker Vieira and Maria C. de Souza Gomes of the Secretariat of the IAJC.

Work Concluded

The Committee held two sessions: the first in Mexico City in March; the second at its headquarters in Rio de Janeiro in August.

Six final reports were adopted. Their conclusions, presented to the Permanent Council and the General Assembly, took the form of a declaration of principles (Privacy and Personal Data Protection), guides to principles (Cultural Diversity in the Development of International Law; Regulating the Use of Force and Protection of People in Situations of Internal Violence that do Not Qualify as Armed Conflict; Innovative Ways of Ensuring the Autonomy of Judicial Systems), and a model law (Simplified Stock Corporations).

Those documents exhausted its agenda of topics entrusted by the General Assembly (four) and Permanent Council (two).

The IAJC also concluded and approved a study on strengthening the Inter-American system for protection and promotion of human rights requested by the General Assembly as a priority.

The IAJC found that strengthening the system requires, first, that Member States consolidate their domestic systems for protection of human rights. Second, the necessary universal adoption of the Regional Convention and protocols on the matter.

Regrettably, not all states have adhered to those binding instruments. Indeed in the case of some of them the number of ratification is very low.

It is worth emphasizing that it is incumbent upon the IACHR itself to review its actions in order to correct excesses in favor of higher efficient.

The topics covered entail matters of real interest and importance for national societies and their citizens. There are no academic requests that might be of interest in other forums. The IAJC is not a debate society. It is from the organ OAS whose deliberations have impact and positive results.

Ongoing Work

New rapporteurships are considering and preparing conclusions on other topics on the agenda such as: General guidelines for border integration; Immunity of states and international organizations; Electronic customs receipts for agricultural products; Inter-American judicial cooperation; and social responsability of companies in the field of human rights and the environment in the Americas.

The IAJC submitted to the Permanent Council a preliminary report on "Sexual Orientation, Gender Identity and Gender Expression," the examination of which was entrusted by the General Assembly. The issue remains on its agenda for this year.

Other Activities

The Course on International Law held annually by the IAJC in August had as its core theme in 2012 "Law and Current International Relations". In opening the course, Dr. Ana Elizabeth Villalta Vizcarra, paid tribute to the Salvadoran jurist Reynaldo Galindo Pohl.

Last year, 24 participants from different Member States received scholarships from the OAS to attend the Course and 15 attended at their own expenses.

It should be noted that this year will be the fortieth consecutive year that the course has been held, a milestone worthy of particular note and praise. The fortieth anniversary will be held from August 5 to 23. The title of the course this year is "Forty Years Promoting International Law."

Once more, renowned jurists, professors, researchers, and legal advisers from the foreign ministries of Member States will share their knowledge and experience with a group of officials and specialists, whose interest and youth will enable them to broaden and deepen their legal knowledge and will then enhance their profession.

Following up on his now traditional dialogue with the United Nations International Law Commission, Dr. David Stewart was in Geneva, where he presented an extensive report on the work and activities of the CJI.

Both at its session in Mexico City and at the one at its headquarters, the Committee welcomed distinguished jurists and international civil servants. In their respective fields of expertise they made a significant contribution to the work of the IAJC. In particular, representatives of the International Committee of the Red Cross, ECLAC, the Universidad Nacional de Córdoba, Argentina (its chair of Private International Law and Integration Law) and the Research Institute of the Universidad Autónoma de México.

The Committee maintains its work rate and fulfills the numerous mandates that it receives in a diligent and authoritative manner, as is recognized even outside the region.

The more requests it receives, the greater its financial and budgetary constraints.

We are operating with the bare minimum of support staff at headquarters and our sessions are kept as short as possible.

I am not oblivious to the broad problems of the OAS in this regard. Notwithstanding, it would be inexcusable to overlook or keep silent about the situation, which worries and threatens us.

As regards working methods, I note that different agenda items very often require, as an essential component, support and direct cooperation from governments in terms of replies to questionnaires and consultations made to them through their foreign ministries. Requests are also made to states for texts of domestic laws and statutes, case law, and information about their legal systems.

I do not believe that it would be too much to insist on prompt and affirmative responses to requests for information. That would hasten the work of the IAJC to the benefit of all.

The IAJC has a long list of accomplishments to its name. It is respected. Specialized entities and institutions use the minutes of its proceedings as bibliographical reference and sources that can be consulted.

It extends its dialogue with universities, think tanks and training centers to great mutual advantage.

Above all, it carries out its responsibilities under the Charter of the Organization of American States successfully and to the letter.

Thank you very much.

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CJI/doc.435/13

REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE TO THE INTERNATIONAL LAW COMMISSION OF THE UNITED NATIONS

(presented by Dr. Miguel A. Pichardo Olivier)

I. Introduction

In addition to thanking you for this opportunity to appear before the Commission, I would like to convey cordial greetings to you from the members of the Committee I represent and from its President Ambassador João Clemente Baena Soares, who has asked me to underscore the importance and current relevance of our Committee's agenda and its contribution to promoting the progressive development and codification of international law.

It is my pleasure, on this occasion, to report on the work and activities of the Inter-American Juridical Committee in 2012, as presented in its Annual Report (document CP/doc.4826/13). I will also report on activities under way this year, following decisions taken at our March 2013 meeting.

II. Presentation of the Annual Report of the Inter-American Juridical Committee

Last year, the Committee was represented by Dr. David P. Stewart who noted the interest shown by members of this Commission in developments in the fields of direct participation, freedom of expression and opinion, cultural diversity, gender identity, strengthening of the human rights mechanism, and refugees. He also sensed a desire to establish more direct ties of cooperation between the Commission and the Committee in various spheres of their competence. In that connection, I would like to repeat the invitation to any member of your distinguished Commission to address the plenary of the Committee during our next session to be held from August 5 to 9, 2013.

The Inter-American Juridical Committee (CJI) serves as the Organization of American States' advisory body on juridical matters under the OAS Charter.

The Committee is a century-old body created by the Third International American Conference that established the Permanent Committee of Jurists of Rio de Janeiro in 1906. It went by two other names before becoming what is now the Inter-American Juridical Committee.

Among its functions and prerogatives, the Committee:

I. provides advice and undertakes studies and work on juridical matters of an international nature, at the request of the General Assembly or on its own initiative;

II. suggests that conferences and meetings be held on international juridical matters;

III. establishes cooperative relations with entities engaged in the development or codification of international law or in teaching international law;

IV. prepares draft conventions or provides advice on matters of regional interest;

V. studies juridical problems related to integration; and

VI. fosters harmonization of laws among the Member States.

The CJI is composed of eleven jurists who are nationals of Member States, elected for a term of four years. It is headquartered in Rio de Janeiro, but may hold meetings elsewhere.

Committee members serve in their personal capacity and do not receive a salary but get honoraria for participation in working meetings. The Committee meets twice a year, for four to six weeks.

Currently, the Committee comprises the following jurists: João Clemente Baena Soares (Chairman), Fabián Novak Talavera (Vice Chairman), Freddy Castillo Castellanos, Hyacinth

Evadne Lindsay, Miguel Pichardo Olivier, David P. Stewart, Ana Elizabeth Villalta Vizcarra, Fernando Gómez Mont Urueta, José Luis Moreno Guerra and Carlos Alberto Mata Prates.

On June 5, 2012 the General Assembly by acclamation elected Gélin Imanès Collot, of Haiti, and re-elected David P. Stewart of the United States, and Fabián Talavera, of Peru.

Over the year the Inter-American Juridical Committee held two regular sessions, one in March in Mexico City and the other in August at its headquarters in Rio de Janeiro, Brazil. The Committee adopted six final reports, of which four were in compliance with requests from the General Assembly on the following topics: strengthening the Inter-American system for the protection and promotion of human rights, CJI/RES. 192 (LXXX-O/12); privacy and protection of personal data in the Americas, CJI/RES. 186 (LXXX-O/12); cultural diversity in the development of international law, CJI/RES. 185 (LXXX-O/12); and access to justice in the Americas, CJI/RES. 187 (LXXX-O/12).

- The report on "Strengthening the Inter-American system for the Promotion and Protection of Human Rights" contains analysis, comments, and suggestions on friendly settlements, precautionary measures, the universal coverage of the system, the funding of its agencies, compliance with judgments, procedural considerations, and other matters, all of which are intended to guarantee a human rights protection system that is transparent, safe, predictable, and responsive.
- In the area of privacy and data protection, the Committee adopted a "Declaration of Principles on Privacy and the Protection of Personal Data in the Americas," which offers a set of principles and measures to ensure respect for people's privacy, reputations, and dignity that States can incorporate in their domestic laws. These principles include *transparency, consent, and confidentiality, together with parameters for accessing and correcting data, handling sensitive information, the responsibilities of the individuals and agencies in charge of information, crossborder use, and exceptions to publication.* The Declaration includes references to developments in communications technologies and new forms of digital information.
- In the area of cultural diversity, the Committee prepared a "Guide to Principles on Cultural Diversity." This sets out the role that, in the Juridical Committee's view, should be played by states and social organizations in promoting and protecting cultural diversity, in working for its constitutional and legal recognition, and in creating institutions and mechanisms for its protection and preservation.
- On the topic of access to justice, the Committee adopted a "Guide to Principles" that establishes new forms of ensuring the autonomy of legal systems and of guaranteeing that rights are upheld and are accessible to all citizens. The document contains proposals on the training and selection of judges, the modernization and autonomy of the judicial system, respect for effective judicial remedies, guarantees of equal access to justice in different areas of a country's judicial system, mechanisms for alternative justice, attending to vulnerable groups, and the recognition of multiculturalism.

Furthermore, the Committee adopted two reports in pursuit of mandates it itself had established: a Model Law on simplified stock companies CJI/RES. 188 (LXXX-O/12), and a Guide to Principles for regulating the use of force and protecting people in situations of internal violence that do not amount to armed conflict (CJI/doc.401/12 rev. 4), with which it concluded its treatment of those topics.

- The Model Law on Simplified Stock Companies proposes a hybrid form of corporate organization that reduces costs and facilitates formalities for the incorporation of formal companies, making use of Colombia's successful experiences in this area. The Committee believes that the inclusion of these corporate models in countries' domestic laws can serve to further the formalization of companies in the nations of the Hemisphere and to promote their economic and social development.

- The Guide to Principles for regulating the use of force and protecting people in situations of internal violence that do not qualify as armed conflict offers a legal framework for situations of internal violence that be cannot be classified as either peace or war. It deals with the legitimate use of force and those rights that are considered nonderogable, in order to establish a balance between the enforcement of the law by security forces and respect for human rights. Among the principles adopted it may be underlined the following:
  - Democracy is indispensable to the exercise of fundamental freedoms in matters of human rights;
  - The state has the duty to provide protection and security to persons within its territory when they are threatened by situations or acts of violence;
  - When force is used, law enforcement officers must respect at all times the principles of legality, necessity, and proportionality;
  - The states have the duty to ensure the right to proper treatment of persons involved in or affected by situations of violence within a country and, in turn, must respect their rights to freedom and privacy;
  - The states should adopt provisions concerning judicial remedies to guarantee that measures taken by legal authorities and police are in observance of the individual rights protected by international conventions.

Moreover, the Juridical Committee formed four rapporteurships to consider new mandates: general guidelines for border integration; immunity of states; electronic customs receipts for agricultural products; and Inter-Americanjudicial cooperation. The draft general guidelines for border integration offers models or legal frameworks to facilitate bilateral integration. The proposal on the immunity of states seeks to clarify the status of staff members of governments and international organizations in transnational litigation. The initiative on electronic customs receipts for agricultural products seeks to modernize the system's procedures. Finally, the mandate on Inter-American judicial cooperation seeks to strengthen the relationship between participants in that sector and to increase awareness of the many decisions handed down by the various judicial bodies.

Upon completing its working meetings for 2012, the plenary of the Juridical Committee decided to continue its efforts in the following areas at its regular session scheduled for March 2013: sexual orientation, gender identity and gender expression, and model legislation on protection of cultural property in the event of armed conflict. Dr. Stewart emphasized that, during the session running from March 11 to 15, 2013, the CJI had completed its work on the topic of model legislation on protection of cultural property in the event of armed conflict (document CJI/doc.403/12 rev. 5) and that the corresponding report would be sent to the Permanent Council in the coming days. This document provides standards for general, special, and heightened protection of cultural assets and proposes, *inter alia*, specific measures for marking, identifying, and inventorying cultural assets; proposes means of promoting training in, and dissemination of, policies on the matter; and deals with the determination of responsibility and aspects related to the monitoring of and compliance with obligations. Finally, the Juridical Committee had decided to send to the Permanent Council a preliminary report on sexual orientation and gender identity and gender expression (document CJI/doc.417/12 rev. 1), a study conceptualizing the categories and explaining the legal implications of these notions, in addition to enshrining respect for the principles of nondiscrimination established in the international, regional, and universal instruments.

The next working session, scheduled for August 2013, is due to address the following issues:

- Sexual orientation and gender identity and expression;
- General guidelines on border integration;

- Immunity of States and of international organizations;
- Electronic customs warehouse receipts for agricultural products;
- Inter-American judicial cooperation;
- Corporate social responsibility in the field of human rights and the environment in the Americas.

It is to be noted that the last three above-mentioned topics are new and are currently being discussed by the ministries of foreign affairs of the OAS Member States. With respect to the topics relating to sexual orientation and corporate social responsibility, the Committee has requested information regarding each State's domestic legislation, including decisions forming part of each country's jurisprudence. As for the immunity issue, the Committee sent out a questionnaire with a view to ascertaining how our legal systems address the issue of the immunity of States and international organizations. The replies to the questionnaire will serve as input for the Committee's work.

VII. Other issues

As for activities to promote international law in the region, Dr. Stewart indicated that the XXXIX Course on International Law had taken place in Rio de Janeiro, Brazil, from August 6 to 24, 2012. The central theme was law and present-day international relations. The Course is designed for reflection, discussion, and updates on topics of public and private international law. The panelists included recognized academic experts of the Hemisphere and Europe, legal advisers from the foreign ministries of some Member States, and staff members of international organizations, including the OAS. In attendance were 20 scholarship holders from various countries of the Hemisphere, financed by the OAS, and 15 participants who covered their own costs of attendance. Dr. Stewart noted that, at the outset of the Course, Dr. Elizabeth Villalta Vizcarra, on behalf of the Inter-American Juridical Committee, had paid homage to the memory of Salvadorian jurist Dr. Reynaldo Galindo Pohl.

The next Course, to be held from August 5st to 23rd, 2013, will be 40th which will coincide with the commemoration of the 40th edition of the Course in International Law. Its theme will be "40 years promoting international law".

Additional information on this report may be found on the web site of the Department of International Law, under Annual Reports: http://www.oas.org/en/sla/iajc.

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B. Course on International Law

The 40th Course on International Law was held in Rio de Janeiro, Brazil, from August 5 to 23, 2013, under the theme: "40 Years Promoting International Law." The purpose of the course is to reflect on, discuss, and present updates on a variety of issues in the area of public and private international law. The panelists included renowned professors from the Hemisphere and Europe, legal advisers from foreign ministries of some Member States, and officials from international organizations and the OAS. In attendance were 20 OAS-funded fellowship holders from various countries of the Hemisphere and 13 local and foreign participants who financed their own participation in the course.

The course was inaugurated by the Chairman of the Juridical Committee, Dr. João Clemente Baena Soares, and the Director of the Department of International Law, Dr. Dante Negro. Meanwhile, the traditional tribute was delivered by the Vice Chairman of the Inter-American Juridical Committee, Dr. Fabián Novak, who dedicated it to the memory of the late Peruvian Jurist and Diplomat, Ambassador Luis Marchand Stens.

The Course Program was as follows:

PROGRAM
40th Course on International Law

"40 Years Promoting International Law"
Río de Janeiro, Brazil
August 5-23, 2013

Organized by the Inter-American Juridical Committee and the Department of International Law of the Secretariat for Legal Affairs of the Organization of American States

First Week

Monday 5

9:30 – 10:00 **REGISTRATION**

10:00 – 12:00 **INAUGURATION**
Ambassador João Clemente Baena Soares, Chairman, Inter-American Juridical Committee
Opening remarks
Dante Negro, Director, Department of International Law of the OAS
Opening remarks
Fabián Novak, Vice Chairman, Inter-American Juridical Committee
Tribute to Ambassador Luis Marchand Stens (Peru)

Roberto Rojas, Legal Officer, OAS Department of International Law
Brief message from the Course Coordination Office

Tuesday 6

9:30 – 10:50 **Mario Buil-Merce,** Political Affairs Officer, United Nations Office on Genocide Prevention and the Responsibility to Protect
Concept, Development and Challenges of the Responsibility to Protect

11:10 – 1:00 **Mario Buil-Merce**
Preventing and Responding to the Risk of Genoicide and Other Mass Atrocities: United Nations Early Warning System and Collective Responsibility to Prevent

2:30 – 4:30 **Hugo De Zela,** Chief of Staff of the Secretary General of the OAS
The Organization of American States and its quest for democracy in the Americas

Wednesday 7

9:00 – 10:50 **Hugo de Zela**

11:10 – 1:00 **José de Jesús Orozco, President,** Inter-American Commission on Human Rights
Protection of Political Rights in the Inter-American System

2:30 – 4:30 **Susan Karamanian,** Associate Dean for International and Comparative Legal Studies, George Washington University Law School
Public v. Private International Law: An Outdated Distinction

Thursday 8

9:00 – 10:50 **José de Jesús Orozco**
Protection of the Right to Defend Human Rights in the Inter-American System

11:10 – 1:00 **Susan Karamanian**
Sovereign Immunity v. Individual Human Rights

2:30 – 4:30 **Gabriel Valladares**
Legal advisor and official in charge of programs with the Armed Forces and Academia, Regional Delegation of the International Committee of the Red Cross for Argentina, Brazil, Chile, Paraguay and Uruguay

Introduction to International Humanitarian Law (IHL) and the Contribution of the International Committee of the Red Cross (ICRC) to Its Development

Friday 9

9:00 – 10:50 **Eduardo Vio Grossi,** Judge, Inter-American Court of Human Rights
The Impact of the Decisions of the Inter-American Court of Human Rights on the Internal, Domestic, or Exclusive Jurisdiction of States

11:10 – 1:00 **Susan Karamanian**
Understanding American Exceptionalism and International Law

2:30 – 4:30 **Elizabeth Villalta**, Member, Inter-American Juridical Committee
International Judicial Cooperation

Second week

Monday 12
Lunes 12

9:00 – 10:50 **Eduardo Véscovi,** Professor, Universidad de la República, Uruguay
The Issue of International Judicial Jurisdiction in the Framework of the OAS: Overview and Outlook

11:10 – 1:00 **Antônio Augusto Cançado Trindade,** Judge, International Court of Justice
Rehabilitation of Victims : Recent Developments in the Case Law of Contemporary International Tribunals

2:30 – 4:30 **Jean-Michel Arrighi,** OAS Secretary for Legal Affairs
The OAS and International Law over the Last 40 Years

Tuesday 13

9:00 – 10:50 **Eduardo Véscovi**

11:10 – 1:00 **Antônio Augusto Cançado Trindade**

2:30 – 4:30 **Jean-Michel Arrighi**

Wednesday 14

9:00 – 10:50 **Eduardo Véscovi**

11:10 – 1:00 **Roberto Rojas**, Legal Officer, OAS Department of International Law
The Inter-American Conventions against Racism, Racial Discrimination, All Forms of Discrimination, and Intolerance

2:30 – 4:30 **Roberto Rojas**

Thursday 15

9:00 – 10:50 **Graciela Salas,** Professor of Public International Law, Universidad Nacional de Córdoba and Universidad Blas Pascal, Argentina
Sovereignty and Natural Resources in the Americas

11:10 – 1:00 **William Berenson,** Adjunct Professor at American University's Washington College of Law, USA
Privileges and Immunities of International Organizations: Developments and Concerns

2:30 – 4:30 **Juan Carlos Murillo,** Regional Legal Officer, UNHCR, Costa Rica
The Inter-American System and Protection of Refugees: The Expert Evidence of the UNHCR in the Case of Pacheco Tineo vs. Bolivia

Friday 16

9:00 – 10:50 **Graciela Salas**

11:10 – 1:00 **William Berenson**

2:30 – 4:30 **Juan Carlos Murillo**

Third week

Monday 19

9:00 – 10:50 **Hélène Ruiz Fabri,** Director, Sorbonne Law School, Pantheon-Sorbonne University, Director, UMR for Comparative L aw, Paris (UMR 8103 CNRS/Paris 1)
Recent Dimensions in the Trade-Environment Relationship

11:10 – 1:00 **Socorro Flores Liera,** Director General for Global Issues, Under-Secretariat for Multilateral Affairs and Human Rights, Ministry of Foreign Affairs of Mexico
The current work of the United Nations International Law Commission and challenges for the future

2:30 – 4:30 **Jorge Viñuales**, Harold Samuel Professor of Law and Environmental Policy, University of Cambridge, UK.
The Evolution of International Environmental Law (1972-2012)

Tuesday 20

9:00 – 10:50 **Hélène Ruiz Fabri**

11:10 – 1:00 **Socorro Flores Liera**

2:30 – 4:30 **Jorge Viñuales**

Wednesday 21

9:00 – 10:50 **Hélène Ruiz Fabri**

11:10 – 1:00 **Mariano Aznar,** Professor of Public International Law, Universidad Jaume I, Spain
The State's Three Tribulations

2:30 – 4:30 **Mariano Aznar**

Thursday 22

9:00 – 10:50 **Arturo Valenzuela,** Professor of Government, Georgetown University, USA
Democratic Consolidation in Latin America: Pending Constitutional Reforms

11:10 – 1:00 **Arturo Valenzuela**

2:30 – 4:30 **Mariano Aznar**

Friday 23

10:00 **CLOSING CEREMONY AND PRESENTATION OF CERTIFICATES**
João Clemente Baena Soares, Chairman, Inter-American Juridical Committee
Jean-Michel Arrighi, OAS Secretary for Legal Affairs

Arturo Valenzuela, Professor of Government, Georgetown University, USA

Mariano Aznar, Professor of Public International Law, Universidad Jaume I, Spain

Roberto Rojas, Legal Officer, OAS Department of International Law

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C. Relations and Cooperation with other Inter-Americanbodies and with Similar Regional and Global Organizations

1. Participation of members of the Inter-American Juridical Committee as Observers to or Guests of different organizations and conferences in 2013

Political and Juridical Affairs Committee
Washington, April 11, 2013
Dr. David P. Stewart (CJI/doc.432/13)
General Assembly of the OAS
La Antigua, June 6, 2013
Contribution del doctor Baena Soares (CJI/doc.434/13)
United Nations Commission on International Law
Geneva, May 9, 2013
Dr Miguel Pichardo (CJI/doc. 435/13)

2. Meetings sponsored by the Inter-American Juridical Committee

The Inter-American Juridical Committee welcomed the following persons as guests and visitors at its sessions during 2013:

- **During the 82nd regular session, held in Rio de Janeiro, Brazil:**

  There were no visits during this regular session.

- **During the 83rd regular session, held in Rio de Janeiro, Brazil:**

1) August 6, 2013: Visit by Judge Kholisani Solo and Mr. Mohamed Kalil, a member and Secretary, respectively, of the African Union Commission on International Law. It was a landmark visit as it was the first time representatives of that Commission had visited the CJI. Judge Solo gave a presentation on the African System to the members of the Juridical Committee and invited them to visit the African Union Commission on International Law and, in particular, to participate in the Forum of International Law to be held in Addis Ababa in October 2013. The Judge also has expressed the Commission's intention to sign a cooperation agreement with the OAS and the CJI. Finally, Judge Solo expressed his interest in the Course on International Law held in Rio de Janeiro, bearing in mind its importance as an experiences-sharing mechanism between the two systems. He promised to raise awareness about the activity in order to encourage the participation of professors and students.

2) August 6, 2013: Visit by Ambassador Hugo de Zela, Chief of Staff of the Secretary General of the OAS. Matters on the agendas of the OAS and CJI were discussed at the meeting.

3) August 6, 2013: Visit by Commissioner Maria Elena Pérez-Jaén Zermeño of the Federal Institute of Access to Information and Data Protection, Mexico (IFAI). Commissioner Pérez-Jaén talked about Mexico's legislative advances and current practices of the IFAI concerning data protection. Furthermore, the Commissioner offered suggestions regarding the model law to be drafted by the CJI.

4) August 7, 2013: Visit by Dr. José Jesus Orozco, President of the Inter-American Commission on Human Rights. President Orozco expressed his intention to strengthen cooperation ties between the two entities the system. He also urged the CJI to update its studies on the effectiveness of decisions and judgments of international bodies, bearing in mind the decisions of the Inter-American Commission on Human Rights.

5) August 7, 2013: Visit by Dr. Mario Buil-Merce, Political Affairs Officer from the United Nations Office on Genocide Prevention and the Responsibility to Protect. Dr. Buil-Mercer explained the mandate of the United Nations Office on Genocide Prevention and the Responsibility to Protect and updated the Juridical Committee on the activities carried out by the entity. In particular, he mentioned the initiative presented by Brazil in 2011 regarding the responsibility to protect, aimed at providing the universal system with preventive mechanisms in the United Nations Security Council. He also mentioned the Latin American Network for the Prevention of Genocide — unveiled by Argentina and Brazil, and currently with 18 Member States—as a regional forum for prevention and education on such matters.

6) August 8, 2013: Visit by Professor Jeanette Irigoin, a representative of the International Humanitarian Fact-Finding Commission, an entity based in Switzerland that has a cooperation agreement with the OAS. The Professor explained the Commission's role and sphere of action and mentioned the scant presence of Latin American countries. She said that the Commission works on cases of violations of international humanitarian law and was noted for its independence. She also referred to the interest of professors of international law with her organization to participate in the Course on International Law.

7) August 9, 2013: Visit by Professor Susan Karamanian, Associate Dean for International and Comparative Legal Studies of George Washington University Law School. Professor Karamanian explained the content of her class in the Course on International Law and noted the advances in international law with respect to the role of the United States on the international stage. She also answered questions from the members of the CJI concerning the possible influence of other countries on United States domestic and foreign policy.

8) August 9, 2013: Visit by Dr. Eduardo Vio Grossi, judge on the Inter-American Court of Human Rights and former member of the Inter-American Juridical Committee. Judge Vio Grossi stressed the importance of the Committee on matters of international law, particularly considering its impartial nature capable of providing legal solutions to important topics under discussion in the Americas. He recommended that the CJI monitor issues to do with the coordination of the Inter-American system between the OAS and other entities that have emerged of late in the Hemisphere. He also suggested that the Committee resume its treatment of the issue of compliance with the judgments of the Inter-American Court of Human Rights.

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The Inter-American Juridical Committee annual Reports are available on the Internet at the following link :

http://www.oas.org/cji/informes_cji.htm (en español)

http://www.oas.org/cji/eng/reports_annualreport_iajc.htm (in English)

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