

**OPINION ON THE RIGHT TO IDENTITY**  
(presented by Dr. Mauricio Herdocia Sacasa)

**I. ORIGIN AND CONTENT OF THE REQUEST FOR OPINION**

1. In a note on March 15, 2007, the current Chair of the Permanent Council, Ambassador Maria del Luján Flores, sent a message to the Chair of the Inter-American Juridical Committee, Jean-Paul Hubert, requesting the Committee for an opinion on “the scope of right to identity” in the light of an exchange of opinions during an extraordinary session of the Council on the topic “Childhood, identity and citizenship”, this request being based on the provision in article 100 of the OAS Charter. In a note on March 26, 2007, the Chair of the Committee answered the aforementioned note indicating that he would immediately inform the members about the request and propose that the topic of the right to identity be added to the agenda of the next regular session on July 30 to be held in the Rio de Janeiro headquarters. The corresponding material was requested, received and then distributed among the members of the Committee, including the topic “The scope of Right to Identity” in the agenda.

2. In Resolution AG/RES. 2286 (XXXVII-0/07) INTER-AMERICAN PROGRAM FOR UNIVERSAL CIVIL REGISTRATION AND RIGHT TO IDENTITY, dated June 5, 2007, the following preamble was considered: “IN VIEW of an extraordinary session of the Permanent Council on March 9, 2007 on “Childhood, right to identity and citizenship”, its relevant report CP/doc.4202/07, and recalling that, at this stage, it was agreed to request the Inter-American Juridical Committee (IAJC) for its opinion on the scope of the right to identity”.

**II. POWERS OF THE INTER-AMERICAN JURIDICAL COMMITTEE**

3. Pursuant to article 100 of the Charter of the Organization of American States, the Committee will undertake the studies and preparatory work entrusted to it, at the request of the Permanent Council of the Organization in its full powers. On this matter, in response to the written request the Committee will proceed to issue an opinion on the topic, taking into consideration the powers provided in both the Charter and Statutes of the Inter-American Juridical Committee, considering its role as an advisory body of the Organization, the technical autonomy granted it, the non-binding nature of its studies and independent service that its members provide that, in their collegiate role as a Committee, represent the overall membership of the Organization.

**III. SPECIFICATION OF TOPIC**

4. The Committee was asked to give its opinion on the scope of right to identity. The Committee understands that the term “scope” means precisely to be able to specify, demarcate and examine the range of action of the topic of the right to identity and define – as far as possible – what are its most important legal consequences and implications and its relations with other international rights and obligations and those corresponding to the State’s internal legislation. It must therefore be agreed, as a starting point, to the legal nature of the right to identity, described as a “right” both by the actual request of the Permanent Council and by the General Assembly.

5. The Committee examines the implications of the right to identity from the overall perspective of the human being, fully considering as far as possible the transcending topics and discussions in the Permanent Council relating to “Childhood, right to identify and citizenship”, contained in the current opinion.

#### IV. THE LEGAL SOURCES OF THE OPINION

6. Although it is true that identity has different axiological, political, psychological, socio-cultural and sociological components, the Committee will restrict itself to examining the implications of the “right”, that is, restricting it as far as possible to the legal aspects of the right, without detriment to other consequences that may derive from the broad concept of identity or of its later development. On doing so, the Committee bears in mind that the fact that a topic has different dimensions does not imply that the Committee cannot address it exclusively from the legal perspective in its charge, dispensing other elements that do not have a necessary relation with the right.

7. Given the general and global nature of the request for an opinion and bearing in mind the discussions in the Permanent Council, the Committee, on considering the sources, will not be restricted to the inter-American sphere or to the degree of legal links of the States with the treaties<sup>1</sup>, but will consider as simple and direct a manner as possible – the existing jurisprudence<sup>2</sup>, the international common law and the regional and universal principal instruments of conventions, including the Convention of the Rights of the Child, especially relevant to this opinion.

8. Bearing in mind the large number and variety of instruments, the Committee will only refer expressly to those regulations that more clearly show the rationale of the Committee in relation to the nature and implications of the right, but it does not mean that other relevant sources will not be considered<sup>3</sup>. On this matter, it is worth considering, although without being restricted to, the following regulations of special relevance in the American Convention on Human Rights: article 1 (Obligation to Respect Rights); article 2 (Domestic Legal Effects); article 3 (Right to Juridical Personality); article 17 (Rights of the Family); article 18 (Right to a Name); article 19 (Rights of the Child); article 20 (Right to Nationality); article 24 (Right to Equal Protection); article 25 (Right to Juridical Protection) and article 27 (Suspension of Guarantees).

9. Considering that the right to identity is indissolubly linked to the individual as such and consequently to the recognition of its juridical personality, in all circumstances, as well as to holding rights and obligations inherent therein, it is important to consider, since the American Declaration of Rights and Duties of Man, the provision in article XVII that “everyone has a right to be recognized anywhere as subject to rights and obligations...”. Similar provisions were provided in the Universal Declaration on Human Rights (article 6), American Convention on Human Rights (article 3) and International Pact of Civil and Political Rights (article 16).

10. In turn, articles 7 and 8 of the Convention of the Rights of the Child, given the direct references to the right to identity, are fully transcribed as follows:

##### Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

<sup>1</sup> There are 28 American States party to the Convention on the Rights of the Child .

<sup>2</sup> For example: the Advisory Opinion OC-17/2002 dated August 28, 2002, requested by the Inter-American Commission of Human Rights. Juridical Condition and Human Rights of the Child.

<sup>3</sup> See for example: Universal Declaration of Human Rights, 1948, arts.15 and 16; American Declaration of the Rights and Duties of Man, 1948, arts. VI, VII, VIII and XIX; International Convention for Reducing the Cases of the Stateless, 1961, art. 1; International Pact of Civil and Political Rights, 1966, art. 24; Convention for Elimination of all forms of Discrimination against Women, 1979, art. 9.; International Convention of Protection of the Rights of Migrant Workers and the Members of their Families, 1990, art. 29, and Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, and so on.

## Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

11. The following is clearly seen from the above transcribed texts:

11.1 That the Convention on the Rights of the Child expressly provides a right of the right to preserve its identity, which is equal to the right that obviously accompanies the person throughout his or her life.

11.2 That the American Convention on Human Rights, although it does not establish the right to identity expressly under this name, it does include, as mentioned earlier, the right to a name, the right to nationality and the rights to family. It also includes the rights of the child.

11.3 Moreover, it is clear that the American Convention not only obliges the recognition and respect for such rights, but also imposes the commitment to adopt legal and other measures that were required to guarantee and effect such rights and liberties, which evidently implies the right to register the child immediately after its birth and the existence of an appropriate accessible, effective and secure registration and identity system within the framework of the domestic laws.

## V. NATURE OF THE RIGHT TO IDENTITY

12. The right to identity is consubstantial to the attributes and human dignity. Consequently it is an enforceable basic human right *erga omnes* as an expression of a collective interest of the overall international community that does not admit derogation or suspension in cases provided in the American Convention on Human Rights.

13. Name, nationality, family relations and registration do not give rise to the right to identify, a right that pre-exists as an indissoluble part of the original dignity of people, subject and fully entitled to basic rights and liberties, whose exercise the States are obliged to guarantee.

## VI. COMMENTS

14. Considering how important it is for the report to be issued by the Committee to outline the field covering the right to identity, it is considered convenient to refer to apparently basic questions:

14.1 The right to identity cannot be mistaken for only one of its elements. In this matter such a right cannot be reduced to any other right included in it. Of course the name, for example, is part of the right to identity, but not the only one.

14.2 Nor can the right to identity be reduced to the mere sum of certain rights included in the Convention on the Right of the Child, therefore many elements may be considered, for example, by internal legislation, as required in this case to give expression to the particular and unique aspects and characteristics of each State and its populations, as well as to effect the rights to whoever is juridically bound and obligated.

14.3 The text of the Convention on the Rights of the Child does not necessarily imply that the elements mentioned therein all correspond to the right to identity. The phrase "including nationality, name and family relations ..." expressly mentions certain rights that must be included, but do not necessarily close the circle of the universe of rights, or much less be associated and closely related to other essential rights, such as the right to juridical personality and equality. The right of the child to be registered immediately after birth is an inseparable part of the rights expressly stated in the Convention on the Rights of the Child.

14.4 Exercising the right to identify cannot be dissociated from registration and an effective national system, accessible and universal, that enables people to materially provide documents that contain the data relating to their identity, bearing in mind particularly that the right to identity is both a right in itself and an essential right as a means to exercise other cultural, economic, political social rights. Consequences of the Right to identity are the right to registration after birth and a duty of the State to take the necessary measures for this purpose. Registering the birth is a primary instrument and starting point to exercise the juridical personality before the State and individuals, and acting in equal conditions before the law.

## VII. IMPLICATIONS AND SCOPE

15. The Committee considers that the right to identity is, among its most relevant implications and scope, to constitute an autonomous right that is based on the regulations of international law and those that derive from the actual cultural elements considered in the domestic legal systems of the States, in order therefore to satisfy the specificity of the individual, with his or her rights that are unique, singular and identifiable.

16. The right to identity, in turn, has an instrumental value for exercising certain civil, cultural, economic, political and social rights so that they fully prevail to reinforce democracy and the exercise of basic rights and liberties. Consequently, it is a means to exercise rights in a democratic society, committed to the effective practice of citizenship and the values of representative democracy, thereby facilitating social inclusion, citizen participation and equal opportunities.

17. Depriving the right to identity or legal deficiencies in domestic legislation for its effective practice puts people in situations that hinder or prevent the enjoyment or access to basic rights, thus creating different treatments and opportunities that affect the principles of equality before the law and of non-discrimination<sup>4</sup> and obstructing everyone's right that to fully recognize their juridical personality.

## VIII. OPINION

18. Based on the above contributions and discussions, the Inter-American Juridical Committee gives the following Opinion:

18.1 The right to identity can be classified as a human right of such a fundamental and basic character and content that it can be enforced *erga omnes* and does not admit derogation or suspension.

18.2 In its actual practice it is subject to overall legislative measures and other internal legal systems of the States, but within the restraints imposed by international law.

18.3 Its implications are reflected as follows:

18.3.1 It is an autonomous right<sup>5</sup>, whose existence is not subordinate to any other right, but is a right in itself.

18.3.2 It is a right that, in addition to having its own value and content, is instrumental to other rights for their full achievement and practice, and

18.3.3 The right to identity has a core of clearly identifiable elements that include the right to a name, the right to nationality and the right to family relations, all of which are accompanied by the State's obligation to recognize and guarantee them, in conjunction with those other rights deriving from national laws or the obligations contracted as a result of the

<sup>4</sup> The Inter-American Court of Human Rights stated that in the current stage of developing international law, the fundamental principle of equality and non-discrimination is now in the domain of *jus cogens*. Advisory Opinion – OC-18. Juridical condition and rights of migrants without identity papers.

<sup>5</sup> In turn, the Inter-American Commission on Human Rights also alluded to the right to identity. Thus, in the *Case of the Serrano Cruz Sisters v. El Salvador (2004)*, the Commission maintained that the right to identity "was recognized by the jurisprudence and doctrine both as an autonomous right and an expression of other rights or as an element constituting them", and that it "is closely associated with the right to recognition of the juridical personality, the right to have a name, nationality, family and to maintain family relations". Inter-American Court of Human Rights. *Case of the Serrano Cruz Sisters v. El Salvador – Decision dated March 1, 2005*.

relevant international instruments. This essence is necessarily accompanied by the right to register the child after birth and the corresponding issue and delivery of the corresponding identity document.

18.3.4 The Committee points out, in the framework of this opinion, that although it is true that the right to identity implies other human rights, none of them loses any of their specific and special elements.

18.3.5 The Committee emphasizes the importance of especially assuring the child's right to identity, reducing therefore its vulnerability in possible abuses and also acting under the principles of "special protection" and "supreme interest" of the child<sup>6</sup>.

18.3.6 An accessible, efficient, reliable and universal registration is a basic guarantee to consolidate the right to identity.

\* \* \*

---

<sup>6</sup> Child must be understood as boy, girl and adolescent.