

## **PRIVACY AND DATA PROTECTION**

(presented by Dr. David P. Stewart)

At the forty-fourth regular session of the OAS General Assembly (Asunción, Paraguay, June 2014), the OAS General Assembly adopted Resolution AG/RES. 2842 (XLIV-O/14), in which it took note of the Inter-American Juridical Committee's resolution on a Proposed Statement of Principles for Privacy and Personal Data Protection in the Americas" and instructed the Committee, before the 45<sup>th</sup> regular session of the General Assembly, "to prepare proposals for the CAJP 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."

Previously, at the 83<sup>rd</sup> regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2013) the Chairman had requested Dr. David P. Stewart to serve as the rapporteur for the topic. Dr. Hyacinth Lindsay asked to work with the rapporteur on this topic.

As members of the Committee are aware, work has been continuing during the past year on an elaboration of the proposed Principles, which were adopted by the Committee at its 80<sup>th</sup> Regular Session in Mexico City in CJI/RES. 186 (LXXX-O/12) (March 2012) (see also the analysis in the accompanying report in CJI/doc.402/12 rev. 20). These principles aim at encouraging Member States of the Organization to adopt measures ensuring respect for people's privacy, reputations, and dignity. They were intended to provide the basis for Member States to consider formulating and adopting legislation to protect the personal information and privacy interests of individuals throughout our hemisphere.

As reported to the Committee at its 84<sup>th</sup> Regular Session in March 2014, the Rapporteur has actively consulted with experts and others involved in the development of relevant principles and practices, including within the European Union and other regional groups, as well as with representatives from governmental, academic, corporate and non-governmental institutions. Information has also been requested from Member States of the Organization about their current practices and laws in the area.

In the intervening months, the Rapporteur has continued to consult with experts and others, and to take into account recent developments, such as the recently released report of the Office of the United Nations High Commissioner for Human Rights entitled "The right to privacy in the digital age." See UN doc. A.HRC/23/27 (30 June 2014). However, due to external circumstances, the Rapporteur has not yet completed his work on the elaboration of the principles.

The Rapporteur continues to believe that the most appropriate direction for this project is the preparation of a proposed legislative guide for Member States. As indicated at the Committee's 84<sup>th</sup> Regular Session, the legislative guide should be based primarily on the 12 principles previously adopted by the Committee, taking appropriate notice and account of the various other sets of guidance prepared within the EU, the OECD, APEC, etc. The effort should be to expand upon those principles by giving additional context and guidance to Member States to assist in their preparation of national legislation. In this way, the focus will remain on principles and practices, taking into account of others in the field, rather than trying to agree on the precise details of exact legislative language.

In the rapporteur's view, the field of personal privacy and data protection continues to be characterized by rapid technological developments as well as constantly evolving threats to personal privacy. Moreover, different responses to these developments and threats have been adopted in different regions of the world. Within our hemisphere, a coherent "regional" approach does not seem to

have emerged. In attempting to elaborate upon the principles, the Committee will be able to draw on the achievements in other regions while taking into account developments in our own hemisphere, in order to formulate a proposed framework for the American States to use in addressing this critical area. Put simply, it seems premature at this point to spend time drafting statutes or code provisions. More interaction with Member States is needed.

The Rapporteur expects to circulate to the Members of this Committee a draft of a proposed legislative guide before the end of the current calendar year, with an invitation for additional comment by Committee Members. The final version of the guide could then be submitted for approval at the 86<sup>th</sup> Session of the Committee and forwarded to the Committee on Juridical and Political Affairs.