

AG/RES. 1634 (XXIX-O/99)

**PROCEDURES FOR PREPARING AND ADOPTING INTER-AMERICAN LEGAL INSTRUMENTS WITHIN
THE ORGANIZATION OF AMERICAN STATES**

(Resolution adopted at the first plenary session, held on June 7, 1999)

THE GENERAL ASSEMBLY,

HAVING SEEN the report of the Permanent Council on preparing and adopting legal instruments within the inter-American system (CP/doc.3193/99 rev. 1), presented in fulfillment of resolution AG/RES. 1560 (XXVIII-O/98), "Procedures for Preparing and Adopting Inter-American Legal Instruments within the Organization of American States"; and

CONSIDERING:

That the Organization of American States is the Hemisphere's forum par excellence for the development and codification of international law;

That the OAS has a long history of preparing basic inter-American legal instruments;

That full participation by a greater number of the member states will strengthen and build on that process;

That the procedural guidelines for preparing inter-American legal instruments should encourage full participation and ensure that the member states will be kept duly informed in a timely fashion throughout the process and be able to air their views;

That the guidelines should also ensure that the instruments ultimately adopted will be of the highest legal caliber;

That, at the time of preparing relevant inter-American legal instruments, it is advisable to recall that the "Declaration on Equal Rights and Opportunity for Women and Men and Gender Equity in Inter-American Legal Instruments" [AG/DEC. 18 (XXVIII-O/98)] recommends to the member states that "any relevant inter-American instruments adopted in the future on the rights of individuals expressly ensure the equality of women and men before the law, equal opportunity for men and women, and gender equity"; and

That it is advisable to establish a single procedure that is still flexible enough to be adapted for use in preparing various types of legal instruments,

RESOLVES:

To adopt the following recommended guidelines for preparing and adopting inter-American legal instruments within the Organization:

RECOMMENDED GUIDELINES FOR PREPARING AND ADOPTING INTER-AMERICAN LEGAL INSTRUMENTS

Scope

1. The sole purpose of the following recommendations is to guide and facilitate the preparation of inter-American legal instruments where a procedure has not already been expressly provided for or the states have not agreed on the corresponding procedure for a specific case.
2. The implementation of one or more of these recommendations shall not prejudice the application of or the need to apply the other provisions of this resolution, as agreed by the states.

Proposal

3. At any time within the appropriate forum, all member states shall have the authority to propose any topic for consideration as the subject matter of an inter-American legal instrument. For the purposes of this resolution, "inter-American legal instrument" means any treaty, convention, or any other agreement having legal effect adopted by the member states within the framework of the Organization.
4. The delegations may apply these procedures in the consideration and adoption of documents other than treaties, conventions, or agreements, as they deem pertinent.
5. If the proposal is not rejected by the forum in which it is introduced, a preliminary study shall be requested.

Preliminary Study

6. The preliminary study shall be prepared by the General Secretariat within a reasonable time. The Secretariat may request the advice of the organs, agencies, and entities it considers pertinent.
7. The preliminary study shall contain the following:

- a. Specification of existing legal instruments in force on the proposed topic;
 - b. Specification of current projects to prepare international legal instruments on the proposed topic; and
 - c. A recommendation as to the need for preparing an inter-American legal instrument on the topic and, if appropriate:
 - i. A recommendation as to the method to be used to prepare the legal instrument; and
 - ii. A recommendation as to the type of legal instrument to be adopted.
8. The Permanent Council shall be notified when a preliminary study has been initiated.
9. When the preliminary study has been completed, the General Secretariat shall forward it to the forum that requested it.
10. If the aforementioned forum concludes that it is advisable to prepare an inter-American legal instrument, the matter shall be submitted to the Permanent Council for consideration.
11. If the Permanent Council approves of this conclusion, it shall specify the procedure for preparing the instrument.

Preparatory Work and Initial Drafts

12. Throughout the entire preparatory process and negotiating phase of an inter-American legal instrument, the Secretariat for Legal Affairs (SLA) of the General Secretariat shall provide advisory services and legal support, and shall transmit information to the states. Timely notification shall be made to the missions of the member states or their designees regarding meetings and developments in connection with the preparation of legal instruments.
13. As soon as the preparatory process has been determined, member states shall be notified thereof and of the opportunity for consultations. Member states may also participate by completing questionnaires, presenting their views through their delegations, and providing written comments on the drafts.
14. The Permanent Council shall instruct a working group of that organ to carry out the preparatory work and draw up the initial drafts.
15. To carry out the task, the working group may establish the standards, guidelines, and objectives to govern the preparation of the draft. It may entrust the drawing up of the initial draft, among other things, to the Inter-American Juridical Committee, the proposing organ, or to any other body considered appropriate.
16. The preparatory work may include the following:
 - a. An analysis of the preliminary study;
 - b. Consideration of comments by the member states; and
 - c. Consideration of comments made by the institutions from which they have been requested.
17. Prior to negotiations and adoption of the final draft, member states shall be given sufficient time and the opportunity to analyze the initial draft.
18. The final draft legal instrument shall be prepared in all official languages of the OAS. All versions shall be reviewed by a drafting committee for accuracy before presentation to the member states.
19. The final draft legal instrument shall be distributed to the member states well in advance of the date scheduled for its consideration by the Permanent Council.
20. Once the above process has concluded, the final draft instrument shall be transmitted to the Permanent Council so that it may determine procedures for possible adoption.