

**INTER-AMERICAN JURIDICAL REPORT**  
**STRENGTHENING THE CONSULTATIVE FUNCTION**  
**OF THE INTER-AMERICAN JURIDICAL COMMITTEE**

**1. DEFINING THE FUNCTIONS AND/OR ATTRIBUTIONS OF THE INTER-AMERICAN JURIDICAL COMMITTEE**

1.1 Applicable normative framework

The functions and/or attributions of the Inter-American Juridical Committee of the OAS are regulated by three different juridical instruments: the Charter of the OAS, the Statutes and the Rules of Procedure of the Committee.

The provisions regarding the functions of the Committee contained in these three instruments follow a different normative hierarchy, the first being an international treaty with foundational characteristics, the second contained in successive resolutions adopted by the General Assembly of the OAS,<sup>1</sup> and the third adopted and successively modified by resolutions of the Committee itself.<sup>2</sup>

Bearing this in mind, let us see which functions are granted to the Inter-American Juridical Committee in these three instruments.

1.2 Functions of the Inter-American Juridical Committee

A full, joint and systematic reading of the three instruments mentioned above<sup>3</sup> allows one to conclude that the Inter-American Juridical Committee of the OAS has five main functions or attributions:

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<sup>1</sup> The Statutes were adopted by Resolution of the General Assembly of the OAS AG/RES. 89 (II-O/72) at its second regular session held in Washington D.C. on 11-21 April 1972. The Statutes were later changed by resolution AG/RES. 885 (XVII-O/87) adopted at the seventeenth regular session of the General Assembly held in Washington D.C. in November 1987, and by resolution AG/RES. 2282 (XXXVII-O/07) adopted at the thirty-seventh regular session of the General Assembly held in Panamá in June 2007.

<sup>2</sup> The Committee adopted its first Rules of Procedure on 15 August 1949. Later on it adopted a new Rules of Procedure in the regular session held on 25 July to 23 August 1972, with further amendments made regular sessions held in January-February 1976, August 1986, January-February 1987 and July-August 1991.

<sup>3</sup> With regard to this point, it is fundamental to apply the Principle of Interpretation of the treaties denominated *Del Contexto*, according to which one should analyze “the set of the international treaty or instrument in question, each of its parts and all of them in relation to each other. The context of the treaty can also be derived from other instruments different from the treaty itself, such as the Resolutions dictated” on said text. In this respect, see DE LA GUARDIA, Ernesto. **Derecho de los Tratados Internacionales**. Buenos Aires: Ábaco de Rodolfo De Palma, 1997, p. 211; YASSEEN, Mustafá. *L’interprétation des traités d’après la Convention de Vienne sur le droit des traits*. RCADI, 1976-III, t. 151, p. 1-114; NOVAK, Fabián; GARCÍA-CORROCHANO, Luis. **Derecho Internacional Público**. t. I: Introducción y Fuentes. Lima: Instituto de Estudios Internacionales (IDEI) de la Pontificia Universidad Católica del Perú, 2000, p. 209.

a. To provide consulting (that is, to lend advisory assistance) on juridical matters of an international character as requested by the bodies of the OAS (a function enshrined in article 99 of the Charter, in article 12 paragraph a) of the Statutes, and in article 5 paragraph a) of the Rules of Procedure).

b. To carry out studies and preparatory work on juridical matters of an international character as assigned by the General Assembly, the Meeting of Consultation of Ministers of Foreign Affairs or the Councils of the Organization (a function enshrined in article 100 of the Charter, in article 12 paragraph b) of the Statutes, and in article 5 paragraph b) of the Rules of Procedure).

c. To carry out on its own initiative studies and preparatory work that it considers appropriate (a function enshrined in article 100 of the Charter, in article 12 paragraph c) of the Statutes, and in article 6 paragraph a) of the Rules of Procedure).<sup>4</sup>

d. To suggest holding specialized conferences and meetings on juridical topics of an international character (a function enshrined in article 100 of the Charter, in article 12 paragraph d) of the Statutes, and in article 6 paragraph b) of the Rules of Procedure).<sup>5</sup>

e. To establish relations for cooperation with national and international entities dedicated to the development or codification of International Law or to the study, research, teaching or diffusion of juridical matters of international interest (a function enshrined in article 103 of the Charter, in article 12 paragraph e) of the Statutes and in article 7 of the Rules of Procedure).<sup>6</sup>

In addition, the Charter of the OAS and the Rules of Procedure of the Inter-American Juridical Committee mention another two functions, which do not appear in the Chapter entitled “Functions and Powers” in the Statutes. Nevertheless, this instrument does refer to them in article 3 when it mentions the “purposes” of the Committee, and indirectly in article 33 (Secretariat) where it points to the procedure for dealing with the opinions of the Committee within the Organization. These additional functions are:

f. To prepare draft treaties or draw up opinions on matters of regional interest that refer to the progressive development of International Law and its codification (a function enshrined in article 99 of the Charter and in article 5 paragraph d) of the Rules of Procedure).<sup>7</sup>

g. To study the juridical problems related to the integration of Member States in developing the economic, social and educational, scientific and cultural fields, as well as the possibility of standardizing their legislations wherever appropriate (a function enshrined in article 99 of the Charter and in article 5 paragraph e) of the Rules of Procedure).<sup>8</sup>

One may conclude from the above that although the functions or attributions of the Inter-American Juridical Committee are quite broad and diverse, certain difficulties do present themselves as regards determining their precise scope.

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<sup>4</sup> Note in this case that although the Rules of Procedure do not include this function in article 5 and consequently do not qualify it as a “principal attribution”, it does establish in article 6 that, just as in article 5, it is contained in title III denominated “Attributions”.

<sup>5</sup> In relation to this function, only the Statutes state that the suggestion can be made to the General Assembly or the Councils of the OAS, which translates the consensus reached by the corresponding Working Group, as referred to by the Rapporteur of Subcommittee I of the Special Committee of Panamá. See **COMITÉ JURÍDICO INTERAMERICANO. Proyecto de Estatuto del Comité Jurídico Interamericano**. Rio de Janeiro, 26 de marzo de 1971, p. 275.

<sup>6</sup> This is the case, for example, of the United Nations International Law Commission, UNITAR (United Nations Institute for Training and Research), UNCITRAL (United Nations Commission on International Trade Law), UNIDROIT (International Institute for the Unification of Private Law), IDI (Institut de Droit International), among others.

<sup>7</sup> According to article 3, paragraph b) of the Rules of Procedure, this function can be exercised by own initiative or requested by the bodies mentioned in article 100 of the Charter of the OAS.

<sup>8</sup> According to article 3, paragraph c) of the Rules of Procedure, this function can be exercised by own initiative or requested by the bodies mentioned in article 100 of the Charter of the OAS.

One difficulty springs from the fact that the Charter of the OAS, as well as the Rules of Procedure of the Inter-American Juridical Committee, do not distinguish between “purposes” and “functions”, assuming both to be one and the same concept. However, as is known, the “purpose” of a body or entity is the purpose or end for which it was created,<sup>9</sup> whereas the “function” is rather the attribution that is granted to that entity or body to accomplish the ends for which it was created.<sup>10</sup> Notwithstanding the clear difference between these two concepts, both juridical instruments seem to embrace within the “functions” of the Committee both those included under the title “purposes” and those properly denominated “attributions”.

The Inter-American Juridical Committee itself called attention to this situation in May 1949,<sup>11</sup> with regard to the Draft Statutes of the Inter-American Council of Jurisconsults. On that occasion the Juridical Committee saw quite clearly the difference between “purposes” and “functions”, the latter being understood as the “juridical capacity to perform certain functions and not others, or the juridically delimited field of action of such functions”.<sup>12</sup> Accordingly, it was seen as a “mistake of the Draft to designate as functions (competences) of the Council of Jurisconsults what in fact were purposes”; nonetheless, it was understood that the “purposes” defined for the Council (“to serve as an advisory body on juridical matters”, “to promote the development of international law”, “to study the possibility of standardizing legislations”), were in fact so concrete that they should be understood as true “functions”.<sup>13</sup> Furthermore, the Juridical Committee concluded its analysis by stating that “so far, no-one has thought that it is a question of purposes”.<sup>14</sup> Regrettably, despite the efforts made by some members of the Committee to distinguish these concepts,<sup>15</sup> their use without distinction would persist in the successive Statutes and Rules of Procedure of the Inter-

<sup>9</sup> REAL ACADEMIA ESPAÑOLA. **Diccionario de la Lengua Española**. Madrid, 22. ed., tomo 5, 2001, p. 718. Here we should apply the Principle of the Ordinary and Natural Sense of Terms, according to which the provisions of a Treaty must be interpreted in accordance with its usual rather than its technical sense. In this respect, see EHRLICH, Ludwik. “L’interprétation des Traités”. In: RCADI, 1928-III, tomo 24, p. 107. Also CORTE INTERNACIONAL DE JUSTICIA. **Opinión Consultiva sobre Competencia de la Asamblea General para la Admisión sobre un Estado en las Naciones Unidas**. Reports, 1950, p. 8.

<sup>10</sup> REAL ACADEMIA ESPAÑOLA. *Ob. cit.*, t. 3, p. 408.

<sup>11</sup> Here should be applied the Principle of Interpretation of the treaties known as “On Preparatory Work”, according to which one looks for the desire or intention of the parties by investigating the history of how the text was elaborated. Preparatory work is the name given to the set of instruments, minutes, declarations or debates in which are registered the various antecedents and works of a conference, congress, convention or treaty. See LAUTERPACHT, Hersch. *Les travaux préparatoires et l’interprétation des traits*. RCADI. 1934-I, t. 48, p. 785-786; CORTE PERMANENTE DE JUSTICIA INTERNACIONAL. **Opinión Consultiva sobre la interpretación de la Convención de 1919 relativa al trabajo nocturno de mujeres**, Serie A/B, 1932, n. 50, p. 38; **Opinión Consultiva sobre la jurisdicción de la Comisión Europea sobre el Danubio**, Serie B, 1927, n. 14, p. 28.

<sup>12</sup> COMITÉ JURÍDICO INTERAMERICANO. **Observaciones al Proyecto de Estatuto del Consejo Interamericano de Jurisconsultos, formulado por la Comisión del Consejo sobre los Órganos del Consejo y sus Estatutos**. Rio de Janeiro, 30 de mayo de 1949, p. 10-11.

<sup>13</sup> *Ibid.*, p. 16. In another aside, the Committee stated: “[...] the ‘purposes’ that article 6 of the Charter assigns to the Inter-American Council of Jurisconsults are in fact ‘functions’”.

<sup>14</sup> *Idem.*

<sup>15</sup> This is the case of Caicedo Castilla (session of 11 March 1971) and Américo Pablo Ricaldoni, then member of the Inter-American Juridical Committee. The latter, in his Draft Rules of Procedure of 1972, declared: “The Statutes that this Draft proposes to regulate uses various expressions, of different content, that refer to the duties of the Committee as a body. These are the words ‘ends’, ‘purpose’, ‘attributions’ and ‘functions’. These items have been given a different meaning both in doctrine and in comparative legislation, which makes it necessary to explain the precise meaning that the Draft gives them. For the rapporteur, the concept of ‘purpose’ [...] is the aim desired to be reached [...]. As for ‘attributions’, the Draft believes that it ascribes to the criterion of the Statutes by considering as such those tasks attributed to a body so that it can carry out its own purposes”. Further ahead, Ricaldoni even distinguishes the terms “attributions” and “functions”, pointing out that the latter referred “simply to the way that attributions are exercised”. See Informe sobre Reglamento del Comité Jurídico Interamericano. Exposición de Motivos, Américo Pablo Ricaldoni (Relator). CJI/SO/D. N° 1/1972, p. 3 and 18.

American Juridical Committee, the interpretation always being that when such instruments refer to the “purposes” of this consultative body, what is actually being referred to are clearly defined functions and/or attributions.

A second difficulty crops up when we note that the attributions of the Juridical Committee referenced in these three instruments are not the same: the Statutes mention five competences, the Rules of Procedure seven (also specifying that five of these are “principal”), and the Charter also seven, although it actually includes “purposes” (article 99) and “attributions” (articles 100 and 103).

All of this enables us to make an initial recommendation, namely that any future amendment to the Charter of the OAS, the Statutes and/or the Rules of Procedure should take into account the above observations so as to ensure perfect harmony between these three texts and in this way expressly define as functions or attributions of the Committee those functions that today appear under the title of “purposes”. In the meantime, and notwithstanding the above-mentioned difficulties, we believe that the attributions of the Committee detailed above can be established based on a review of the preparatory work that gave rise to the Statutes and Rules of Procedure of the Committee, as well as a joint and systematic reading of these three instruments.

With the functions and/or attributions of the Inter-American Juridical Committee now defined, let us proceed to establish which of these functions are contained in the mandate of this Rapporteur.

## **2. SCOPE OF THE MANDATE GRANTED BY THE JURIDICAL COMMITTEE TO THE RAPPORTEUR**

At its 74<sup>th</sup> regular session held in Bogotá, Colombia, the Inter-American Juridical Committee decided to include in its working agenda the topic “Strengthening the Consultative Function of the Inter-American Juridical Committee”, and assigned Dr. Fabián Novak to develop the topic. However, despite the broad discussion within the Committee in respect to the scope of this report, some difficulty was experienced in reaching an agreement, because of the problems of interpretation of the Committee’s functions which we pointed out earlier. That is precisely why it is fundamental for this rapporteur to start out by defining the limits of his mandate, in order to try to fulfill it in a proper manner.

In this sense, of the seven competences of the Juridical Committee defined in clause 1.2 of this report, this Rapporteur understands that the mandate covers the study of the first two (that is, to *provide consulting services* and to *carry out studies and preparatory work upon request*), with in both cases the Committee emitting an opinion or study as assigned (consultation) by a body of the Organization. Although it would be more precise, given the title of the mandate, to understand that this refers only to the first of these functions, this report is inclined to be more comprehensive.

## **3. THE FUNCTION OF THE IAJC TO PROVIDE CONSULTING SERVICES AND FULFILL ASSIGNMENTS**

### **3.1 Consultations and assignments as two different functions**

A fundamental point of this report is to clarify and distinguish the consultative function of the IAJC and its function to carry out assigned studies and preparatory work. The debate that took place at the 74<sup>th</sup> regular session, and in particular at the session held on 19 March 2009, shows us that these functions may be mistakenly understood as one, which doubtless has contributed to the scant use of one of them. That is why it is of paramount importance to make a distinction between them.

One demonstration that these are different functions is the fact that they are found contemplated and regulated as such in different articles in the three instruments that regulate the Committee’s functions. In other words, when the Statutes or the Rules of Procedure of the Committee enumerate its “main attributions”, they set forth in the first paragraph the function of “advising and providing consulting

services”, and in another different paragraph (the second) the function of “carrying out studies and preparatory work upon assignment”. The same situation occurs with the Charter of the OAS when it enshrines the first of these functions in article 99 and the second in article 100, although it must be acknowledged that the wording of this latter instrument may lead to some confusion, as has indeed happened. In any case, the Statutes and the Rules of Procedure leave no room for doubt.<sup>16</sup>

A second - and this time definitive - example is that, as we shall develop further ahead, the bodies of the OAS that can request the Committee for a *consultation* are not the same ones that can ask for a *study or preparatory work to be carried out*. In the first case, the request can be made by any body of the OAS, whereas in the second instance the request must come from certain very specifically considered bodies. This shows us that the drafters of these three instruments, especially the Statutes and the Rules of Procedure, had this distinction of functions very clearly in mind, so much so that they appointed different bodies as being capable of performing them.

Finally, a third differentiating element is related to the nature of each function. Thus, the function of “advising and providing consulting services” consists in emitting a written opinion, statement or advice on some controversial issue in order to illustrate and remove any doubts in its regard.<sup>17</sup> Whereas the function of carrying out studies and preparatory work should rather be meant to deliver a report that entails an in-depth examination of a certain issue, a greater effort that would require more time and dedication.<sup>18</sup> In other words, the consultation would point to a technical, illustrated answer on the part of the Committee concerning some controversial question, an answer formulated quickly and opportunely, rather than studies and preparatory work that attempt to develop a topic whose very nature would consume more time.

So, the two functions being different, let us now look at what matters could be the object of consultations and assignments, as well as who is qualified to formulate them.

### 3.2 Matters for consultations and assignments

As regards *consultations*, the three instruments under study in this report materially confer on the Inter-American Juridical Committee the fullest consultative capacity that can be granted to an international entity by establishing that this is the consultative body of the Organization “on juridical matters”<sup>19</sup> and by then pointing out that these matters should be of “an international nature”.<sup>20</sup>

The same happens in the case of the *assignments* when these same instruments state that the Committee will undertake studies and preparatory work on “juridical matters of an international nature” that it receives on assignment.<sup>21</sup>

There is therefore no doubt that the Inter-American Juridical Committee can provide consulting services and fulfill assignments on any international juridical question, with no limitation or express or tacit restriction of any type being set. Furthermore, practice shows us that this function is so broad that the

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<sup>16</sup> With regard to this point, while it could be argued that the Charter of the OAS is an international treaty that cannot be limited in its scope by Statutes and Rules of Procedure, we believe that these three instruments should best be interpreted together and integrally as complementary norms, and in this sense we can affirm that there is no contradiction, modification or limitation to the scope of the Charter; on the contrary, we understand that the latter two instruments (Statutes and Rules of Procedure) have made it precise and respected its spirit, above all if we bear in mind that the Statutes were adopted and changed by means of both resolutions of the General Assembly of the OAS itself.

<sup>17</sup> REAL ACADEMIA ESPAÑOLA. *Ob. cit.*, t. 3, p. 428.

<sup>18</sup> See note 9.

<sup>19</sup> See article 99 of the Charter of the OAS and articles 3 and 12 paragraph a) of the Statutes.

<sup>20</sup> See articles 3 paragraph a) and 5 paragraph b) of the Rules of Procedure.

<sup>21</sup> See article 100 of the Charter of the OAS, article 12 paragraph b) of the Statutes and article 5 paragraph b) of the Rules of Procedure.

Committee has even emitted statements concerning the juridicity of a sentence passed by a national court, as well as on the validity of an internal law in accordance with International Law.<sup>22</sup>

To this it should be added that the instruments in question grant the Committee “the fullest technical autonomy” to undertake its studies and express its opinions,<sup>23</sup> meaning that the amplitude applies not only to the matters that can be the object of consultation or assignment but also to the way they are resolved.

### 3.3 Subjects qualified to request consultations or determine assignments

Unlike the preceding point, there are differences between the subjects qualified to request the Inter-American Juridical Committee for a consultation and those who can legitimately assign a study or preparatory work.

In effect, the Committee can be asked for a *consultation* by any body of the OAS, according to article 99 of the Charter, which generally provides that the Inter-American Juridical Committee is the consultative body “of the Organization”, the same wording being repeated in article 3 of the Statutes and in article 3 paragraph a) of the Rules of Procedure. A similar provision is found in article 12, paragraph a) of the Statutes and in article 5, paragraph a) of the Rules of Procedure, which also states that consultations can be requested “by the bodies” of the Organization. Even clearer is article 5, paragraph c) of the Rules of Procedure, which expressly provides that “when the request for *advice or for information* comes from a *principal organ not mentioned in article 100 of the Charter*, it shall be authorized by the General Assembly”; and on the other hand, if the request comes from “a *subsidiary or dependent agency*, it shall be authorized by the organ on which it depends”.

This allows us to conclude that both the Statutes and the Rules of Procedure of the Committee have on the one hand specified the scope of article 99 of the Charter of the OAS, and consequently the function of the Inter-American Juridical Committee as regards *consulting services*, only being qualified to provide those requested by “bodies of the OAS”, thereby excluding the “States” that are also part of the Organization.<sup>24</sup> On the other hand, both the Statutes and the Rules of Procedure of the Committee have failed to set limits on the bodies of the OAS that may request consultation; as a matter of fact, they refer to each and every one of them.

The same idea is conveyed by the preparatory work meant to draw up the Rules of Procedure of the Inter-American Juridical Committee in 1972, although originally full subjective legitimacy was contemplated both for “consultations” and “studies and preparatory work”. In any case, in these draft Rules of Procedure, Américo Pablo Ricaldoni explained that the requirement that the General Assembly or the superior body authorize the request for consultation made by principal bodies not contemplated in article 100 of the Charter or by subsidiary or dependent bodies, respectively, should be for the purpose of “preventing distortions to the infrastructure of the Organization”.<sup>25</sup>

As a consequence, *consultations* are different from *assignments*, precisely because the former can be requested by any body of the OAS, namely:

- a. The General Assembly,
- b. The Meeting of Consultation of Ministers of Foreign Affairs,
- c. The Councils (the Permanent Council and the Inter-American Council for Integral Development),
- d. The Inter-American Commission on Human Rights,

<sup>22</sup> See notes 28 and 29.

<sup>23</sup> See article 102 of the Charter of the OAS and article 2 of the Statutes.

<sup>24</sup> See footnote 16.

<sup>25</sup> See RICALDONI, Américo Pablo (Relator). **Informe sobre Reglamento del Comité Jurídico Interamericano: exposición de motivos**. CJI/SO/D. N° 1/1972, p. 21.

- e. The General Secretariat,
- f. Specialized Conferences,
- g. Specialized Bodies, and
- h. Subsidiary or dependent bodies.<sup>26</sup>

It should therefore be noted that the Juridical Committee can provide consulting services for any body of the OAS, including the Office of the General Secretariat. It remains clear that these consultations cannot be requested by Member States of the Organization. Finally, in the case of a consultation being requested by a body other than those listed in article 100 of the Charter, the General Assembly or a body superior to it shall act as a filter to authorize it before the Committee begins to address it.

In respect to the *assignments* for studies and preparatory work, the subjects qualified to request these are less in number. Thus, article 100 of the Charter of the OAS, like article 12, paragraph b) of the Statutes and article 5, paragraph b) of the Rules of Procedure, expressly provide that studies and preparatory work can only be assigned to the Committee by:

- a. The General Assembly,
- b. The Meeting of Consultation of Ministers of Foreign Affairs, and
- c. The Councils of the Organization.

Having established the difference and contents of each of these two functions, let us now look at what has been the practice of the Inter-American Juridical Committee and other bodies of the OAS in respect to them.

#### **4. THE PRACTICE OF THE INTER-AMERICAN JURIDICAL COMMITTEE WITH REGARD TO CONSULTATIONS AND ASSIGNMENTS**

##### **4.1 Conclusions drawn from the practice of the Juridical Committee**

In relation to the function of the Inter-American Juridical Committee to provide consulting services and fulfill assignments, it is interesting to note how this and other bodies of the OAS have acted. In this sense, a thorough analysis of this practice in the period between 1990 and 2008 leads us to the following conclusions:<sup>27</sup>

- a. The first conclusion is that in this period practically no body of the OAS formulated *consultations* to the Committee, the same ones referenced in article 99 of the Charter, article 12 (a) of the Statutes and article 5 (a) and (c) of the Rules of Procedure. Indeed, while in practical terms some assignments made to the Committee during these years could qualify as actual *consultations*, it is correct to say that juridically and formally they were not requested of the Committee as such. This is the case, for example, of the Helms-Burton Law<sup>28</sup> or that of

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<sup>26</sup> See articles 53 and 70 of the Charter of the OAS.

<sup>27</sup> Here credit should be given to the work of the staff of the Inter-American Juridical Committee, thanks to whom all the pertinent information was made available, classified and organized by year.

<sup>28</sup> See Resolution AG/RES. 1364 (XXVI-O/96) of 4 June 1996, in which the General Assembly of the OAS assigns the Committee to present its opinion concerning the validity of the Helms-Burton Law in accordance with International Law, without specifying whether it does so under article 99 or article 100 of the Charter. It was rather the Inter-American Juridical Committee that interpreted — not based on any resolution of the General Assembly — that the Opinion was emitted adjusted to the functions assigned in article 99 of the Charter, that is to say, as a consultation.

the Inter-American Convention against Corruption.<sup>29</sup> The sole exception found in this period was the consultation made to the Committee in respect to the Alvarez-Machain affair.<sup>30</sup>

- b. The second conclusion is that in this same period the Committee received approximately twenty-nine *assignments for studies and preparatory work*, all of them based on article 100 of the Charter of the OAS, on article 12 (a) and (b) of the Statutes and on article 5 (b) of the Rules of Procedure. Regarding this point, it is interesting to note that we believe that the resolutions of the *assignments* misquote paragraphs (a) and (b) of article 12 of the Statutes, which our report claims refer to different functions of the Committee: the first subparagraph to *consultations* and the second to *assignments*. In a sense, this once more demonstrates the practice that reigns in the Organization of referring without distinction to these two functions of the Juridical Committee in spite of the fact that they are clearly differentiated in its texts.
- c. The third conclusion is that the vast majority of *assignments* were made to the Committee by the General Assembly of the Organization, and on only six or seven occasions by the Permanent Council of the OAS; to date, no other body of the Organization has made any assignments.
- d. Finally, during this period, thirty-eight topics were included in the Committee's agenda by individual or collective initiative of its own members, as provided for in article 100 of the Charter of the OAS, in article 12 (c) of the Statutes and in article 6 (a) of the Rules of Procedure, that is, 56.7% of the work of the Juridical Committee has been created "from the inside".

#### 4.2 Possible causal factors

If we analyze the above conclusions in the light of the information contained in this report, we could try to establish some possible causes or factors that explain the fact that the Organization formulates few *consultations* to the Committee, as well as the short list of bodies that have so far approached it with an *assignment*. Thus:

- i. The lack of clarity in respect to the objectives and functions of the Juridical Committee, as well as the distinction between its competence to provide *consulting services* and fulfill *assignments*, has unquestionably limited the possibilities for the Committee to exercise its advisory function and carry out assignments more intensely and more often.

It is particularly difficult to expect the bodies that make up the Organization to distinguish and identify the different possibilities of collaboration that the Committee offers if their functions are not clearly defined in the Charter and in its Statutes and Rules of Procedure.

- ii. To this lack of clarity as to competence should be added factors that could also be contributing to the fact that only 43.3% of the Committee's work has been assigned "from the outside", and this almost exclusively by a single body of the Organization: the General Assembly. Among these factors, which result from an in-depth analysis of the work carried out by the Committee as well as from interviews held by the rapporteur with different State and Organization employees, the following deserve special mention:

<sup>29</sup> See Resolution AG/RES. 1328 (XXV-O/95) of 9 June 1995, in which the General Assembly assigns the Committee — once again without explaining whether it is a consultation or assignment — to lend priority to reviewing the Draft Inter-American Convention against Corruption. In this case, when the Committee engaged to analyze the topic, it did not explain under which function it did so.

<sup>30</sup> In effect, in this case the Permanent Council of the OAS, through Resolution CP/RES. 586 (909/92) of 15 July 1992, requested the Committee for an opinion on the international jurisdiction of the sentence passed by the Supreme Court of the United States of America in the case *Government of the United States of America vs. Humberto Alvarez-Machain*, based on its consultative function enshrined in article 99 of the Charter of the OAS. Likewise, the Juridical Committee, in its resolution CJI/RES. II-15/92, assumes the function of this case based on article 99 of the Charter, stating that "consultative opinions have no obligatory effects for the body or bodies that request them".



- a. The absence of deadlines for presenting the reports of the Committee, which may be a reason why the assignments are not accomplished within the time frame expected by the requesting body.

In this respect it is important to note that on some occasions this delay has to do with the lack of precision of the mandate adopted by the General Assembly or the lack of response from the Member States to the questionnaires drawn up by the Committee, which are fundamental to allow the rapporteurs to terminate and sometimes to initiate their research.

- b. The lack of harmony that in some cases exists between the matters which are of interest to the Organization and its Member States and those that may be of interest to the Committee and its members. This situation is seen, for example, when we realize that some of the topics included in the Committee's agenda on the initiative and under the supervision of some member are not checked to see whether the same initiative is shared by the countries that make up the OAS.
- c. The limited impact and diffusion that in general the reports issued by the Inter-American Juridical Committee have had in the academic milieu, among NGOs, Members States, and - even more importantly - within the Organization itself. Save in some very specific cases, the impact and diffusion of these reports has been very limited.
- d. The practical and budgetary difficulty of holding special sessions — provided in the Statutes and the Rules of Procedure — in order to attend to urgent consulting work. For this effect, it is preferred to resort to the Secretariat for Legal Affairs of the OAS, given the fact that it is a permanent body and also because it is located in Washington, D.C..

We believe that all these factors explain — at least in part — the results that we have presented above. Without any doubt, such factors have inhibited many bodies of the Organization, as well as the Member States themselves, from requesting the Committee for *consultations* and increasing the number of *assignments*, despite the scope and undeniable importance of the functions for which it was created. In this sense it is imperative to develop a set of actions addressed at righting this situation, actions that by mandate of the Committee are suggested below.

## 5. RECOMMENDATIONS AND PROPOSALS

Based on the above analysis and the listing of the factors that in our assessment act against strengthening the functions of the Inter-American Juridical Committee designed to provide consulting services and fulfill assignments, the following recommendations and proposals can be formulated:

- a. In the first place, it is essential to state precisely and clearly the functions of the Inter-American Juridical Committee, in particular those meant to provide consulting services and fulfill assignments, bearing in mind the three legal instruments that support them. Beyond any necessary future review of these three instruments, we believe that it is possible – by applying various principles of interpretation quoted in this report – not only to define such functions but also to explain precisely their scope and content, as well as the bodies that can activate them. This report precisely makes a proposal in this sense.
- b. In the second place, it is necessary to disclose the activities and functions (already defined) of the Committee within the Organization, in order to make known the different collaboration possibilities afforded by this consultative body of the OAS. Accordingly, the Committee, through the Secretariat, should send a communication to the Member States and bodies of the OAS specifying the different collaboration possibilities offered to them by the Juridical Committee, clearly defining the scope of its functions and the technical and autonomous nature of its work. Moreover, the drafting of a short document (pamphlet) to be widely disseminated should be contemplated.

- c. In the third place, the Committee needs to act more closely with the Member States and political bodies of the Organization in order to know the topics of concern in which the Committee can participate and debate. Accordingly, an attempt would be made to register the Committee in the agenda of the Organization, developing reports, studies or consultations that are relevant to it. In this sense it would be important for the Chairman and/or Rapporteurs of the Committee to take part in the sessions of the Permanent Council and the Committee on Juridical and Political Affairs of the OAS as far as is possible, not only to mark presence but also to become familiar with the concerns of the Member States that might eventually be addressed by the Committee. The Committee budget should make an annual projection in this respect.
- d. Fourthly, the Committee should have available a mechanism for follow-up on its reports and resolutions within the OAS, which we feel should be entrusted to its Secretariat to guarantee proper diffusion of such matters among the various bodies connected with the topic, and among the Member States of the Organization (in particular, among the Legal Advisory Departments of the Ministries of Foreign Affairs).
- e. Likewise, the Inter-American Juridical Committee should set up an electronic network with universities, professional associations, research institutions and NGOs, on a permanent basis and with a double role: on the one hand to feed information to the Committee on the topics debated in the international agenda that might eventually be of interest to the OAS, and on the other hand to spread the research and reports of the Committee among the international academic community. To this end, the Secretariat could take advantage of the agreements signed by the Committee with academic institutions that are in effect, as well as making contact with the most prestigious international research centers, in order to maintain this electronic exchange of information with the commitment to share it among its members.

This would not only provide feedback to the Committee with updated information on the topics of concern and interest to the International Community but also have a multiplying effect by diffusing the results of its research and reports.

In addition, the Secretariat should keep the members of the Committee informed about national and international academic forums held in different countries of our hemisphere on the topics that are being researched in order to provide for or at least offer the presence of the rapporteurs of the Committee at such events, or at least access the documents prepared on the subject. This would also afford the Committee more visibility and presence in international academic forums, thereby consolidating its prestige and image outside and within the Organization.

Thus, and without affecting the responsibilities that the Secretariat of the Committee should assume on the matter, we believe that the capacity of initiative of each one of the Members of the Inter-American Juridical Committee will prove vital for the successful fulfillment of the recommendations contained in this paragraph, provided they possess a network of personal and institutional contacts that should be exploited for the benefit of this body of the OAS.

- f. In order to accelerate the work of the Committee, broader and better programming could be established, setting deadlines and/or schedules for delivering final reports which would enable a more timely delivery of results to the requesting body. Moreover, the States' failure to answer the questionnaires distributed by the Committee should not prevent it from continuing with the development of reports, given the capacity of initiative this body has.
- g. It is also important for the Secretariat of the Committee or the Secretariat for Legal Affairs (present at the sessions of the General Assembly and the Permanent Council) to request and ensure that the assignments passed on to the Committee are minimally precise and indicate the desired product so as to facilitate the work of future rapporteurs of the Committee.

- h. Finally, the Committee must use electronic means of communication<sup>31</sup> more intensively in order make internal consultation in advance, schedule work or future courses of action, coordinate and schedule its reports and contact networks.

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<sup>31</sup> In this regard we should recall only as reference that the Statutes and Rules of Procedure of the Inter-American Juridical Committee currently allow to change the date of a regular or special meeting by vote, either by mail, cable or any other means of communication (See article 20 of the Statutes and article 17 item c) of the Rules of Procedure).