ORGANIZATION OF AMERICAN STATES

INTER-AMERICAN JURIDICAL COMMITTEE

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ANNUAL REPORT

OF THE INTER-AMERICAN JURIDICAL COMMITTEE TO THE GENERAL ASSEMBLY

2014

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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 2014, 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 2014, the Inter-American Juridical Committee held two working sessions. The first – its eighty-fourth regular session – was held from March 10 to 14; the second, corresponding to its eighty-fifth regular session, was from August 4 to 8. Both took place at its headquarters in Rio de Janeiro, Brazil.

In the course of the year, the Inter-American Juridical Committee adopted four reports, one of them at the behest of the General Assembly: “Report of the Inter-American Juridical Committee on Sexual Orientation and Gender Identity and Expression” (CJI/doc.447/14). The other three: “Second Report. Corporate Social Responsibility in the Field of Human Rights and the Environment in the Americas” (CJI/doc. 449/14 rev.1), “Recommendations to the States of the Americas on Border or Neighboring District Integration” (CJI/doc.433/13 rev.1), and “Report of the Inter-American Juridical Committee on Alternatives for the Regulation of the Use of Psychotropic Substances, as well as for the Prevention of Pharmacodependency, especially as regards Marijuana or Cannabis Sativa” (CJI/doc.470/14) correspond to mandates established by the Committee itself.

It is worth noting that the Committee created three new rapporteurships to address its mandates: Guidelines on the Protection of Stateless Persons (mandate pursuant to resolution AG/RES. 2826 (XLIV-O/14) of the General Assembly); Law Applicable to International Contracts; and Representative Democracy. Finally, the Plenary of the Juridical Committee decided to continue debating the following topics: Preparation of the Model; Law on Access to Public Information and Protection of Personal Data (mandate pursuant to General Assembly resolution AG/RES. 2811 (XLIII-O/13); the Immunity of States and International Organizations; Electronic Warehouse Receipts for Agricultural Products; and Guidelines for Migration Management in Bilateral Relations.

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. Fabián Novak Talavera, 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 (in English) and http://www.oas.org/cji/informes_cji.htm (in Spanish).

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-Fourth regular session

The 84th regular session of the Inter-American Juridical Committee took place on March 10 to 14, 2014, 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. David P. Stewart
Dr. João Clemente Baena Soares
Dr. Ana Elizabeth Villalta Vizcarra
Dr. Gélin Imanès Collot
Dr. Hernán Salinas Burgos
Dr. Hyacinth Evadne Lindsay
Dr. José Luis Moreno Guerra
Dr. Carlos Mata Prates

Dr. Fernando Gómez-Mont Urueta and Miguel Anibal Pichardo Olivier were 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; Christian Perrone, Legal Officer, Maria Lúcia Iecker Vieira and Maria C. de Souza Gomes, all of the Secretariat of the Inter-American Juridical Committee.

During the first session, the Chairman of the Inter-American Juridical Committee congratulated Drs. Ana Elizabeth Villalta Vizcarra and Miguel Aníbal Pichardo Olivier, who began their mandates on January 1 of this year, having been re-elected during the forty-third regular session of the General Assembly of the OAS in La Antigua, Guatemala. Moreover, the Chairman welcomed Dr. Hernán Salinas from Chile, 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. 200 (LXXXIII-O/13), "Agenda for the Eighty-Fourth Regular Session of the Inter-American Juridical Committee":

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.

CJI/RES. 202 (LXXXIV-O/14)

DATE AND VENUE OF THE EIGHTY-FIFTH 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 85th regular session from August 4 to 8, 2014, in the city of Rio de Janeiro, Brazil.

This resolution was approved unanimously at the meeting held on March 13, 2014, by the following members: Doctors Fabián Novak Talavera, David P. Stewart, João Clemente Baena Soares, Ana Elizabeth Villalta Vizcarra, Gèlin Imanès Collot, Hernán Salinas Burgos, Hyacinth Evadne Lindsay, José Luis Moreno Guerra and Carlos Alberto Mata Prates.

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At the end of the working sessions, the Juridical Committee took a moment to pay tribute to Dr. Freddy Castillo Castellanos, whose term, begun on January 1, 2006, and ended on December 31, 2013. The Committee highlighted his work in the field of sexual orientation and gender identity and expression and of cultural diversity in the development of international law, as well as his contributions on the subject of access to justice and legal/institutional cooperation with the Republic of Haiti.

CJI/RES. 204 (LXXXIV-O/14)

HOMAGE TO DOCTOR FREDDY CASTILLO CASTELLANOS

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING the termination of the mandate of Doctor Freddy Castillo Castellanos as a member of this Organization on 31 December 2013;

NOTING ALSO that Doctor Castillo Castellanos has been a member of the Inter-American Juridical Committee since 2006, and as such represented the Inter-American Juridical Committee in various international fora; and,

TAKING INTO ACCOUNT the studies presented by Doctor Castillo Castellanos and his noteworthy participation in the Inter-American Juridical Committee,

RESOLVES:

1. To express its gratitude to Doctor Freddy Castillo Castellanos for the work he carried out as a member of the Inter-American Juridical Committee.

2. To take into account the studies that he undertook in the Inter-American Juridical Committee on the theme of sexual orientation, gender identity and gender expression, and on cultural diversity in the development of international law, in addition to his contributions to the topic of access to justice and juridical-institutional cooperation with the Republic of Haiti.

3. To wish Doctor Freddy Castillo Castellanos total success in all his future endeavors.

This resolution was unanimously approved at the session held on March 13, 2014, by the following members: Doctors Fabián Novak Talavera, David P. Stewart, João Clemente Baena Soares, Ana Elizabeth Villalta Vizcarra, Gélin Imanès Collot, Hernán Salinas Burgos, Hyacinth Evadne Lindsay, José Luis Moreno Guerra and Carlos Alberto Mata Prates.

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B. Eighty-Fifth regular session

The 85th regular session of the Inter-American Juridical Committee took place on August 4 to 8, 2014, 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. João Clemente Baena Soares
Da. Hyacinth Evadne Lindsay
Dr. Miguel Aníbal Pichardo Olivier
Dr. José Luis Moreno Guerra
Dr. Hernán Salinas Burgos
Dr. Gélin Imanès Collot
Dr. Carlos Mata Prates
Dr. Fernando Gómez Mont Urueta
Dr. Fabián Novak Talavera
Dr. Ana Elizabeth Villalta Vizcarra

Dr. David P. Stewart 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 Committee Chairman, Ambassador Baena Soares, congratulated the new Committee Members, Dr. Joel Antonio Hernández García (Mexico) and Dr. Ruth Stella Correa Palacios (Colombia), who were elected by the OAS General Assembly, meeting in Asunción, Paraguay, on June 3-5, 2014, and thanked the General Assembly for the trust it had placed in him, on that same occasion, by re-electing him. Their terms begin on January 1, 2015.

On Monday, August 4, 2014, the Members of the Juridical Committee received a visit from the Secretary General of the Organization, His Excellency José Miguel Insulza, with whom they discussed legal issues of interest to the Organization and ways to strengthen ties between the Inter-American Juridical Committee and the OAS General Secretariat.

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.

At its 85th regular session, the Inter-American Juridical Committee had before it the following agenda, which was adopted by means of resolution CJI/RES. 203 (LXXXIV-O/14) "Agenda for the Eighty-Fifth Regular Session of the Inter-American Juridical Committee":

CJI/RES. 203 (LXXXIV-O/14)

AGENDA FOR THE EIGHTY-FIFTH REGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE

(From August 4th to 8th, 2014**)**

Topics under consideration:

1. Immunity of States and international organizations
   Rapporteurs: Drs. Carlos Mata Prates y Hernán Salinas Burgos
2. Electronic warehouse receipts for agricultural products
   Rapporteur: Dr. David P. Stewart
3. Alternative for the regulation of the use of psychotropic substances, as well as for the of pharmacodependency
   Rapporteur: Dr. Fernando Gómez Mont Urueta
4. Guidelines for migratory management in bilateral relationships
   Rapporteur: Dr. José Luis Moreno Guerra
5. Protection of personal data
   Rapporteur: Dr. David P. Stewart
6. Applicable law to international contracts
   Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and Gélin Imanès Collot

This resolution was approved by unanimous at the meeting held on March 13, 2014, by the following members: Drs. Fabián Novak Talavera, David P. Stewart, João Clemente Baena Soares, Ana Elizabeth Villalta Vizcarra, Gélin Imanès Collot, Hernán Salinas Burgos, Hyacinth Evadne Lindsay, José Luis Moreno Guerra and Carlos Alberto Mata Prates.

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During the working session of Thursday, August 7, the new head officers of the Committee were elected. The newly elected Chairman is Mr. Fabián Novak Talavera, with Dr. Carlos Mata Prates as Vice-Chairman; both positions have a two-year term, by virtue of the provisions of Article 10 of the Statute of the Committee.

Furthermore, at its August session, the plenary of the Inter-American Juridical Committee decided to hold its next regular sesión between March 23 and 27, 2015, through resolution CJI/RES. 209 (LXXXV-O/14), "Date and Venue of the Eighty-Sixth Regular Session of the the Inter-American Juridical Committee. It also adopted resolution CJI/RES. 208 (LXXXV-O/14), "Agenda for the Eighty-Sixth Regular Session of the Inter-American Juridical Committee," scheduled for March 23 to 27, 2015.

CJI/RES. 209 (LXXXV-O/14)

DATE AND VENUE OF THE EIGHTY-SIX 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 86th regular session from March 23 to 27, 2015, in the city of Rio de Janeiro, Brazil.

This resolution was approved unanimously at the meeting held on August 8, 2014, by the following members: Doctors João Clemente Baena Soares, Hyacinth Evadne Lindsay, Miguel Aníbal Pichardo Olivier, José Luis Moreno Guerra, Hernán Salinas Burgos, Gélin Imanès Collot, Carlos Alberto Mata Prates, Fabián Novak Talavera and Ana Elizabeth Villalta Vizcarra.

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CJI/RES. 208 (LXXXV-O/14)

AGENDA FOR THE EIGHTY-SIX REGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE
(from March 23 to 27, 2015**)**

Topics under consideration:

1. Immunity of States and international organizations
   Rapporteurs: Drs. Carlos Mata Prates and Hernán Salinas Burgos
2. Electronic warehouse receipts for agricultural products
   : Dr. David P. Stewart
3. Guidelines for migratory management in bilateral relationships
   Rapporteur: Dr. José Luis Moreno Guerra
4. Protection of personal data
   Rapporteur: Dr. David P. Stewart
5. Applicable law to international contracts
   Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and Gélin Imanès Collot
6. Guide for the protection of stateless persons
   Rapporteur: Dr. Carlos Mata Prates
7. Representative democracy
   Rapporteur: Dr. Hernán Salinas Burgos

This resolution was approved by unanimous at the meeting held on August 8, 2014, by the following members: Drs. João Clemente Baena Soares, Hyacinth Evadne Lindsay, Miguel Aníbal Pichardo Olivier, José Luis Moreno Guerra, Hernán Salinas Burgos, Gélin Imanès Collot, Carlos Alberto Mata Prates, Fabián Novak Talavera and Ana Elizabeth Villalta Vizcarra.

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At the end of its regular sessions, the Inter-American Committee took a moment to pay tribute to Dr. Fernando Gomez Mont Uruet and Dr. Hyacinth Evadne Lindsay, whose terms end on December 31, 2014. Regarding Dr. Lindsay, the Committee highlighted her valuable work on the subject of efforts to combat discrimination and intolerance. As for Dr. Gómez Mont, the Committee underlined his invaluable contribution to the development and codification of international law and that of the Inter-American System, particularly with respect to international humanitarian law and the regulation of narcotics and psychotropic substances, in addition to his overall contribution to the work of the Juridical Committee.

CJI/RES. 210 (LXXXV-O/14)

HOMAGE TO DOCTOR FERNANDO GÓMEZ MONT URUETA

THE INTERAMERICAN JURIDICAL COMMITTEE

CONSIDERING that Doctor Fernando Gómez Mont Urueta ends his mandate on 31 December 2014;

RECALLING that Doctor Gómez Mont Urueta has been a member of the Committee since May 2011;

RECOGNIZING the valuable contribution made by Doctor Gómez Mont Urueta throughout his mandates to the work of the Committee, and fully aware that his reports represent an incomparable addition to the development and consolidation of international law and to the Inter-American system, especially as regards those themes related to international humanitarian law and the regulation of the use of psychotropic substances;

UNDERSCORING the various personal qualities and professionalism of Doctor Gómez Mont Urueta, among which special mention should be made of his juridical and academic knowledge and the distinctive cordial treatment he offered to everyone,

RESOLVES:

1. To express their profound appreciation of Doctor Fernando Gómez Mont Urueta for his dedication and invaluable contribution to the work of the Inter-American Juridical Committee.

2. To wish him full success in his future activities and hoping that he remains in contact with the Inter-American Juridical Committee.

3. To forward this resolution to the different sectors of the Organization.

This resolution was approved unanimously at the session held on 7 August 2014 by the following members: Drs. João Clemente Baena Soares, Hyacinth Evadne Lindsay, Miguel Aníbal Pichardo Olivier, José Luis Moreno Guerra, Hernán Salinas Burgos, Gélin Imanès Collot, Carlos Alberto Mata Prates, Fabián Novak Talavera and Ana Elizabeth Villalta Vizcarra.

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CJI/RES. 211 (LXXXV-O/14)

HOMAGE TO DOCTOR HYACINTH EVADNE LINDSAY

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that on December 31, 2014 the mandate of Doctor H. Lindsay comes to an end;

RECALLING that Doctor Hyacinth Evadne Lindsay has been a member of the Committee since January 2007;

CONSCIOUS of the valuable contribution of Doctor Hyacinth Evadne Lindsay throughout her mandates in the activities of the Committee and that her contributions have provided an invaluable input for the development and consolidation of international law and the Inter-

American system, especially as regards the topic on the fight against discrimination and intolerance;

HIGHLIGHTING the various personal and professional qualifications of Doctor Hyacinth Evadne Lindsay, among them her juridical and academic culture and her cordial politeness, which make her a distinguished member of the Committee.

RESOLVES:

1. To express its deep recognition to Doctor Hyacinth Evadne Lindsay for her dedication and invaluable contribution to the work of the Inter-American Juridical Committee.

2. To wish Dr. Lindsay lots of success in her future work, in the hope that she will maintain contact with the Inter-American Juridical Committee.

3. To send a copy of this Resolution to the Organs of the Organization.

This resolution was approved by unanimous decision during the meeting held on August 7, 2014, by the following members: Doctors João Clemente Baena Soares, Miguel Aníbal Pichardo Olivier, José Luis Moreno Guerra, Hernán Salinas Burgos, Gélin Imanès Collot, Carlos Alberto Mata Prates, Fernando Gómez Mont Urueta, Fabián Novak Talavera and Ana Elizabeth Villalta Vizcarra.

CHAPTER II

TOPICS DISCUSSED BY THE INTER-AMERICAN JURIDICAL COMMITTEE AT THE REGULAR SESSIONS HELD IN 2014

THEMES UNDER CONSIDERATION

In 2014, the Inter-American Juridical Committee held two regular sessions, at which it adopted four reports, one of them in response to a General Assembly mandate: "Sexual Orientation and Gender Identity and Expression." The other three reports adopted by the Committee correspond to mandates it established: "Corporate Social Responsibility in the Field of Human Rights and the Environment in the Americas", "Border or Neighboring District Integration" and "Alternatives for the Regulation of the Use of Psychotropic Substances, as well as for the Prevention of Pharmacodependency, especially as regards Marijuana or *Cannabis Sativa*." This year, the General Assembly requested a study on Protection of Stateless Persons, with a view to preparing guidelines for States. For its part, the Committee created two new rapporteurships to address its own new mandates: Law Applicable to International Contracts; and Representative Democracy. Finally, the Plenary of the Juridical Committee decided to continue debating the following topics: Preparation of the Model Law on Access to Public Information and Protection of Personal Data (mandate pursuant to General Assembly resolution AG/RES. 2811 (XLIII-O/13); the Immunity of States and International Organizations; Electronic Warehouse Receipts for Agricultural Products; and Guidelines for Migration Management in Bilateral Relations.

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.

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1. **Sexual orientation, gender identity and expression**

Documents	
CJI/RES. 207 (LXXXIV-O/14	Sexual orientation, gender identity and gender expression
Annexes: CJI/doc.447/14	Report of the Inter-American Juridical Committee. Sexual orientation, gender identity and gender expression
CJI/doc.460/14	Disident vote. Sexual orientation, gender identity and gender expression (presented by Dr. Gélin Imanès Collot)

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.

For his part, Dr. Freddy Castillo Castellanos submitted the elements that would be included in the report. Besides reiterating how complex the issue was, particularly with respect to the terminology of the contents, he 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 (IACHR) 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.

During the 84th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March, 2014), the Rapporteur on the topic, Dr. Elizabeth Villalta Vizcarra, presented a final document that includes a description of the origin of the mandate (resolution AG/RES. 2653 (XLI-O/11) and developments in that area in the inter-American system. She pointed to key aspects of the ruling of the Inter-American Court of Human Rights in the case of *Atala vs. Riffo*; the consultations conducted with the Member States; a study conducted on the applicable European legal norms, and regulatory developments within the OAS, such as the "Inter-American Convention against All Forms of Discrimination and Intolerance' and resolution AG/RES. 2807 (XLIII-O/13), entitled "Human Rights, Sexual Orientation and Gender Identity and Expression" The report also includes a compilation of the legislation of the countries that have replied to the Committee's consultation. The report, document CJI/doc.447/14, compiles and considers the laws of three new countries responding to the consultations: Paraguay, Argentina, and Costa Rica. In the case of Paraguay, Dr. Villalta ascertained that its domestic laws seek to establish equality and to support all members of its community. In Cost Rica, considerable progress was made by amending the Constitution and lower-ranking legal provisions. Mention was made of progress also made in the jurisprudence in Costa Rica, which has declared May 17 as the Day for Fighting Homophobia, Lesbophobia, and Transphobia. The Rapporteur further mentioned a regulation regarding identification and I.D. photos that respect a person's sexual identity. Finally, the Rapporteur noted the progress made in Argentina with the passing of laws against discrimination and discriminatory treatment.

The Rapporteur concluded her presentation by pointing out that there was substantial progress made in this field, especially the naming of "sexual orientation" as a specific ground in discrimination, effectively protected the fundamental rights of people with a determined sexual orientation, without the need to resort to other categories in order to protect them.

She then requested that the Juridical Committee's work on the subject be considered concluded.

Dr. David Stewart thanked the Rapporteur, Dr. Villalta, for her very thorough report. He pointed out that while there may well be a debate about social aspects, from a legal point of view, there was no more questioning or debating about whether the aforementioned criteria constituted factors of discrimination. Dr. Fabián Novak also agreed with Dr. David Stewart, given the general and specific standards adopted in the Hemisphere. He proposed that the Committee adopt the report and consider the General Assembly mandate fulfilled.

Dr. Collot, for his part, said he was not comfortable with the report because it mentioned only international legal instruments banning discrimination in the domestic legislation of seven Member States, without regard for the laws in the remaining States. In his opinion, the report had focused on one direction only and failed to take into consideration the complex scope of the issue. As he saw it, all laws must be understood as part of "ordre public", morality and ethical customs, so that he could not support the report. He mentioned that he had written a personal opinion and asked that it be included along with the report (CJI/doc.444/14).

Dr. Carlos Mata Prates also congratulated Dr. Elizabeth Villalta and paid homage to Dr. Freddy Castillo Castellanos, as their work had constituted a notable contribution to the Hemisphere in a complex field, such as this. He had seen reports in his country that had quoted the Committee's work. Dr. José Luis Moreno Guerra likewise congratulated Dr. Villalta and Dr. Freddy Castillo Castellanos for their contribution to the subject.

The Chairman asked that the Committee adopt Dr. Villalta's report, document CJI/doc. 447/14, with the dissenting vote of Dr. Collot, document CJI/doc.460/14.

The Inter-American Juridical Committee declared the topic closed. On April 10, 2014, the Secretariat sent the aforementioned documents to the OAS Permanent Council.

The texts of the aforementioned reports are as follows:

CJI/RES. 207 (LXXXIV-O/14)

SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that resolution AG/RES. 2653 (XLI-O/11) requested of the Inter-American Juridical Committee "to prepare a study on the legal implications and the conceptual and terminological developments with regard to Sexual Orientation, Gender Identity and Gender Expression" and,

IN VIEW OF the report of the Inter-American Juridical Committee adopted in August 2013, (CJI/doc.417/12 rev 2 corr.1), "Sexual orientation, gender identity and gender expression", as well as the report presented by Doctor Ana Elizabeth Villalta Vizcarra in March 2014, "Sexual orientation, gender identity and gender expression" document CJI/doc.447/14,

RESOLVES:

1. To thank Doctor Ana Elizabeth Villalta Vizcarra for her report on "Sexual orientation, gender identity and gender expression", document CJI/doc.447/14.

2. To approve the report of the Inter-American Juridical Committee, document CJI/doc.447/14, "Sexual orientation, gender identity and gender expression", attached to this resolution.

3. To transmit this resolution to the Permanent Council of the Organization of American States.

4. To consider concluded the studies of the Inter-American Juridical Committee on this theme.

This resolution was adopted at the session held on March 13, 2014, by the following members: Drs. Fabián Novak Talavera, David P. Stewart, João Clemente Baena Soares, Ana Elizabeth Villalta Vizcarra, Hernán Salinas Burgos, Hyacinth Evadne Lindsay, José Luis Moreno Guerra and Carlos Alberto Mata Prates.

Doctor Gélin Imanès Collot presented a dissident vote, attached to this resolution, document CJI/doc.460/14.

* * *

CJI/doc.447/14

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

I. MANDATE

This mandate originated in the forty-first regular session of the General Assembly of the Organization of American States (OAS), held in San Salvador, El Salvador en junio del 2011 por resolución AG/RES. 2653 (XLI-O/11) por medio de la cual se solicitó a la Comisión Interamericana de Derechos Humanos (CIDH) y al Comité Jurídico Interamericano (CJI)

> 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.

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, as the rapporteur for the topic I 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 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. Taking those parameters into account, the following rapporteur's report is hereby submitted.

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 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 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, 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."

At this regular session, the Committee members requested a new report that would consult the member states of the Organization of American States about their legislation on the subject of sexual orientation, gender identity, and gender expression, and would investigate European legislation on the topic.

In this regard, at the 83rd regular session of the Inter-American Juridical Committee, held in Rio de Janeiro, Brazil, from August 5 to 9, 2013, it was presented the advancement that had place at the 43rd Regular Session of the General Assembly 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.

The preamble of that Convention declares that the Member States are

> that certain persons and groups experience multiple or extreme forms of discrimination and intolerance, driven by a combination of factors such as gender; age; **sexual orientation**; language; religion; political or other opinion; social origin; economic status; migrant, refugee or displaced status; birth, stigmatized infectious-contagious condition; genetic trait; disability; debilitating psychological distress; or other social condition; as well as others recognized in international instruments

Furthermore, alarmed by the surge in hate crimes motivated by gender, religion, sexual orientation, disability, and other social conditions; and

The rapporteur's report noted that the fortieth regular session of the OAS General Assembly approved resolution AG/RES. 2807 (XLIII-O/13) corr. 1 titled "Human Rights, Sexual Orientation, and Gender Identity and Expression" on June 6, 2013, which among other matters resolved

> 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.

In view of the substantive developments in the area, with the approval of the "Inter-American Convention against Racism, Racial Discrimination, and Related forms of Intolerance," and the establishment of sexual orientation as a specific type of discrimination, it is no longer necessary to use another category such as "sex and any other social condition" to refer to this form of discrimination, in order to guarantee the protection of the basic rights of persons with a specific sexual orientation.

As suggested by the members of the Inter-American Juridical Committee, the rapporteur's report referred to the European Union norms for protection against discrimination because of sexual orientation.

With respect to domestic legislation of the member states of the Organization of American States, the report analyzed the legislation submitted by Ecuador, Peru, Bolivia, and El Salvador, which substantially guarantee the rights of these persons, prohibiting discriminatory treatment, which has been clearly established in their constitutions, domestic legislation, jurisprudence, municipal ordinances, and even in national plans and policies, as applicable.

At the 83rd regular session of the Inter-American Juridical Committee the Committee members decided that it was important to continue consulting the member states of the Organization about advances in their domestic legislation on the subject.

As a result, information was obtained from Paraguay, Argentina, and Costa Rica, which is described in the following point of this rapporteur's report.

II. REPORTS

A) Information from the Republic of Paraguay on sexual orientation, gender identification, and gender expression:

The Republic of Paraguay has made progress in this area with the Principles of Corporate Responsibility in the Area of Human Rights, according to which the companies work with philosophies aimed at creating equality, eradicating all forms of discrimination, supporting care of the environment, and supporting social development initiatives. One of the principles is "promoting nondiscrimination."

B) Information from Costa Rica on sexual orientation, gender identification, and gender expression:

Article 33 of Costa Rica's Constitution states: "All persons are equal before the law and there shall be no discrimination against human dignity.

The General Law on Young Persons, N°8261 of May 2, 2002, in Chapter II on rights, states in Article 4, section h): "The right not to be discriminated against for reasons of color, national origin, belonging to a national, ethnic, or cultural minority, sexual orientation, language, religion, opinions, social condition, physical ability or disability, place of residence, financial resources, or any other personal or social condition or circumstance of the young person."

The Law against Trafficking in Persons and for Establishment of the National Coalition against Illicit Trafficking in Migrants and Trafficking in Persons (CONATT), N° 9095 of October 26, 2012, stipulates in Article 2, on General Principles: "The following principles shall be taken into account when applying this law: (a) the principle of equality and nondiscrimination: regardless of the judicial or administrative proceeding undertaken to investigate the crime of trafficking in persons, the provisions of this law shall be applied so as to guarantee respect for the human rights of persons who are victims of this crime, with no discrimination whatsoever for reasons of ethnicity, disability, sex, gender, age, language, religion, sexual orientation, political or any other opinions, origin, nationality, financial condition, or any other social or migratory condition."

The Minimum Standards for the Operation of Services that Care for Minors, with problems deriving from the use of psychoactive substances, Executive Decree N°37326 of September 7, 2012, in section (A), which regulated the Standard for Access, Availability and Admission, established in paragraph A.5: "For admission to the program there shall be no discrimination at the general level in the following aspects: (a) racial, ethnic, cultural, ideological, political, religious, philosophical, and sexual orientation."

A Policy Respecting Sexual Diversity in the Judicial Branch, N°123-11, has been established.

The Full Court, in its session N°31-11, held on September 19, 2011, approved Article XIII, "Policy Respecting Sexual Diversity," in which the Costa Rican Judicial Branch undertakes:

1. To avoid discrimination based on sexual orientation with respect to services provided to users and to opportunities for persons who work in the institution.
2. To carry out all administrative, regulatory, procedural, and operational measures necessary to guarantee respect for the rights of sexually diverse persons who are users of the system or judicial employees.
3. To ensure the availability of human, material, financial, and technical resources needed, and the establishment of adequate organs, methods, and procedures to implement this policy and incorporate criteria of decentralization to make it effective.
4. To define and execute affirmative actions or measures needed to eliminate inequalities in access to justice that affect sexually diverse persons.
5. To carry out continuing training and awareness programs for judicial employees to change the attitude of the institutional culture regarding sexually diverse persons.
6. To ensure the provision of services based on reliable criteria of efficiency, celerity, courtesy, and accessibility in accordance with the needs of sexually diverse persons, taking into account their specific characteristics, and eliminating all regulations, practices, and customs that have a discriminatory effect or result.
7. To provide reliable, understandable, and accessible information on legal services for sexually diverse persons.
8. To require the application of guidelines for non-revictimization in cases where the parties are sexually diverse minors."

Regulations for Refugees, Executive Decree Nª 36 831 of September 28, 2011.

Article 6 of these Regulations stipulates: "Principle of equality and nondiscrimination. Regardless of the migration proceeding begun, migration officials shall respect and guarantee the human rights of the persons requesting refugee status, refugees, and stateless persons, with no discrimination whatsoever for reasons of ethnicity, origin, nationality, gender, age, language, **sexual orientation**, political opinions, financial condition, or any other social or migratory condition."

May 17 of each year is officially declared "the National Day against Homophobia, Lesbophobia, and Transphobia" by Executive Decree No34399 of February 12, 2008.

This decree, promulgated by the President of the Republic and the Minister of Health, established in Article 1: "May 17 of each year is hereby declared 'the National Day against Homophobia, Lesbophobia, and Transphobia." Article 2 states: "Government institutions shall disseminate the objectives of this observance widely and facilitate, promote, and support actions working to eradicate homophobia, lesbophobia, and transphobia." Article 3 provides that said decree shall "be in force as of the date of its publication."

There are also the "Regulations on Photographs for Identity Cards," the Decree of the Supreme Electoral Tribunal No. 8 of June 22, 2010.

Article 2 of this decree, governing its scope, specifies: "All persons have the right to respect for their image and sexual identity when taking the picture to be included on their identity card. This right must be reconciled with the public interest to have a suitable, secure, and reliable identification document."

In this regard, Article 4 of the Regulations provides: "Employees' duties. Persons responsible for reception and entry of data provided by applicants for identity cards, and those responsible for examining it, shall ensure that each transaction is conducted in the framework of full respect for the user's image and sexual identity, and complies with the provisions of the Organic Law and these Regulations."

Costa Rica also has the Ministry of Public Education's "Curriculum for Sensitivity and Comprehensive Human Sexuality."

This program incorporates content, values, objectives, and attitudes that endeavor to develop, among other things, people who are respectful, capable of expressing emotions, capable of enjoying and respecting sexual diversity, and living a more complete, responsible, and enjoyable sexuality, respectful of the rights of sexually diverse persons, and therefore less likely to engage in discriminatory actions.

The background for this program is that sex education in Costa Rica had been taught in the curriculum and extracurricular activities since 2001, and the Ministry of Public Education had an "Education Policy on the Expression of Human Sexuality" that integrated the subject in a crosscutting manner in the school curriculum.

In 2009 the Civic Education program included the components of youth identity, sexual identity and diversity (interculturality) for the first time. In 2011 an executive decree approved the Coexistence Program, whose objective was to promote the execution of participatory activities in the schools to strengthen relations of coexistence in the educational community and to promote relations based on respect, enjoyment of diversity, participation, and a sense of belonging and identity.

That same year there was a participatory diagnostic study involving teachers, parents, researchers, and civil society organizations to consider how to teach sex education in the schools. The results of that study led to the "Curriculum for Sensitivity and Comprehensive Human Sexuality" approved by the Higher Council for Education three years later.

In the area of "Sexual Diversity Theory," there were analyses of topics related to binary logic of sexuality, definition of sexual diversity, sexual diversity depending on sexual orientation, definitions of homosexuality, biological theories of homosexuality, psychological theories of homosexuality, sociocultural theories, and multifactor theories. There were also studies on bisexuality, sexual diversity depending on sexual identity and generic expressions, and as for participatory methodology, methodological guidelines were developed for talking about sexuality in the classroom.

C) Information from the Republic of Argentina on this subject:

Article 17 of the Employment Contract Law approved by Law 20744 provides "the prohibition of discrimination" and states: "This law prohibits any type of discrimination against employees on the basis of sex, race, nationality, religion, political or union affiliation, or age."

Article 81 of the same law regulates equal treatment and stipulates that the employer must give all employees equal treatment in identical situations.

III. CONCLUSION

We have noted the information received from the member states of the Organization of American States (OAS) during the 83rd and 84th regular sessions of the Inter-American Juridical Committee; the European Union norms; the reports of the Inter-American Commission on Human Rights; the Judgment handed down by the Inter-American Court of Human Rights in the case of Atala vs. Riffo; the "Inter-American Convention against All Forms of Discrimination and Intolerance" and resolution AG/RES. 2807 (XLIII-O/13) titled "Human Rights, Sexual Orientation, and Gender Identity and Expression," approved at the forty-third regular session of the OAS General Assembly, held in La Antigua, Guatemala, from June 4 to 6, 2013.

We therefore conclude that there has been significant progress in this matter, especially the establishment of "sexual orientation" as a specific reason for discrimination, so it is no longer necessary to use another category such as sex and any other social condition when referring to it, thereby effectively ensuring the protection of the basic rights of persons with a given sexual orientation.

Based on the foregoing facts, this rapporteur considers it appropriate to regard the Inter-American Juridical Committee's studies on the present topic concluded.

CJI/doc.460/14

DISSIDENT VOTE

SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION

(presented by Dr. Gélin Imanès Collot)

According to the resolution AG/RRES 2653 (XLI-O/11), the Inter-American Juridical Committee is mandated "*to prepare a study on the legal implications and the conceptual and terminological developments with regard to sexual Orientation, Gender Identity and Gender Expression*".

The mandate of the Assembly is very complex and should be executed, in the long run, in the framework of a doctoral thesis at the university, or by a group of specialist researchers in many fields of knowledge. The result of their study should complete the expertise of the Inter-American Juridical Committee in the execution of the mandate.[1]

So, I congratulate the Inter-American Juridical Committee and the rapporteur (Dr. Ana Elizabeth Villalta Viscarra) who voluntarily accepted the mandate and effectively executed it. However, I am not comfortable with it on different aspects regarding the development and the conclusion.

In my humble opinion, the mandate has to be executed according to three approaches:

1) **First of all, the general approach:** The questions are these: What is the meaning of sexual orientation, gender identity and expression? Is this a human reality or a new phenomenon in the developing of human beings? Is this phenomenon scientifically demonstrated, humanly and naturally felt, morally and socially accepted, and legally defined and regulated?

2) **Second approach: the field of Comparative Law:** The questions would be these: Do all the Member States of the OAS or some of them know the concept of sexual orientation? Do they directly or indirectly include this concept in their domestic Law with the same meaning and implications?

3) **Third approach: the field of Human Rights: T**he questions are these: Does ignorance of the concept in domestic or Inter-American Laws mean necessarily discrimination, intolerance and violation of Human Rights? Affirmatively speaking, how do we integrate this concept in domestic and Inter-American Laws in order to guarantee the respect of Human Rights?

1. My reserves regarding the report

The report overlooks the above approaches. Truly, the first approach may be very complicated and extensive. It would require the contribution of many specialists. In fact, we cannot blame the rapporteur for following her own method and approaches. But, if she chooses to conduct the study in the field of Comparative Law, she is obligated to choose different references and tendencies of domestic Laws in order to balance objectively her investigation and reflection.

1.1 According to the comparative Law Approach

The rapporteur chooses seven States of thirty-five Member States and invokes their domestic law that she deems favorable to the special sexual orientation, because they protect this Human Right against sexual discrimination. Would 7 States be representatives of 35 Member States? Exactly: 20 %. In addition to that, was enough time devoted to the questions of jurisprudence and *ordre public et bonne moeurs*" (public order, customs and morality) in the

[1] Perhaps, it is impossible to refer to external experts, because of some obstacles in terms of confidentiality, budget, delay, etc.

interpretation and the application of domestic Law? And for the 7 Member States chosen, only two are represented in the Inter-American Juridical Committee: Peru and El Salvador.

Haiti, pioneer of Liberty and Human Rights, for having fought against slavery in America, is still fighting against every kind of discrimination and intolerance (sexual, racial, **religious**, etc.). Haitian Law was not consulted. I would very much appreciate being asked to contribute in the field of Haitian Law in order to deepen the reflection in Comparative Law on sexual orientation.

1.1.1 What is the meaning of sexual orientation? I do not know the reason why the General Assembly asked the Inter-American Juridical Committee to conduct this study on sexual orientation by the resolution AG/RES. 2653 (XLI-O/11). Probably, it is because one or more Member States are facing a problem regarding people who have special sexual practice or tendency of sexual ambivalence. They are probably persecuted because of their sexual tendency or choice. Why are they persecuted? If the problem exists somewhere, it is very important to solve it. But, how can we solve it without understanding it?

In fact, the concept "Sexual Orientation" directs our observation and reflection to two categories of people that we are forced to distinguish in the new perspective of sexual conditions and practice:

1) People who are normally identified with one sex and oriented to the opposite sex;

2) People who manifest tendencies related to two sexes or attracted by the same sex. Are they abnormal or special?

For a long time, sexual behavior has generally been considered on the moral basis. Nowadays, this question gives way to many public debates and controversies in terms of acceptance or prohibiting sexual liberality regarding the evolution of customs and a moral society. More often, moral controversies and social debates become early or lately intensive in the juridical aspect. Some States allow, but others prohibit and condemn this thing.

This study conducted on sexual orientation leads the rapporteurs to identify the people who practice it under the label of "LGTBI". This new concept, very complex, is not part of the juridical terminology and theory. The branches of Private Law, as Personal Law and Family Law, ignore this concept.

Does the mandate exist to define the new terminology "LGTBI" and to integrate it in lexical juridical terms in the laws of Member States of OAS? If so, what should be the impact of this integration in the field of Human Rights or other aspects of Private and Public Law regarding identity and security?

1.1.2 Sexual orientation through the concept "LGTBI". The study of sexual orientation on the juridical aspect implies the definition of the new concept "LGTBI". This new concept consisting of five letters, designates five categories of people who have special practice of sexuality or gender identity, and expression (**L** for designating lesbian, **G** for gay, **T** for transsexual, **B** for bisexual, and **I** intersexual).

We do not know exactly what the distinction between all the letters used in the new concept should be. For example, what is the difference between bisexual and intersexual? What is the difference between those categories, and homosexuals (lesbians and gays)? However, we can imagine that some of them were born with the tendency or affinity for the same sex or both, and others choose to be homosexual. For the best understanding of the concept, I think that it would be better to distinguish more or less two main categories:

- "LGTBI" by option for sexual orientation: We do not know why some people become homosexual or member of LBGTI. By chance? By choice? Probably, some of them choose to belong to this group, because he decided to pass by transsexual operation, for example. According to the Bible account, Sodom and Gomorrah were the first cities where people openly practiced homosexuality. The Bible considers that sexual practice as deviation and immorality. This is the reason why Sodom and Gomorrah were punished and destroyed.

Wherever people practice homosexuality, they exercise their choice and freedom, and take risks[2]. They have to assume their responsibility. The right to choose, without being persecuted, is the most important Human Right. According to the guarantee offered by International Juridical Instruments, nobody is allowed to ask someone to reveal if he is homosexual or heterosexual before being hired. Where does the discrimination lie? Where is the matter of Human Rights?

- "Bisexual or intersexual" at birth or by accident? Is it possible that some people be born with two sexes or with a natural tendency to be attracted by the same sex or by both, like the hermaphrodites? It is a question of chromosome **X** or **Y**. But, why? Is this an accident of chromosomes? Is this a sexual "deformation" or deviation?[3] We cannot explain. It is the responsibility of the specialist in biology and other fields of knowledge to explain it. Statistically, do we know how many people are born in this situation[4] every year?

Normally, the sex (male or female) of a person is known at birth or before birth by ultrasound test. If people are currently born bisexual or intersexual, anyway, it is abnormal. The causes and the consequences have to be determined and analyzed for the best and multidisciplinary approach and institutional considerations. Are the parents authorized to make a choice? What choice? The choice based on their preferences? The choice of the predominant sex? Which one is predominant?

We can imagine the real problem of the parents with the newborn until maturity. We can imagine the big trouble of the person from childhood until maturity. The choice is possible but not so easy. Parents, psychologists, social workers, social organizations should help those people, who are not responsible for their situation, to be accepted and supported, according the true Human Rights approach. In addition, the bad choice of one of the two sexes risks creating problems in terms of gender identity.

1.2 Gender identity or expression. This is the tip of the iceberg. In order to try to understand the difficult concept, let us ask three simple and very important questions: How can we identify a person's gender? Alternatively, how have people been identified and when? Is there any relationship between sex and gender identity?

Usually, there is a close relationship between sex and gender identity[5]. The sex is declared at birth. Concretely, the parents see the sex and confirm what is revealed before birth by ultrasound. The hospital of birth registers the sex along with the fingerprint of the newborn, in some countries, in USA for example. What is the problem?

In the development of the newborn, from childhood to majority, is it possible that he naturally identifies himself with the opposite sex? If the morphological sex organ may be different with the gender identity, in this case, it should be effectively a problem of gender identity and expression. This term designates the category of people according to their physical appearance and manner to be presented and accepted by the society, independently from their sexual organ. Is it normal? Is this a problem of discrimination to solve based on Human Rights?

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[2] They take different kinds of risks. For example, in the field of medicine, what is the specialty caring for sexual and reproductive organs of LGTBI suffering from sexual diseases? Gynecology? Urology? I remember the case of a person who decided to pass by transsexual operation, from male to female. After this operation, he asked his lawyer to file and proceed with the process before the Court in order to change his gender identity. The Court ordained that the person should be examined psychologically. The result of this psychological exam revealed that the person's characteristics do not change. He is still male. Unfortunately, instead of accepting this result, he preferred to commit suicide.

[3] DACO, Pierre. **Les prodigieuses victoires de la psychologie moderne**, París: Marabout, 1984, p. 214-216. ISBN: 2-50100151-6 - 505 p.

[4] To my knowledge, there is no statistics, no survey on those people who were born with special sexual orientation, like intersexual or bisexual organ of reproduction. It should be interesting to have some information on the causes of this situation.

[5] HURTING, Marie-Claude, KAIL, Michèle and ROUCH, Hélène. **Sex et genre. De la hiérarchie entre les sexes.** France: CNRS Ed., Oct. 2003. ISBN: 2-2771-060028-1.

2. In the field of Human Rights

Human Rights constitute an old and classic concept whose origin refers to the Magna Charta in England in the thirteen Century AD. The evolution of Human Rights has already known three generations extending the fields of its application. The third generation protects all the aspects of human and social environment.

2.1 Human Rights coverage protection against positive and negative discrimination: Human Rights protect everybody, without negative or positive discrimination and regardless the group or category (majority or minority) to which he belongs. The protection covers everyone, regardless of social status and economic conditions, race, religion, matrimonial conditions and sexual orientation.

Of what avail would be a law that protects separately the poor, the rich, the great and honorable citizen, the anonymous citizen, the single, the married, the divorced, the widow, etc. on the basis of Human Rights? Should we think that those laws could introduce positive discrimination? Do we think such a positive discrimination would lead people to marginalization?

The report mentioned the creation of a day for LGTBI. Why this creation? What is the purpose of this day? Is this the way to give a clear signal of solidarity with the LGTBIs? But, is this the mandate to be executed by the IJC? To my knowledge, the LGTBIs do not ask for solidarity. Is this the best way to give a clear signal against intolerance to everybody? But, is this the mandate? And how do many people, victims of many kinds of discrimination in the world, truly need our solidarity for the respect of Human Rights?

There are many victims of discrimination: women victims of sexual discrimination, men and women victims of racial and social discrimination regarding their conditions, male and female handicapped as victims of their conditions, or religious discrimination regarding their faith, in other words, violation of their religious freedom. Why should we create a special day in order to manifest solidarity with all of them?

2.2 Human Rights coverage of privacy in accordance with public interest: Even though we try to protect only the LGTBIs, especially those considered in this, on the basis of Human Rights, it is very important to remember that Human Rights have their limits just like everything in the world. Human Rights for a group of people are limited by Human Rights for another group of people, or by public interest.

In accordance with Human Rights, does somebody have the right to stay nude at home in his intimacy? That does not mean the same person has the right to show his nudity in public, for the sake of respect for other people and preservation of public morality against nudism.

How many people do smoke at home in their privacy (Human Rights)? However, the law forbids and prohibits public smoking (public health). How many people do consume alcohol in their privacy? But does the law allow them to do it all the time and everywhere? How many people do consume drug in their strict privacy and intimacy? But the law prohibits drug. For the same reason, the choice and the intimacy of LGTBIs have to be respected. As far as I am concerned, this is the deep and true meaning of jurisprudence regarding the Inter-American Court of Human Rights in the case *Atala vs. Riffo*.

Based on this consideration, Human Rights have to respect the choice of LGTBIs, even though in many countries, they are prohibited and penalty sanctioned. But, they do not have to show their sexual orientation. And the respect of their rights does not mean the necessity to integrate the term in the International, or Domestic Law.

3. The impact of the integration of the new concepts in the terminology of domestic law.

The definition and the integration of the new and so complex concepts like “sexual orientation”, “gender identity and expression” and the herein-associated term, “LGTBI” should have a lot of negative impact on the law of the Member States with respect to two branches of domestic law: Private Law, and Public Law.

In a branch of Private Law, the integration would imply modification of many chapters, like personal law and statutes regarding:

- the personal status of people, including their first name, their name and sex: male or female;

- the modification of our Civil Code and of the law on registration of the acts of civil status (birth, marriage, divorce, and death certificates);
- the modification of Laws on Marriage (homosexual marriage, or without distinction of sex).

In the branch of Public Law, many questions should be asked, like: How do we identify people in their ID Cards like passports, identity Cards, "cedular", etc.? What words should be used in travel documents like passports, immigration forms, etc.? Male or female? LGTBI?

In public places, is it possible to have three types of restrooms: one for men, one for women, and one for the LGTBIs?

In conclusion, the report on sexual orientation is biased, as it is oriented towards one direction and executed "*ultra petita*". Such orientation conducts to the confirmation of the response of certain Member States to LGTBIs. So, it is not balanced enough. In addition to that, the report exceeds the limit of the demand relating to the mandate of the Assembly. That is not fair. For, usually, the jurist is concerned by the research of the equilibration of rights.

As far as I am concerned, the Member States should take measures in order to find out how many children are born bisexual or intersexual every year. By the way, statistically speaking, the Member States should have an exact idea regarding the evolution of this problem, in order to bring about institutional provisions to face this situation instead of evoking Human Rights.

Non-discrimination does not mean confusion of sexes or gender identity and expression; it does not mean encouraging people to marginalization either. Confusion of sexes risks to be a source of confusion of identity and insecurity. From my humble point of view, non-discrimination would mean the acceptance of differences among human beings. We are different, because we are created like that by the powerful God. Forgive me for my personal biblical conviction. In fact, this is the great natural law admitted everywhere in the whole world.

The Haitian Law follows the direction of non-discrimination on the basis of Human Rights. Haiti has concluded many International Juridical Instruments against any kind of discrimination (racial, sexual, religious) and it is committed to respect of individual liberties and Human Rights. But, the concept "LGTBI" is not known in Haiti, neither in current language of society, nor in the Haitian Law.

The Haitian Civil Code is still attached to the marriage of two people of different sexes: male and female. The new amended Constitution of May 11, 2011, provides for the percentage of male and female presence in political affairs. Feminist groups of pressure are fighting so that equality between male and female may be recognized in all aspects of the Domestic Laws. That means Haitian Domestic Laws distinguished and continue to distinguish male and female. No space for "LGTBI".

The introduction of the new term "LGTBI" in Haitian Law would have a sad effect on the application of the law and all the juridical structure relating to Haitian identity and matrimonial conditions. It will be the source of real problems instead of solutions to non-existing problems. Though we consider the perspective of modifying the Haiti Civil Code and all the domestic legislations, the problem may not be solved. People would question the purpose of the *lege feranda*. Finally, why would we modify them? For the integration in domestic laws of such questionable terms? For approving what the majority of the Haitian people should disapprove?[6]

[6] Last year many people in Haiti have publicly against homosexuality in Port-au-Prince. And some congressmen supported them by their declaration. They were motivated by their religious conviction. For Haitians are generally a very religious people. On this specific question, public order and customs and morality should be religious.

2. General guidelines for border integration

Documents	
CJI/RES. 206 (LXXXIV-O/14)	General guidelines for border integration
Annex: CJI/doc.433/13 rev. 1	Recommendation to the American States on Border Integration (presented by Dr. 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.

During the 84th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March, 2014, the Rapporteur concerned, Dr. José Luis Moreno Guerra, submitted a revised version of the previous report entitled "Recommendations to the States of the Americas on Border or Neighboring District Integration" (CJI/doc.433/13 rev.1) ,indicating that the changes proposed by Dr. David P. Steward regarding tenses has been incorporated and that the document submitted had introduced those changes.

The Chairman then said, if there were no further comments, the document were to be adopted.

On April 10, 2014, the Secretariat remitted the resolution (CJI/RES. 206 (LXXXIV-O/14) and its Annex (CJI/doc.433/13 rev.1) to the OAS Permanent Council.

Following is a transcription of the resolution and the document by Dr. José Luis Moreno Guerra:

CJI/RES. 206 (LXXXIV-O/14)

GENERAL GUIDELINES FOR BORDER INTEGRATION

THE INTER-AMERICAN JURIDICAL COMMITTEE

CONSIDERING its decision in March, 2012, during the 80th Regular Session on the development of a study on "Guidelines for Border Integration", and

HAVING SEEN the report presented by the rapporteur of the topic, Dr. José Luis Moreno Guerra: "Recommendations to the States of the Americas on Border or Neighboring District Integration", document CJI/doc.433/13 rev.1,

RESOLVES:

1. To thank the rapporteur of the theme, Dr. José Luis Moreno Guerra, for the presentation of the document "Recommendations to the States of the Americas on Border or Neighboring District Integration", document CJI/doc.433/13 rev.1.

2. To approve the above-mentioned report, attached hereto.

3. To communicate this resolution to the Permanent Council of the Organization of American States.

4. To consider its work on this topic concluded.

This resolution was approved by unanimous decision during the meeting held on March 13, 2014, by the following members: Drs. Fabián Novak Talavera, David P. Stewart, João Clemente

Baena Soares, Ana Elizabeth Villalta Vizcarra, Gélin Imanès Collot, Hernán Salinas Burgos, Hyacinth Evadne Lindsay, José Luis Moreno Guerra and Carlos Alberto Mata Prates.

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CJI/doc.433/13 rev.1

RECOMMENDATIONS TO THE STATES OF THE AMERICAS ON BORDER OR NEIGHBORING DISTRICT INTEGRATION

(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 study of "General 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 bi-national 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 the official languages 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 Bi-National 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 give that is actually a recommendation.

Finally, a decision was made at the 83rd regular session, held in Río de Janeiro from August 5-9, 2013, to replace the term "standards" with "recommendations" to the States of the Americas on border or neighboring district integration.

2. Proposal

Based on above, the following recommendations will be presented for final consideration by the plenary of the Inter-American Juridical Committee at its 84rd regular session, to be held in Rio de Janeiro, from March 10-14, 2014:

1. Responsibility for launching, developing, consolidating, and completing border integration can be assumed in practical terms by establishing one Neighborhood Commission for each country on its borders.

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

3. The Neighborhood Commission would comprise both parties' national sub-committees.

4. The respective national sub-committees should have an equal number of members, and members would be from identical or equivalent institutions in the two countries.

5. The national sub-committee would be chaired and represented by a member of that country's diplomatic service, who would be referred to as its Executive Secretary.

6. The Executive Secretary's chief responsibilities would be to negotiate and agree on uniform positions within his or her own country in order to present them and negotiate 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 report.

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

8. Each party would appoint a member of its foreign service to act as the "Coordinator" of the national sub-committee. He or she would 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.

9. The host country would appoint, from among its members, a Rapporteur for each meeting of the Neighborhood Commission and the Binational Committees. His or her job would be to draw up the minutes of the meeting.

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

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

12. The parties could agree to include representatives of local official entities, relevant private non-profit institutions, and business groups or chambers as members of the Binational Committees.

13. The Rules of Procedure of the Neighborhood Commission and those of the Binational Committees, and any future amendments thereof, would be adopted by common accord of the parties.

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

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

16. Island States could declare both parties' territory to be a Binational Integration Zone.

17. Nationals of both parties may move around the border or Binational Integration Zone, carrying just their I.D.

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

19. Through a Binational Committee, the parties would conduct ongoing programs reporting on and disseminating plans, projects, and actions undertaken or about to be undertaken in the border or bi-national integration zone. Such briefings would target the regional authorities, teachers, leaders, the media, and the general public.

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

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

22. Each party would undertake to recognize the judgments handed down by a competent authority 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.

23. The parties would pool their efforts and coordinate their actions through a Binational Committee in order to keep up a permanent battle against organized crime, terrorism, trafficking in persons, the smuggling of cultural assets and banned products, and money-laundering.

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

25. The parties would eliminate fixed roadside checkpoints in the Border Integration Zone, preserving the right to conduct mobile and random inspections.

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

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

28. Works to be carried out by common consent in the Border or Binational Integration Zone would be binational, costs would be shared proportionally, and international financing negotiations would be conducted jointly.

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

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

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

32. The parties would undertake to allow duty-free trading, in the Border 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 regulations.

33. The parties could 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 could also agree on tax exemptions and elimination of double taxation of the binational enterprises established.

34. The competent Binational Committee would plan periodic meetings of businessmen from both countries.

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

36. A Binational Committee would be responsible for planning and running regular agricultural, farming, industrial, trade, and service expos, among others, in the Border or Binational Integration Zone.

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

38. Through a Binational Committee, the parties would agree on the establishment of bi-national schools, colleges, institutes, universities and polytechnic institutes in the Border or Binational Integration Zone; they would use the same textbooks and would guarantee free access to students of both nationalities.

39. The studies carried out and the certificates, diplomas, and degrees awarded at every level in the border integration zone would be officially recognized by both parties.

40. The parties would agree to train special teachers for the bi-national educational establishments, and to require them to be bilingual if the languages of the two countries or of the indigenous populations differ.

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

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

43. Through a Binational Committee, the parties would organize periodic sports competitions, championships, and contests in the Border Integration Zone, with participants from both countries and in alternating venues.

44. The parties would establish Binational or 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 Integration Zone at standardized (domestic rather than international) rates.

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

46. The parties would 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, equipping, and operating health centers and health posts; for accrediting bi-national medical personnel; and to provide medicine in the Border Integration Zone.

47. Through a Binational mobility and transportation committee, the parties could 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 could also standardize or recognize vehicle tag plates, registration certificates, licenses and insurance certificates issued by the other party; and they could also establish timetables, working hours, and uniform rates (based on the domestic, rather than international, rates).

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

49. The parties would plan and build new highways with the same characteristics on both sides and they would upgrade existing highways.

50. The parties would declare ports and airports to be "alternatives" to those existing in the Border Integration Zone; they would authorize the operation of carriers of both nationalities; and they would standardize rates (based on domestic, as opposed to international, rates).

51. The parties would form a Binational Committee to address the problem of ethnic groups or minorities that share contiguous territories on the border, with the participation of representatives of those groups and using resources allocated by both governments.

52. The environmental issues in the Border or Binational Integration Zone would be handled by the parties with the help of a Binational Committee, particularly with respect to bi-national 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.

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APPENDIX

GENERAL CONSIDERATIONS REGARDING EACH OF THE RECOMMENDATIONS OUTLINED

Introduction

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

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

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

Border integration shapes and determines all the other forms of geographic integration, including bi-national, 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 alike.

The border integration recommendations are applicable, *mutatis mutandi*, to both countries with active borders and those with depressed border areas, i.e. the vast majority.

In most cases, border integration recommendations are also applicable to island States, which have no overland borders. The "Binational integration" approach applies, taking the maritime border as 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 Recommendation 1

Experience has shown that the most efficient way to approach border or binational integration is by establishing 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 may be on as many "Neighborhood Commissions" as there are States on its overland or maritime borders.

Regarding Recommendation 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 Recommendation 3

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

Regarding Recommendation 4

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

It would be 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 would 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 are paid by the official entities to which they belong.

Regarding Recommendation 5

Inasmuch as the integration process involves international management and representation of the State, each national sub-committee would 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 he or pertains.

Regarding Recommendation 6

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

Regarding Recommendation 7

The neighborhood commission is intended to function continuously, with the venues for its regular meetings alternating between the territories of the two parties.

Alternation is a principle applicable 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 or in one country or another.

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

Regarding Recommendation 8

Each national subcommittee appoints 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 Recommendation 9

At each meeting of the Neighborhood Commission and of the Binational Committees, a Rapporteur responsible for drawing up the minutes would be appointed. That appointment would 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 would comprise staff from the official competent authorities on the subject, which would be responsible for paying their salaries, fares, and per diem expenses, given that the Neighborhood Commission has no payroll of its own.

Regarding Recommendation 10

The innovative border integration process involves altering the behavior and habits of border personnel and adapting them 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 would therefore be entrusted to each institution's instructors.

Regarding Recommendation 11

It would be up to the Neighborhood Commission to establish, alter, and terminate Binational Committees.

The Binational Committee meetings would be held at alternating venues, preferably in towns or other places related to the topic.

Regarding Recommendation 12

Local official entities and private nonprofit institutions could participate in, collaborate with, and support Binational Committees related to issues they handle.

Regarding Recommendation 13

The parties would 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 Recommendation 14

Border integration would take place in the geographic area known as the "Border 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 would be sought.

Regarding Recommendation 15

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

The development and expansion of the border integration zone culminates with the inclusion of each party's entire territory and the achievement of binational integration.

Regarding Recommendation 16

Island States would benefit from the expedited border integration mechanism, taking advantage of the fact that they have a maritime, rather than a land, border.

Regarding Recommendation 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 I.D.s, police certificates and the other paraphernalia usually required for international travel could be done away with. Visitors would simply carry their I.D.s with them.

Any necessary national filters or screening would be moved to the outer confines of the Border Integration Zone.

Regarding Recommendation 18

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

Regarding Recommendation 19

It would be useful for the whole Border or Binational Integration to be broad a process, with all its actors and beneficiaries sufficiently familiar with it 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 or water transportation services – of the obvious advantages of border integration.

Regarding Recommendation 20

The parties could standardize rates charged for a series of 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 the "domestic rate" criterion.

National enterprises providing services outside of the border would not be economically affected by setting “domestic rates” but, quite the contrary, their earnings would increase from there being more users.

Regarding Recommendation 21

Apart from being ineffective, the treatment regularly meted out by officials to visitors from a neighboring country, 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 Recommendation 22

Collaboration and assistance in judicial matters cannot be left up to the good will of the judiciaries. Rather, it would 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 the country of origin 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.

The procedures relating to issues of recognition of judgments, deportation of convicts, and handing over those wanted by the other party’s law enforcement, may develop into a bi-national rules of procedure for judicial cooperation.

Regarding Recommendation 23

Borders are favorite areas for organized crime 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 Recommendation 24

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

Regarding Recommendation 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 would be able to set up mobile and random checkpoints.

Regarding Recommendation 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 could be legalized and their infrastructure improved, in a coordinated and gradual process, until completed.

Regarding Recommendation 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 Recommendation 28

In principle, all works to be carried out in the Border Integration Zone should 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 Recommendation 29

Binational works in the Border Integration Zone could 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 would specialize in different 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 Recommendation 30

Another reason for alternation in the execution of binational works is also applicable 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 would be done by the other; if the former were in charge of construction, the latter would supervise.

Regarding Recommendation 31

The day-to-day life of the inhabitants of a Border or Binational Integration Zone would include freedom to use either party's currency.

Making the currencies of the parties to the Border or Binational Integration Zone legal tender prevents underground trafficking in foreign exchange, energizes trade, and facilitates business.

Regarding Recommendation 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 it would therefore be useful for it to be legalized, using a "family basket" criterion.

Products in the “family basket” are brought in to offset the rising cost of living in the periphery of states.

Regarding Recommendation 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 by broadening the scope of their activities and users.

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

Regarding Recommendation 34

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

Regarding Recommendation 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 would be well advised to facilitate premises, 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 Recommendation 36

The parties would draw up an annual calendar of multiple or specialized 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 expos would provide a welcome opportunity to introduce folk groups, artists, musicians, singers, orchestras, theatrical works, and other cultural events inside and outside the zone.

Regarding Recommendation 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 Recommendation 38

The fact that the local population or that of the neighboring country is inevitably mobile, 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 is to enable children to start or continue their studies in any educational establishment in the border integration zone, regardless of nationality.

Regarding Recommendation 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 nonsensical.

Regarding Recommendation 40

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

Regarding Recommendation 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 Recommendation 42

Culture warrants particular attention in the Border Integration Zone, where the parties should strengthen it, preserve values, foster talent, and encourage research.

Regarding Recommendation 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 Recommendation 44

Interconnection of various utility services in the Border Integration Zone helps bring together scattered areas on either side of the border and substantially improves the quality of life of those living in border areas.

Electrical, telephone, and postal interconnection makes optimal use of equipment and facilities, brings down cost to users, and facilitates mutual assistance in situations of shortage.

Regarding Recommendation 45

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

Regarding Recommendation 46

Disease respects no borders, so that it is 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 Recommendation 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.

The political decision to facilitate and simplify transportation in the Border or Binational Integration Zone is key to implementing decisions by regional and sub-regional integration bodies.

Regarding Recommendation 48

The controls needed for the international carriage of passengers, groups of tourists, and freight are carried out at the beginning and end of the journey, hence they are not needed at the border and are counterproductive in that they hamper traffic and foster corruption.

Regarding Recommendation 49

Binational highways 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 highways can be built as binational projects.

Regarding Recommendation 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.

This simple measure corrects the serious problems arising from ports and airports being closed because of accidents, maintenance, congestion, bad weather, or other reasons, and makes optimal use of costly infrastructure.

Regarding Recommendation 51

The parties would be responsible for redressing the damage done to indigenous populations and ethnic minorities by the division caused by the border.

Regarding Recommendation 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 Integration Zone would be screened by the bi-national technical committee in order to examine their usefulness, priority, location, characteristics, adverse effects, and remedies.

3. Immunity of States and International Organizations

During the 81st regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August, 2012), Dr. David P. Stewart proposed to the plenary that the Committee work on an instrument addressing the immunity of States in transnational litigation. He pointed out that in 1986 the Committee had presented a draft convention on the immunity of States that did not prosper. He also observed that the United Nations Convention on the jurisdictional immunities of States and their assets is not in force yet. Furthermore, he noted that States lacked appropriate legislation. In his explanation, Dr. Stewart described the positive implications that an instrument in that area could have for trade, in addition to providing guidelines for government officials.

Dr. Fernando Gómez Mont Urueta proposed that the plenary agree to designate Dr. Carlos Mata Prates as rapporteur for the subject: a proposal that met with the plenary's approval.

The Chair tasked the rapporteur with presenting a 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 for the topic, Dr. Carlos Mata Prates, explained that his report would be presented to the regular session of Committee in August 2013. He then engaged in a general reflection. He explained that the purpose of the rapporteurship's work was to restrict it to states and international governmental organizations, which are subject to international law, although he was aware that the element of immunity would pertain to institutions, officials, and places, including embassies or warships. In his presentation he noted that the treatment of acts or deeds attributable to a state cannot be tried by a domestic court of another state.

The rapporteur expressed appreciation for the proposed questionnaire prepared by Dr. David P. Stewart, which is to be sent to the states, but expressed doubts about being able to get back replies.

The rapporteur noted the important role of tribunals, citing the Law of the Sea Tribunal case between Argentina and Ghana, relating to immunity of an Argentinean warship from jurisdiction (immunity derived from the Law of the Sea Convention).

He spoke as well about the scope of immunity from jurisdiction and its evolution, and about the distinction between management acts and acts of authority. He illustrated the trend being consolidated through traffic, transit, and rental cases.

With regard to international organizations, the rapporteur explained that immunity is conferred by rule as established in headquarters agreements. He also cited a domestic court decision concerning ALADI officials.

The Chairman asked Dr. David P. Stewart to present his questionnaire. Dr. Fabián Novak Talavera urged the rapporteur to include national practices. Dr. Gélin Imanès Collot proposed that the rapporteur include in his document references to the 2005 Convention on Immunities of States. In that regard, the rapporteur explained that this issue had already been included in the questionnaire and that the Committee's work will be limited to states of the Hemisphere.

Dr. José Luis Moreno proposed that elements on waiving sovereign immunity should be included and should be distinguished from cases in which sovereign immunity is maintained in order to monitor trials involving nationals. The rapporteur cited cases in which a state by its action loses its immunity or cases in which disputes are taken to arbitration.

Dr. David P. Stewart read his proposed questionnaire aloud to the plenary. He also announced he would work with the rapporteur to include a reference to the immunity of international organizations.

The Department of International Law circulated that questionnaire to the permanent missions to the OAS, through Note OEA/2.2/26/13 of April 26, 2013.

At the 83rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2013), the rapporteur for the topic, Dr. Carlos Mata Prates, was not present and no report was sent for the consideration of the Committee. Regarding the questionnaire Dr. Luis Toro Utillano

provided an explanation on the situation of its responses. He stated that so far there had been six responses, from the following governments: Bolivia; Colombia, Costa Rica, Mexico, Panama and Dominican Republic. In addition, he consulted the Plenary whether a reminder should be sent to the States that had failed to respond.

Dr. Fabián Novak suggested the issuance of a reminder involving all the themes, and that the final date for the delivery of the responses could be scheduled for December 15, 2013.

Dr. David Stewart asked the Secretariat about the possibility of forwarding the questions to professors, experts and NGOs instead of sending them to State representatives. In this regard, Dr. Dante Negro explained that the affairs of the Committee are not restricted to governments, thus surveys can be sent to the *academia* as well.

During the 84th regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2014), the rapporteur, Dr. Mata Prates, decided to bring forward a part of the report he was preparing, and provided some background to the Committee's work on the issue. Citing studies conducted between 1971 and 1983, he explained that his report would build on previous work and would revisit the status of those concepts. An analysis of the replies received, from 10 countries altogether, would be included.

He also noted that it would be important to consider studies done by the UN International Law Commission, the UN Convention on Jurisdictional Immunities of States and Their Property, doctrine, and expert studies on the subject.

He argued that immunity from jurisdiction was not absolute but relative, and cited among its limitation issues related to transit, real estate, and the workplace, which was developed through case law. In this context, he explained that a 1970 Brazilian ruling had pioneered the establishment of the perspective that when it came to labor matters, there was no immunity from state jurisdiction. The rapporteur commented as well on the difference between immunity from judgment and from execution.

He concluded by explaining that based on the ten responses received, none of the States had ratified the UN Convention on Jurisdictional Immunity, and that only one had a parliamentary process underway with a view to said ratification.

He said that while a distinction is made in the hemisphere between *"jure imperii"* and execution measures, there was unanimity on immunity from jurisdiction. This is very different from the situation in Europe, where there is unanimity in terms of implementation, allowing, for example, the freezing of bank accounts as one way to execute a judgment.

The Chair pointed to difficulties faced by the International Law Commission, and asked the Rapporteur to limit himself to the regional context.

Dr. Hernán Salinas joined the Rapporteur in expressing appreciation. He said the oral presentation focused on immunity of States and asked whether the topic would in fact be linked as well to immunity of international organizations. If so, he suggested it would be better to divide the issue under two rapporteurs or into two topics.

The Chair noted that the Hague Commission experienced the same problem.

Dr. Mata Prates explained that the intention was to deal with both issues together. He said that under customary law, the principles were very much the same, with certain shades of difference.

The Chair asked whether these would be international organizations or international agencies.

Dr. Mata Prates' reply was that the reference to international organizations included inter-governmental organizations.

Dr. Stewart asked whether during the consultations there were references to domestic law in the countries and to immunity for international organizations. He also asked whether it might be useful to run the questionnaire again, as only ten countries had replied, fewer than one third of the number of Member States. Dr. Novak said he agreed with Dr. Stewart about the study's best contribution being

the view of the countries of the Hemisphere. He said there were countries that had not replied and that the very members of the Committee could make an effort to internally encourage their respective Foreign Ministries to reply.

Dr. Mata Prates' reply to Dr. Stewart was that some questions dealt specifically with immunity for international organizations. In this context, the valued added of the information would include the position of the countries of the Americas on the subject matter. Given the time constraints to have the report ready for the next meeting, however, it was difficult to send out another reminder to include new proposals. The best option would be to approach the Foreign Ministries of the Committee Members' countries of origin.

Regarding the UN Convention, the Rapporteur confirmed that there were not enough signatures for it to enter into force.

Dr. Villalta commented on the importance of the issue for the Foreign Ministries of the countries. She noted as well several cases of countries that applied a variety of rules that were customary in nature.

The Chair asked the rapporteur to submit his report in August, and further remarked that countries could not be forced to reply.

Dr. Hernán Salinas Burgos volunteered to serve as joint rapporteur for the issue, alongside Dr. Carlos Mata Prates, which the full Committee ratified.

During the 85th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August, 2014), Dr. Carlos Mata Prates, the Rapporteur for the issue, reviewed the background and actions taken by the Juridical Committee thus far. He recalled that previously a questionnaire had been sent to the Member States and that so far 11 had replied. He mentioned that none of the States that had replied were parties to the United Nations Convention of 2005. He warned that doctrine regarding "*acta jure imperii*" (acts by right of dominion) and "*acta jure gestionis*" (acts by right of management) was not clear-cut and that the aforementioned Convention does not specifically address this doctrine. Generally speaking, States were immune from jurisdiction, except in respect of some labor, extracontractual, and commercial contract aspects.

With regard to international organization, he noted that a body of law had been developed by international custom and that, in practice, domestic courts refrained from taking on cases in which international organizations with administrative tribunals were involved. He mentioned a case involving ALADI in Uruguay.

He said that a report on the issue would be circulated for the next regular session, in which, Dr. David P. Stewart was expected to participate.

The co-rapporteur, Dr. Salinas, inquired about the Committee's procedures for cases involving co-rapporteurships. He noted that the mandate referred to matters of a different nature and that for going forward it would be better to separate the two issues. In addition, he mentioned that he would like to address another issue mentioned by the Secretary General and for that reason asked whether he could not excuse himself from the co-rapporteurship.

Dr. Novak mentioned that both topics were very broad, so that he suggested restricting the subject for the moment to the issue of the immunity of States. He also suggested that perhaps someone else, say Dr. Stewart, could join Dr. Carlos Mata Prates. Finally, he asked the Secretariat what States had replied to the questionnaire. In response, Dr. Luis Toro said they were: Bolivia, Brazil, Colombia, Costa Rica, the Dominican Republic, El Salvador, Mexico, Panama, Paraguay, the United States, and Uruguay.

The Chairman mentioned that the subject of the immunity of international organizations should not be neglected, especially the experience of the States hosting them.

Dr. Gélin Collot mentioned that the issue was very broad, so that he was in favor of splitting it in two. He asked whether the mandate was restricted to one of the two types of immunity – from

jurisdiction and from attachment and execution – or referred to both. He asked who the questionnaire had been sent to.

The Chairman said that questionnaires were sent to the States' Mission to the OAS.

Dr. Carlos Mata Prates mentioned that the mandate on the issue referred to the immunity from jurisdiction of States and international organizations; it was not part of the mandate to address the immunity of officials and warships. Moreover, he said that both the types of immunity mentioned were to be addressed in the report.

Dr. Hernán Salinas insisted on the need to separate the two issues because they were too broad. Moreover, he did not agree with the view that a coalition of principles existed which would lead to a better grasp of the two types of immunity taken as a whole.

Dr. Miguel Aníbal Pichardo shared Dr. Hernán Salinas' view because the development of immunities for organizations had evolved differently from that of immunity for States. Furthermore, he supported Dr. Novak's proposal that the issue of the immunity of States be addressed first, followed by the immunity of international organizations.

The Chairman ascertained a consensus among those present about addressing the issue of the immunity of States first.

The Committee kept the item on the agenda as originally adopted – "Immunity of States and International Organizations" --, but the Rapporteur would first address the immunity of States. Subsequently, they would address considerations regarding the immunity of international organizations.

* * *

4. Electronic warehouse receipts for agricultural products

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 Electronic 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.

During the 84th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March, 2014), the Rapporteur on the issue, Dr. David P. Stewart presented document CJI/doc.452/14. He mentioned that the same as with the Juridical Committee’s report on Simplified Joint Stock Companies, the work focused on small enterprises: in that case, small farmers who normally lack access to financial markets and need a certification that will enable them to finance harvesting based on their output. In that context, electronic transactions – the use of modern technology – could facilitate access to capital for those farmers. He also mentioned that that was not a unique proposition. Rather it existed in various international forums, such as the World Bank, and

national forums, including some in the United States, which was experimenting with the aforementioned technology. In conclusion, the rapporteur considered that all such initiatives could facilitate changes in the current system. He pointed out that a first version of the Model Law had already been prepared jointly with the Department of International Law. Furthermore, he noted the importance of bringing in other experts on the subject: both governmental and nongovernmental. Finally, he said he wanted to circulate a first version during the regular session in August.

The Chairman welcomed the rapporteur's proposal and Dr. Fabián Novak mentioned that the model law format was ideal.

Dr. Moreno Guerra thanked Dr. Stewart for the social sensitivity shown in his document and its attention to small and medium-sized farmers. Dr. Elizabeth Villalta also congratulated the rapporteur.

The Chairman noted that all Members of the Committee approved of the Rapporteur's proposal.

During the 85th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August, 2014), the Rapporteur was unwell and unable to attend. Given Dr. Stewart's absence, Chairman Novak suggested that the Committee continue its discussion of the subject at its 86th regular session in March, 2015. The other Members agreed.

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

Documents	
CJI/RES. 205 (LXXXXIV/14)	Corporate Social responsibility in the field of human rights and the environment in the Americas
Annex: CJI/doc.449/14 rev. 1	Second Report. Corporate Social responsibility in the field of human rights and the environment in the Americas (presented by Dr. Fabián 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.

During the 84th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March, 2014), Dr. Fabián Novak Talavera presented a second report (CJI/doc. 449/14 rev.1), which incorporated pertinent information contained in its first draft as well as the comments made by the other Members during the previous (83rd) regular session. The Rapporteur pointed out that the report was divided into seven sections:

The first includes a definition of social responsibility, a discussion of that notion, and an account of its status in the region.

The second part refers to free trade agreements that have had a bearing on treatment of the issue by establishing minimum standards of observance of human rights, labor rights, and environmental protection. It also addresses the imbalances derived from countries' varying levels of development and from differences within them. It acknowledges the capacity of large enterprises to implement social responsibility patterns, in addition to devoting space to the contributions of trade unions, business associations, and civil society organizations.

The third section covers international initiatives. As far as the region is concerned, it includes an inventory of OAS General Assembly resolutions, a study that led the Rapporteur to ascertain the lack of a (voluntary or binding) regional regulatory document on the subject. This section also includes an analysis of the inter-American conferences on corporate social responsibility, organized by the Inter-American Development Bank. Finally, there is an analysis of national regulations, based on a consultation/survey of States and the Rapporteur's own research covering one third of the Member States.

The fourth and fifth parts examine positive and negative business practices, with a focus on how cases are taken to court based on constitutional and environmental provision, and on safeguarding human rights. Negative practices were examined by conducting a study of the case law of the Inter-American Commission and Inter-American Court of Human Rights.

In that context, the Rapporteur reiterated the conclusions regarding the status of social responsibility in the Hemisphere. They enabled him to draw up a set of guiding principles, which is appended to his report and takes a number of international instruments into account.

Both Dr. Carlos Mata Prates and the Chairman congratulated the Rapporteur. Apart from noting the novel nature of the issue which first emerged as an autonomous initiative by corporations and then became part of countries' domestic legal frameworks, the Rapporteur refers to principles of international law. Dr. Mata Prates shared the Rapporteur's interest in limiting corporations' liability, without going into the liability of States for actions taken by corporations, in order not to distract from the principal topic.

Dr. Elizabeth Villalta Vizcarra also congratulated Dr. Fabián Novak Talavera and pointed to the importance of unifying protection of human rights and the environment.

Dr. José Moreno Guerra said that the document contained important inputs for the General Assembly. He explained the scope of the Ecuadorian Constitution, which recognizes the rights of nature, which it construes more broadly than just environmental protection rights. He criticized the behavior of some multinational enterprises that are familiar with countries' regulations and exploit their legal *lacunae.* He specifically mentioned outsourcing, which denies nationals of Ecuador the protections afforded by the State's social security obligations and other labor rights.

The Chairman pointed out that often enterprises sign outsourcing contracts that do not transfer to the other party the responsibilities they have *vis-à-vis* their employees.

Dr. Fabián Novak asked Dr. José Moreno Guerra to send him the article in the Ecuadorian Constitution dealing with the rights of nature, for him to include in his report.

Dr. David Stewart seconded his colleagues' congratulations of the Rapporteur, particularly in respect of the rather delicate issue of corporations' responsibility. He then went on to suggest changes in the order of some of the principles: than "n" and "o" swap places. He also suggested "may receive reparation," rather than "receive reparation."

Dr. Fabián Novak thanked Dr. David Stewart for his generous words of appreciation. He accepted the latter's suggestion about changing the order of two of the principles and mentioned that the last sentence could be omitted, rather than re-written, given that the purpose of the provision in question was compensation.

During a subsequent meeting in the same regular session, the Rapporteur on the issue, Dr. Fabián Novak, pointed out that he had incorporated all the changes mentioned by the Members of the Inter-American Juridical Committee. As regards the first change, he said he had included a reference to the Ecuadorian Constitution's mention of the rights of nature. As for the second change, he had swapped the order of subparagraphs "o" and "n" and deleted the final phrase in new subparagraph "o".

Noting that subparagraph "o" existed in other international instruments, such as the American Convention on Human Rights, particularly in connection with protecting access to justice, Dr. Carlos Mata Prates queried whether it was appropriate to include it in the document.

Dr. Novak said that the principle in question was indeed upheld in other legal instruments. Nevertheless, he felt it was important to reiterate those principles. He mentioned, furthermore, that other international instruments dealing with responsibility also include the aforementioned principle.

Dr. Hernán Salinas said that, unfortunately, he had been able to take part in the earlier discussion of the topic. He had only one misgiving and that was about the freedom of corporations and the differences imposed on them based on whether they are small, medium-sized, or large enterprises. As regards item "h", he thought that the requirements should be tweaked so as to take small enterprises into account. In addition, he pointed out that the requirements for constituting trade unions and for collective bargaining, such as, for instance, the existence of a given number of workers, were internationally accepted requirements and did not amount to any objection.

The paragraphs cited in the discussion establish the following:

h. Corporate social responsibility is incumbent upon all enterprises, regardless of their size, structure, economic sector, or characteristics. However, their in-house policies and procedures may vary according to those circumstances.

n. States must guarantee those who may be affected by a corporation's activities, who may resort to effective, transparent, and timely administrative, judicial, and even extrajudicial claim mechanisms to elicit reparation.

Dr. Novak thanked everyone for their comments and said that Dr. Salinas' concerns could easily be taken into consideration. Regarding item "h", he mentioned that precisely the second part of said proposal referred to his objection. As for sub-paragraph "a", it could be remedied by including the phrase "in line with international standards."

Dr. Hernán Salinas suggested adding a reference in sub-paragraph "h" to "burdens" (*cargas*), in addition to "responsibilities" and "policies."

Dr. Mata Prates pointed out that the scope of the proposal referred to principles of basic rights and human rights, so it would not be appropriate to use the term "burden." Responsibility would lie with the State, more than with corporations.

Dr. Hernán Salinas stressed that human rights and individual freedoms were contained in the statement of principles, but that organizing workshops for ongoing training of workers would be obligations involving greater costs and so could impair the freedom of corporations.

Dr. David Stewart noted that both arguments were valid. He said that one solution might be to delete the phrase "the States must guarantee" and replace it with "potentially affected parties should be able to resort…"

Dr. Fabián Novak indicated that Dr. Stewart's proposal struck him as half-way between the two. He suggested keeping the reference to policies, procedures, and measures, which can vary from one enterprise to another. Regarding the change to sub-paragraph "o", he proposed the following wording: "potentially affected parties should be able to resort to judicial protection mechanisms."

Dr. Carlos Mata Prates said he was open to considering both comments. He mentioned that there could be obligated parties other than States. As an example, he cited the clause for waiving domestic jurisdiction in contracts with the FIFA. Dr. Moreno found that the suggestion of changing "should be able to resort" to "may resort" could change the meaning, because the former contains three verbs. For his part, Dr. Novak found that the change would render the principle very weak. Finally, Dr. Lindsay proposed the expression "should have the right.".

After that exchange of views, the aforementioned paragraphs read as follows:

h. It is incumbent upon all enterprises to exercise corporate social responsibility, regardless of their size, structure, economic sector, or particular characteristics. Nevertheless, in-house policies, procedures and measures may vary, based on those characteristics.

m. Corporations must also guarantee those possibly affected by their activities the possibility of accessing internal, early, direct and effective claim mechanisms.

The Chairman pointed out that everybody agreed and the report was adopted.

On April 10, 2014, the Secretariat sent a letter from the Chairman of the Inter-American Juridical Committee to the Permanent Council, attaching resolution CJI/RES. 205 (LXXXIV-O/14) and its attachment (CJI/doc.449/14 rev.1).

The resolution and Dr. Fabián Novak Talavera's document read as follows:

CJI/RES. 205 (LXXXIV-O/14)

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

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING its decision in March 2013, during the 82nd Regular Session, concerning the development of a report on the current situation of corporate social responsibility in the region that would be instrumental in the further drafting of a Guide of Principles for the OAS Member States; and,

SINCE the report presented by the rapporteur of the theme, Dr. Fabián Novak Talavera "Second Report. Corporate Social Responsibility in the Area of Human Rights and the Environment in the Americas", document CJI/doc.449/14 rev.1, contains a Guidelines of Principles on the issue,

RESOLVES:

1. To thank the rapporteur of the theme Dr. Fabián Novak Talavera for the presentation of the document "Second Report. Corporate Social Responsibility in the Area of Human Rights and the Environment in the Americas" and also for the "Guidelines Concerning Corporate Social Responsibility in the Area of Human Rights and Environment in the Americas", document CJI/doc.449/14 rev.1.

2. To approve the above-mentioned report, and Guidelines, attached hereto.

3. To communicate this resolution to the Permanent Council of the Organization of American States.

4. To consider its work on this topic concluded.

This resolution was approved by unanimous decision during the meeting held on March 13, 2014, by the following members: Drs. Fabián Novak Talavera, David P. Stewart, João Clemente Baena Soares, Ana Elizabeth Villalta Vizcarra, Gélin Imanès Collot, Hernán Salinas Burgos, Hyacinth Evadne Lindsay, José Luis Moreno Guerra and Carlos Alberto Mata Prates.

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CJI/doc.449/14 rev.1

SECOND REPORT
CORPORATE SOCIAL RESPONSIBILITY IN THE AREA OF HUMAN RIGHTS AND THE ENVIRONMENT IN THE AMERICAS

(presented by Dr. Fabián Novak Talavera)

1. Scope of the 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, Article 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.

Subsequently, the Rapporteur submitted an initial report at the 83rd regular session of the Inter-American Juridical Committee, held in Rio de Janeiro, Brazil, from August 5 to 9, 2013. At that time, the other members of the CJI saw fit to endorse the focus and contents of the report; they also offered their own observations and suggestions.

At this 84th regular session, the Rapporteur presents a second report, which reflects the suggestions made at the previous session, incorporates new information provided by the countries and garnered by the Rapporteur himself, and proposes a set of Guiding Principles on Corporate Social Responsibility in the Area of Human Rights and the Environment in the Americas, with a view to their review and, as appropriate, adoption by the plenary Committee.

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].

This means that businesses should implement an effective and efficient goods production and the distribution system that abides by environmental standards, human rights, and workers' labor rights. Corporate social responsibility also requires that businesses offer goods and services that meet international environmental standards. Moreover, however, businesses must also respect the environment and communities where they operate, seeking to preserve their ecosystems, traditions, and customs and to contribute to their economic and social development.[2]

Based on the above definition, this report will address the issue of corporate social responsibility exclusively from the point of view and reality of the Americas region Many of the countries that are OAS Member States have enjoyed 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 the Americas regional 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:

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1. OLCESE, Aldo. **El Capitalismo Humanista**. Madrid: Marcial Pons Ed. Jurídicas y Sociales, 2009, p. 40-59.

2. CARROLL, A.B. "Corporate Social Responsibility: Evolution of a Definitional Construct". In: *Business Society*, N. 38, 1999, p. 268; DE LA CRUZ, René. **Responsabilidad Social Empresarial: Diagnóstico de la situación actual en República Dominicana.** In: *Ciencia y Sociedad*, v. XXXVII, Nº 1, enero-marzo de 2012, p. 67.

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/]

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 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 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 the region 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 the Americas, there are also differences in practice between the more developed countries, such as the United States and Canada, on one hand, and Latin America and the Caribbean on the other; in the latter, too, there are disparities 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 the region 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. Corporate social responsibility cannot be harnessed to serve subordinate interests, but used to protect global rights and interests.

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3. MEJÍA, Marta and NEWMAN, Bruno. **Responsabilidad Social Total**. México D.F.: EFE, 2011, p. 38.
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.

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)

No regional regulations (mandatory or voluntary) on social responsibility have been established in the Americas, 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 CIDI/RES. 276 (XVII-O/12) of the OAS Inter-American Council for Integral Development of May 15, 2012 and resolution AG/RES. 2753 (XLII-O/12) 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 (IDB) has held periodical Inter-American conferences 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

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[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>

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 developed a regional standard, guideline or directive on corporate social responsibility, but have rather 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 2000 United Nations Global Compact,[12/] the 2006 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,[13/] the 2010 ISO 26000,[14/] the 2011 Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD)[15/] and the 2011 Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (Ruggie Principles).[16/]

[11.] Available at <http://www.esramericas.org>.

[12.] This was an initiative that came into being in 1999 but was officially launched on July 25, 2000, by former UN Secretary-General, Kofi Annan, to help enhance the values and principles that humanize the market, as well as to attain an inclusive and sustainable economy by observing 10 principles in four thematic areas: human rights, labor, anti-corruption, 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: Businesses should uphold the elimination of all forms of forced and compulsory labour; 5: Businesses should uphold the effective abolition of child labour; 6: Businesses should uphold the elimination of discrimination in respect of employment and occupation; 7: Businesses should support a precautionary approach to environmental challenges; 8: Businesses should undertake initiatives to promote greater environmental responsibility; 9: Businesses should encourage the development and diffusion of environmentally friendly technologies; and 10: Businesses should work against corruption in all its forms, including extortion and bribery. In 2004, a complaints and penalties mechanism was established, under which, if the participating companies fail to report measures taken to implement the measures each year, they may first be classified as non-reporting companies and then, if non-compliance continues, be publicly expelled from the Compact. So far, almost 3,800 companies have been penalized in this way. The Compact was inspired by the Universal Declaration of Human Rights, the International Labour 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. Currently, over 10,000 transnational corporations in 135 countries have pledged to observe such principles. See DURÁN, Gemma. **Empresa y Medio Ambiente. Políticas de Gestión Ambiental**. Madrid: Pirámide, 2007, p. 68-69. See also FERNÁNDEZ, Roberto. **Administración de la Responsabilidad Social Corporativa**. Madrid: Universidad de León/Thomson, 2005, p. 39-ff. In 2006, approximately 45% of the Global Compact's participants were from Latin America. In relation to the latter, see OFFICE OF THE UN GLOBAL COMPACT. **IV Global Compact Local Networks Annual Forum**. Barcelona, September 26-27, 2006, p. 10.

[13.] 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.

[14.] 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.

[15.] A group of recommendations divided into 11 chapters and formally adopted by the 34 Member States and 10 other countries, who undertake to promote the observance of those recommendations by the companies that operate in their territories. See: http://dx.doi.org/10.1787/9789264115415-en

[16.] DOC.ONU A/HRC/17/31, March 2011. There are 31 recommended principles divided into three objectives (protect, respect, and remedy) developed by Professor John Ruggie, Special

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, Central, and South America and the Caribbean[17]:

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.[18/]

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.[19/] 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, provides that domestic or foreign enterprises with a certain number of workers have to prepare 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.[20/]

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

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Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, which were adopted by the United Nations Human Rights Council.

[17] It should be mentioned that these examples are not meant to exhaust all the legislations in the region. Accordingly, for example, there are cases such as the Constitution of Ecuador that dedicate a chapter to the "Rights of Nature", Articles 71 and 73.

[18].MAYER, Charles. *Ob. cit*., p. 178.

[19].AGÜERO, Felipe. **La responsabilidad social empresarial en América Latina: Argentina, Brasil, Chile, Colombia, México y Perú.** Miami: Universidad de Miami, 2002, p. 43.

[20].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.

incentives will be withdrawn from enterprises that make voluntary submissions and fail to perform their obligations.[21/]

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.[22/]

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[23/] 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.[24/]

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 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.[25/]

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

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[21].PALADINO, M., A. MILBERG, and F. SANCHEZ IRIONDO. **Emprendedores Sociales y Empresarios Responsables**. Buenos Aires: Temas, 2006, p. 49. A similar law worth noting is Law 8488 of November 7, 2012, adopted by the Senate and House of Deputies of the Province of Mendoza. Permanent Mission of the Argentine Republic to the OAS. Official letter OEA Nº 594 addressed to the Inter-American Juridical Committee on December 13, 2013.

[22].See **Río de Janeiro fija por Ley la reducción del cambio climático. In: Comunicación de responsabilidad y sustentabilidad empresarial. Comunicarse.** February 15, 2011.

[23].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.

[24].MEJÍA, Marta and NEWMAN, Bruno. *Ob. cit.*, p. 38.

[25].Available at: <www3.ethos.org.br>.

promoting a person-centered business culture; and Prohumana, created in 1998, as a non-profit organization destined to promote social responsibility through active citizenship.[26/]

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.[27/]

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.[28/]

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.[29/]

In the case of Colombia, Article 333 of the Political Constitution provides that "the enterprise, as a basis of development, has a social function that entails obligations." On that basis, several laws that refer to social responsibility directly or indirectly have been enacted. 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.

We should also mention Decree Law Nº 2820 of 2010, under which all business proposals with a potential environmental impact require an environmental permit issued after an environmental impact assessment. This law also establishes that projects using water from natural sources must invest no less than one percent of the total project investment in measures for the reclamation, preservation, conservation, and monitoring of the water basin supplying the water.[30/]

[26.] AGÜERO, Felipe. *Ob. cit.*, p. 36 and 41.

[27.] ACCIÓN RESPONSABILIDAD SOCIAL. Available at: <www.accionrse.cl/contenidos.php?id=45&normas-y-estandares-RSE.htm>.

[28.] *Idem.*

[29.] CARAVEDO, Baltazar. **Empresa, Liderazgo y Sociedad**. Lima: Ed. Perú 2021, 1996, p. 33.

[30.] MINISTRY OF FOREIGN AFFAIRS OF COLOMBIA. DIRECTORATE FOR ECONOMIC, SOCIAL, AND ENVIRONMENTAL AFFAIRS. **Documento Responsabilidad Social Empresarial en Colombia-Medio Ambiente** (Corporate Social Responsibility in Colombia-Environment), November 2013.

In addition, since 2005 the Ministry of Environment and Sustainable Development has been issuing an environmental seal to those enterprises that meet international standards of environmental social responsibility. Similarly, the Superintendency of Corporations, which is attached to the Ministry of Commerce, Industry, and Tourism, promotes environmentally responsible business conduct in the country, with the authority to supervise and investigate any enterprise or corporation.

Lastly, in the area of human rights, a number of joint agencies (government-business-civil society), such as the Mining Energy Committee and *Guías Colombia*, issue recommendations to enterprises, promoting awareness and dialogue among enterprises and local communities and respect for regulations in the areas of labor, human rights, and international humanitarian law.[31/]

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) El Salvador

Although this country has no specific regulations on corporate social responsibility, Environmental Decree Law No. 233 of 1998 provides fiscal benefits for enterprises whose processes, projects, or products are environmentally sound or support natural resource conservation (Article 32) and instructs the Ministry of Environment and Natural Resources to monitor businesses' compliance with technical environmental quality standards (Article 44).

g) United States of America

The United States of America has been one of the countries to promote and sign the 2011 Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD) and the 2011 Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (Ruggie Principles).[32/]

It also has programs and public-private partnerships that foster corporate social responsibility. And it has a series of internal norms for the same purpose. These include the Alien

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[31].**Presidential Program on Human Rights and International Humanitarian Law. Documento Avances de Colombia en Derechos Humanos y Empresa** (Colombia's Progress in Human Rights and Business), September 2013.

[32].UNITED STATES DEPARTAMENT OF STATE. Bureau of Democracy, Human Right and Labor. *U.S. Government Approach on Bussiness and Human Rights*, 2013, p. 3 y 5.

Tort Statute, enacted in 1789 and later incorporated into the United States Code, which consolidates permanent federal laws. The Act has allowed domestic courts in the United States of America to consider claims that corporations have committed or are responsable for human rights violations in other countries, as in the matter of Doe v. Union Oil Company of California (UNOCAL), heard by the Ninth District Court of Appeals.

In this matter, the Court ruled that the business in question was complicit in allowing the hiring of 600 Myanmar soldiers to provide security, given the populace's opposition to the construction of a natural gas extraction pipeline. The Court found that the hired soldiers committed acts of torture, murder, and enslavement with the company's full knowledge and that the company did nothing to stop them.[33/] Since this ruling was issued, various businesses have been sued for civil damages under this law in the United States for human rights violations.

Also on the books are the 1930 Tariff Act on the importation of goods produced through forced labor, the 1977 Foreign Corrupt Practices Act, the 2000, Trafficking Victims Protection Act, and sections 1502 and 1504 of the 2012 Consumer Protection Act; all are designed to discourage or prohibit the acquisition of goods or services produced or provided by businesses in violation of human rights or environmental law.[34/]

h) Jamaica

Like El Salvador, this country has no specific legislation on the matter, but various Jamaican domestic laws contain provisions directly linked to corporate social responsibility.

The 1996 Maritime Areas Act makes it the obligation of every individual and enterprise to respect the environment.

Much more specifically, the 2004 Companies Act establishes the legal obligation of enterprises to exercise corporate social responsibility in their operations for the protection of society and the environment. It also establishes the obligation of enterprises not only to safeguard their own interests but also those of their employees and the communities in which they operate (section 174, 4), and makes business directors responsible for ensuring compliance with this obligation.

i) 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.[35/]

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[36/] culture, as the one granted by the Mexican Center for Philanthropy (Centro Mexicano para la Filantropía (CEMEFI)),[37/] 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*

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[33].SALMÓN, Elizabeth, BASAY, Lorena and GALLARDO, María Belén. **La progresiva incorporación de las empresas multinacionales en la lógica de los Derechos Humanos.** Lima: PUCP, 2012, p. 140-142.

[34].UNITED STATES DEPARTAMENT OF STATE. Bureau of Democracy, Human Right and Labor. *U.S. Government Approach on Business and Human Rights*, 2013, p. 11-13.

[35].EPSTEIN, Marc. **Sostenibilidad Empresarial.** Bogotá: ECOE 2009, p. 61-62.

[36].MEJÍA, Marta and NEWMAN, Bruno. *Ob. cit.*, p. 10.

[37].*Ibid.*, p. 39.

Innovación Tecnológica, COMPITE), which promotes the matter among small and medium enterprises.[38/]

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 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.

j) 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.[39/]

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 *Peru 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 *Peru Responsable* program, the Ministry of Labor and Employment Promotion began designing corporate social responsibility public policies that would generate decent employment. *Peru Responsable* undertook the challenge of an across-the-board concept of corporate social responsibility from the perspective of promotion, articulation and certification.[40/]

In the last few years, a set of provisions—although not a specific regulation—on this matter have also been issued in Peru, in particular Chapter 4: Enterprise and Environment, of Law Nº 28611-General Environmental Act, of October 13, 2005, placing a series of obligations on enterprises to ensure clean, environmentally sustainable production and respect for the rights of communities in which they operate.

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.

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[38].AGÜERO, Felipe. *Ob. cit.*, p. 18, 20 and 24.

[39].*Ibid.*, p. 47-50.

[40].Available at: <http://www.trabajo.gob.pe/mostrarContenido.php?id=863&tip=850>.

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.[41] 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.

However, there are examples of other socially responsible enterprises beyond the exclusive financial sphere in the region, 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.[42/] The company's policy is to pay the growers fair prices for their coffee and even paying above 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.[43/]

b. Palí in Costa Rica and Nicaragua. This is a discount supermarket chain whose target population are 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.[44/] 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.[45/]

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

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[41].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.

[42].SCHROEDER, Kira and KILIAN, Bernard. "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.

[43].*Ibid*., p. 47.

[44].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.

[45].*Ibid*., p. 81.

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 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.[46/]

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.[47/] 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.[48/]

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

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[46].GONZÁLEZ, Connie and PRATT, Lawrence. "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.

[47].SCHARF, Regina and PRATT. Lawrence. "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 (coordinator). **Empresa y Ética. Responsabilidad Social Corporativa.** Madrid: Vozdepapel, 2005, p. 83-87.

[48].CORTES, Cristián and ICKIS, John. "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.

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 citizenship and corporate volunteering. Its production process includes environmental protection and prevention measures, among other actions.[49/]

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.[50/]

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.[51/]

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.[52/] To this, we must add the medical centers dedicated to providing the

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[49].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.

[50].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.

[51].CABALLERO, Karina and LEGUIZAMÓN, Francisco. "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.

[52].AGÜERO, Ana, MARTÍNEZ Juan Luis and SIMÓN, Cristina. **La acción social de la empresa. El caso español y latinoamericano**. Madrid: Prentice Hall, 2003, p. 168-172.

community with better healthcare at the lowest prices. PROPAL also has environmentally-friendly paper manufacturing process at all production stages.[53/]

While these ten cases are not the only examples of the American corporate social responsibility universe[54/], 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 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-American level 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[55/] 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-American human 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

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[53].On this case, also see CARAVEDO, Baltazar. *Op. cit.*, p. 38-42.

[54].Thus, for example, in the Dominican Republic one could mention the food manufacturing industry, Mercasid's reforestation drives, the Banco Popular Dominicano and its *Yo reciclo* (I recycle) program, among many others. See DE LA CRUZ, Miguel. Op. Cit., p. 71-72.

[55].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>. Another example that could be cited is Chevron-Texaco in Ecuador, whose polluting operations between 1964 and 1990 affected 30,000 people, damaged 400,000 hectares of land, and poured 16,000 million of toxic effluent into rivers and wetlands, causing numerous protests from communities in Sucumbíos and Orellana. See www.elcomercio.com/negocios/justicia-Chevron-Ecuador-medio_ambiente_o_1001899863.html.

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".[56/]

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".[57/] 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.[58/]

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

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[56].INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. Report 2185, Case 12/85, *Yanomami vs. Brasil*, March 5, 1985, see paragraphs 2, 3, 7, and 11.

[57].INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. Report 40/04, Case 12.053, **Maya Indigenous Communities vs. Belize**, October 5, 2000, paragraphs 34 and 35.

[58].*Ibid*., paragraphs 140 and 147.

occupied and used by the Mayan people, and shall also repair the environmental damage caused by the concessions granted by the State.[59/]

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 persons that survive from farming, hunting and fishing, which activities they perform within a territory according to their traditional community organization scheme.[60/]

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, 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,[61/] including the land on which they live and the resources found in them, as is the case of their trees and forests.[62/]

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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> […]

[59/] 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.

[60/] INTER-AMERICAN COURT OF HUMAN RIGHTS. **Mayagna (Sumo) Awas Tingni Community vs. Nicaragua,** Judgement of August 31, 2001 (Merit, Reparations and Costs), paragraph 103.

[61/] *Ibid*., paragraph 153.

[62/] TANGARIFE, Mónica. *Ob. cit.,* p. 75-78.

> The State should not allow private employers to violate the rights of workers, or the contractual relationship to violate minimum international standards.[63/]

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."[64/]

e) Matter of the San Mateo de Huanchor Community vs. Peru (2004)

In this case, the San Mateo de Huanchor Community, located a few kilometers from Lima, Peru, accused the Lizandro Reaño, S.A., mining corporation of violating all the environmental standards in its operations in that community; specifically, the corporation was accused of contaminating public health, in particular that of children, with lead, mercury, and arsenic, which are highly toxic substances.[65/]

In response, the IACHR issued a precautionary measure establishing that the harmful tailings must be removed; this was done the next year when the Peruvian State verified the pollution.

f) 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 Reposo Guararapes*, for having abused and threatened against the integrity of a patient, Damião Ximenes Lopes, a person with a mental disability.

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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> […]

[63.] INTER-AMERICAN COURT OF HUMAN RIGHTS. **Advisory Opinion OC-18 - Condición jurídica y derechos de los migrantes indocumentados.** September 17, 2003, paragraphs 140 and 148.

[64.] *Ibid.*, paragraph 153.

[65.] INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. Report on Admissibility 69/04, Petition 504/03. **Case of the Community of San Mateo de Huanchor vs. Peru**, October 15, 2004.

> 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.
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> […].
>
> 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.[66/]

g) 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 the special relationship that the members of the Saramaka community have with their territory, which in turn ensures their survival as a tribal people.[67/]

h) Pediatrics clinic in the Los 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 Los Lagos Region, city of Cabo Frio, in the State of Rio de Janeiro, in 1996.[68/]

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.

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[66] INTER-AMERICAN COURT OF HUMAN RIGHTS. **Ximenes Lopes vs. Brasil.** Sentence of July 4, 2006, paragraphs 85, 89 and 90.

[67] INTER-AMERICAN COURT OF HUMAN RIGHTS. **Saramaka People vs. Suriname**, Judgment on Preliminary Objections, Merits, Reparations and Costs of November 28, 2007, paragraph 129.

[68] INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. **Report Nº 70/08**, Petition 12.242, 16 de October de 2008, paragraphs 1 y 2.

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.[69/]

i) 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.[70/]

j) 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.[71/]

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.[72/]

.....

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 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

From all of the above, we may conclude the following:

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[69] *Ibid.*, paragraph 50.

[70] 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.

[71] INTER-AMERICAN COURT OF HUMAN RIGHTS. **Kichwa of Sarayaku Ingigenous People vs. Ecuador,** Judgment on Merit and Reparations of June 27, 2012, paragraph 127.

[72] *Idem.*

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 and Caribbean 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.

   Additionally, in several of these countries civil associations or trade unions 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

f. 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.

g. 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 mobilization and 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.

7. Guidelines

Bearing in mind the characteristics of CSR in the Americas and the conclusions reached in this report and in the various instruments on the matter developed by international organizations of a universal or regional nature, mentioned in the first paragraph of item 3.3; and, with the aim of strengthening the progress achieved in the region in terms of corporate social responsibility and overcoming existing obstacles and weaknesses, the Rapporteur wishes to place before the plenary Inter-American Juridical Committee for approval the following Guidelines Concerning Corporate Social Responsibility in the Americas; these are in the nature of recommendations and intended as guidance for the countries of the region.

* * *

Attached

Guidelines Concerning Corporate Social Responsibility in the Area of Human Rights and Environment in the Americas

a. Enterprises, in the course of their activities, should adopt internal preventive measures and measures to protect human rights, environmental law, and the labor rights of their workers and the populations where they operate.

To that end they should implement policies, for example, to eliminate all forms of discrimination, child labor, and forced labor; respect the right of workers to unionization, collective bargaining, and workplace health and safety; the use of clean technologies and ecologically efficient extraction procedures; among other measures, according to international law.

b. Enterprises should respect the environment, property, customs, and ways of life of the communities where they operate, seeking to cooperate and contribute to their economic, social, and environmental development.

c. Enterprises should encourage their providers and contractors to respect the rights mentioned in the first item of these Guidelines, so as not to become complicit in illegal or unethical practices.

d. Enterprises should conduct training activities for their officers and employees, so that they will internalize the commitment to corporate social responsibility.

e. Enterprises should conduct studies of the impact their activities will have, which should be presented both to the authorities and to the population in whose environment they will operate.

f. Enterprises should have emergency plans for controlling or mitigating potential serious harm to the environment stemming from accidents in the course of their operations, as well as systems for alerting authorities and the population, so that swift and effective action may be taken.

g. Enterprises should redress and deal with damage brought about by their operations.

h. Corporate social responsibility pertains to all enterprises, regardless of size, structure, economic sector, or characteristics; however, policies and procedures established by them may vary according to these circumstances.

i. Enterprises should take the necessary measures to ensure that consumers receive the goods or services they produce with the appropriate levels of quality in terms of health and safety. To that effect, it is essential that the good or service carry sufficient information on its content and composition, eliminating deceptive trade practices.

j. Enterprises and the States where they operate should strengthen, respectively, their internal and external systems for the follow-up, monitoring, and control of compliance with labor rights, human rights, and environmental protection laws.

   This necessarily involves State implementation of efficient policies for the inspection and supervision of enterprises in the course of their activities as well as the enterprises' establishment of policies to ensure respect for human rights and environmental laws in their operations.

   Both monitoring mechanisms should consult outside sources, including the parties affected.

k. Internal and external monitoring mechanisms should be transparent and independent of the businesses' control structures and of any sort of political influence.

l. This should be complemented with the establishment of incentives or means of recognition, both governmental and private, to benefit or distinguish enterprises that are actively committed to corporate social responsibility.

m. States should require enterprises with which they conduct commercial transactions or which present competitive bids to comply fully with the obligations noted in item (a) of these Guidelines.

n. Enterprises should also guarantee that parties potentially affected by their activities have recourse to internal claim mechanisms that are swift, direct, and effective.

o. Parties potentially affected by an enterprise's activities have the right of resourse to administrative, judicial, and even extrajudicial claim mechanisms that are effective, transparent, and expeditious.

p. The principles of corporate social responsibility should be publicized, as should good business practices that have benefited both the local communities where enterprises operate and the enterprises themselves.

   Corporate social responsibility should be part of a culture shared and embraced by all, to which end it is essential to train and sensitize entrepreneurs, authorities, and public opinion in general.

q. Other actors should participate in this effort, from universities and research centers, providing skills and ideas to improve business behavior, through NGOs, unions, social organizations, communications media, and churches, who can serve as instruments of pressure or condemnation but also as organs of support and cooperation.

r. Business guilds or associations can be key actors in the conscious, voluntary strengthening of corporate social responsibility, providing technical advice and training, establishing networks for the exchange of information and discussion of experiences among enterprises, and creating incentives and prizes, among other measures.

* * *

6. 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.

During the 84th regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2014), the Rapporteur for the issue, Dr. Fernando Gómez Mont Urueta, did not participate. However, on his own initiative, Dr. José Luis Moreno Guerra presented a report entitled "Those tempting hallucinogens," document CJI/doc.445/14, which refers to the historical use of hallucinogens and defines the concepts used, factors influencing the use and abuse of drugs, and the individual and societal consequences of overdosing. He noted the consequences of alcoholism and smoking as well, and warned that the problem of drug legalization would be economic, given the huge amounts of money that it generates every year. He also pointed to prohibition as a source of mafia creation; UN and OAS efforts at possible decriminalization; a number of countries that have discussed the possibility of decriminalizing drugs, among them Holland and Uruguay, as well as some states in the United States.

The Chair suggested using Dr. José Luis Moreno's full study as a basis for a discussion in August, if the Rapporteur felt this was appropriate.

Dr. Fabián Novak indicated that, in the absence of the Rapporteur, there was no clear course to follow. He said this was a complex issue with no clear answers. There were terminology issues, such as the confusion between decriminalization and legalization. He cited the case of Peru with decriminalization policy in place although the use of drugs has not been legalized. Another question for the Rapporteur for the issue to address concerns what is to be legalized – use or sale and distribution – and the type of hallucinogens (soft or hard drugs). Peru is the world's main producer of cocaine and, accordingly, legalizing marijuana may not have the desired effect in terms of the key issue. Regarding international treaties, there is a need to verify what obligations States have assumed and how binding the treaties are. Finally, he said legalization and social peace did not go together, in light of the situation in the Netherlands (where 80% of crimes are drug-addict related), Sweden (that legalized and then changed its mind), Switzerland, and Portugal (where the problem used to be heroin use, but is now cocaine and cannabis). His view was that prohibitionist policies have had limited impact, but that legalization has had its own problems as well, which shows how complex the issue is.

The Chair thanked Dr. Novak for his recommendations, asking him to send them to the Rapporteur for follow-up.

Dr. Carlos Mata Prates also commented on the complexity of the problem, explaining that he was sharing his opinion as a Committee Member and not as a government representative. He explained that decriminalization in Uruguay dated back to 1974, in which regard the current law clears up an ambiguity in the previous situation, in which there was a contradiction between individuals who possessed narcotics for personal use and those who were punished for buying drugs. He further noted that the aim of the new cannabis law was not to promote but rather to restrict use by limiting its sale in pharmacies through State authorization. All this is consistent with international law and with the 1961 Treaty in particular. He also argued for personal use, distribution, and trafficking to be distinguished from one another, and undertook to refer the Uruguay law to the rapporteur for the issue, for consideration.

Dr. Evadne Hyacinth explained that from Canada to Jamaica there was a lot of demand for cannabis, supposedly for therapeutic use.

Dr. Elizabeth Villalta underscored the importance of the issue, and the distinction that must be made between drug producing countries and consumer countries. She said it would be useful for the Rapporteur's study to include a country-by-country analysis of the how the issue is regulated in the hemisphere, including successes and failures in terms of legalization.

The Chair requested that this entire discussion be referred to the Rapporteur for the issue as soon as possible. Pursuant to that request, at the end of the Committee's working meeting the Secretariat sent the information to the rapporteur for the issue.

During the 85th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August, 2014), Dr. Fernando Gómez Mont Urueta presented his report entitled "Alternatives for Regulating the Use of Psychotropic and Narcotic Substances as well as for Preventing Drug Addiction" document CJI/doc.470/14. During his presentation, the Rapporteur outlined the international legal framework regarding the use of narcotics and the prevention of drug addiction, highlighting the Single Convention on Narcotic Drugs of 1961, the United Nations Convention on Psychotropic Substances of 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The last-mentioned treaty stipulates that it is an obligation of each Party to it to establish as criminal offences under its domestic law the various activities relating to traffic in narcotic drugs and psychotropic substances from cultivation through to consumption. The Rapporteur also outlined the legal framework regarding organized crime, as set forth in the United Nations Convention against Transnational Organized Crime (Palermo Convention). In that section, he also referred to protection of human rights in the United Nations and OAS framework, focusing in particular on "protection of individuals *vis-à-vis* acts by governments and the obligation of States to guarantee citizens the possibility of satisfying their basic needs in education, health, social protection, employment, housing and of living their lives in a democratic, safe, and sustainable environment."

The Rapporteur then proceeded to analyze a number of facets of the laws on the use of narcotic drugs and psychotropic substances and of prevention in the past 50 years, particularly with regard to health, security, the promotion and protection of human rights, and international cooperation on security matters.

He ended his presentation by pointing to the need to propose a change of regulatory approach, based on the following premises:

- Revision of the list of narcotic drugs and other psychotropic substances, based on scientific criteria;
- Regulation based on a medical and health perspective to determine the potential for addiction;
- Recognition of the right of (adult) users to decide on their use of said substances, provided they use them without harming others or placing them at certain risk;
- Non-discriminatory treatment of users of said substances *vis-à-vis* users of other currently permitted substances, such as alcohol or tobacco;
- Implementation of information campaigns directed at users on the risks posed by use of said substances to health and personal performance;
- Regulation of the use of such substances from a damage mitigation perspective, distinguishing between the markets for tolerated and prohibited substances;
- Implementation of policies designed to make users accountable for the impact of their use on public health systems and social protection given the persisting demand for these substances;
- Alignment between the production of these substances and the various regulations in place with the demand for them in such a way as to reallocate international regulation of the issue, allowing each State more room for fine-tuning domestic policies;

- Acknowledgment of the violence and corruption generated by the existence of black markets, meaning that alternative regulations need to be devised that make it possible to subject such markets to democratic controls.

In that connection, the Rapporteur pointed out that the change of approach means that more institutional familiarity is needed with respect to the effects of marihuana. For instance:

" i.1) Its addiction potential is lower than that of alcohol or tobacco.

i.2) The risk of overdoses is much lower than with alcohol or tobacco.

i.3) Scientific progress has shown that it is increasingly indicated for a variety of medical uses.

i.4) Its incidence in criminal conduct is less than that of alcohol.

i.5) There are studies claiming that its use crowds out the use of other, more dangerous substances.

i.6) It is the market that generates most demand for these kinds of substances.

i.7) Its production is relatively less complicated and is therefore closer to demand centers. Home-growing is a possible scenario.

i.8) Production of marihuana serves industrial purposes separate from its psychoactive effect."

The Chairman of the Committee, Dr. Fabián Novak Talavera had two suggestions for the Rapporteur: that he cite the sources of the factual affirmations made in the report; and that he insert an introductory paragraph specifying that the report does not aspire to solving the overall drug problem, given that the suggestions do not necessarily encompass the difficulties faced by producer countries that are consumers.

Dr. Carlos Mata Prates explained the mechanism established under Uruguay's law, which allows use of marihuana in that country for medical and recreational purposes, and noted that the Rapporteur's report took a similar approach, without contravening international treaties.

Dr. Fernando Gómez Mont said he intended to circulate a revised version of the report with source data for facts referred to, as suggested by the Chairman. He noted that each country has its own specific context and mentioned Bolivia's withdrawal from international instruments because it considered that they did not respect cultural aspects. He ended by saying that more flexible international regulation was needed in order to lend greater support to countries, taking a number of factors inconsideration, including health-related and cultural aspects. He indicated that report advocates a review of the rules so as to allow greater flexibility in the criminalization of international trafficking, as well as regulating and preserving the UN treaty.

Dr. Hernan Salinas shared the view that that problem should be aired in the Juridical Committee. He pointed out that in the Chilean debate, there were opposing positions among the players. He noted that the document serves precisely to prompt debate and reflection on this issue.

Dr. José Luis Moreno Guerra considered that the document made a positive contribution to the OAS and suggested that it be adopted.

The Chairman inquired whether the Committee accepted the report with the suggested changes and the Committee said it did.

Following are the reports presented:

CJI/doc.445/14

THOSE TEMPTING HALLUCINOGENS

(presented by Dr. Luis Moreno Guerra)

Background

The consumption of hallucinogens has been with us ever since the first hominids experimented with the intake of mushrooms, roots, fruit, leaves, stems, flowers, bark, or herbs in their natural states, processed, fermented, or distilled, and with mineral and animal products, and discovered that they triggered a sense of wellbeing, euphoria, hilarity, disinhibition, sociability, lightheadedness, strength, sexual appetite, sweet lethargy, loquacity, and inspiration.

Hemp or cannabis, in one of its varieties known as marijuana, was consumed 10,000 years ago and today is the most used drug in the world, according to the United Nations.

Fossilized poppy seeds have been found in parts of modern-day Switzerland and date back six thousand years.

To make their predictions, the famous Sibyls of the Delphic Oracle in Ancient Greece entered into their trances thanks to the consumption of hallucinogens.

In his epic Ancient Greek poem, the Odyssey, believed to have been written in the Eighth Century B.C., Homer refers to opium as a herb that

"banishes all care, sorrow, and ill humor."

The Old Testament describes Noah's frequent drunken episodes and also how the daughters of Lot, Abraham's brother, gave him fermented grape juice to get him drunk, copulate, and ensure they had descendants. For its part, the New Testament describes the crowds attending "Weddings at Cana," which must have culminated successfully in collective binge drinking thanks to the abundance of good wine at an "open bar."

Opium, the resin oozing from a cut in the still green bud of the poppy, was well known in China several centuries ago, when its use was reserved by Buddhist monks for religious and ceremonial purposes, as a powerful tool for meditation as well as medicinal uses.

Other plants with similar effects were also grown, such as belladonna, henbane, mandrake, tobacco, coca, iboga and ayahuasca, known in the Amazon region it comes from as "the mother of all plants," to name but a few.

According to Eduardo Galeano, in 1839 the United Kingdom's gunboat policies imposed the opium trade and the widespread consumption of opium on the Chinese. As a result of that unequal confrontation, the United Kingdom dominated the trade and helped itself to the island of Hong Kong, sanctimoniously calling it a "leasing arrangement." In 1856, the United Kingdom started the second opium war to gain a complete monopoly of the trade.

Refined and synthetic products

Science and technology are constantly coming up with new, powerful, and fearfully addictive drugs with a devastating impact on global health. Cocaine has long been extracted from the noble coca plant. In 1985, the alkaloids were extracted from opium to create morphine, named after the God of sleep and dreams, Morpheus. In 1898, another much more potent drug was extracted from opium, namely heroin. And one of today's most successful pharmaceuticals is aspirin, which, according to Daniel Estulin, a student of the subject, contains traces of opium.

As for synthetic drugs, we have amphetamines, lysergic acid, mescaline, ecstasy, "ice," and others, with similar addictive qualities. Some chemical drugs, like "crack," are a mix of organic and mineral substances, a combination of cocaine with sodium bicarbonate.

New drugs

Drug addicts, drug traffickers, top-notch athletes and their doctors have sharpened their wits to discover or produce new, equally effective, less expensive, more readily accessible, and

harder-to-detect drugs that are not on the banned list. In response, the international community continues the seemingly endless task of expanding that list of banned drugs.

Properties

Drugs have won recognition for a wide range of properties from the analgesic to the therapeutic, from widespread use in medicine to hedonistic properties causing pleasure and mystical qualities used to induce trances.

Effects

The effects of drug use may change over time; in the short term, they may bring pleasure, relief, and "other compensations," but in the medium and long term, pain, disaster, desolation, and–as Harumi Duhanet puts it–"a host of problems."

Stages

The first stage of drug use is often associated with curiosity or the need to be accepted in a group. In most cases, the body reacts to experimentation with rejection, giddiness, headaches, vomiting, diarrhea, and other unpleasant effects. Fortunately young people in stable households do not persist and do not move on to the later stages.

The second stage begins when a person overcomes the body's initial reaction of disgust and increases drug use until it becomes habitual. Drug addicts begin a "double life," hiding what they do and maintaining the appearance of normality at home, at school, and in the workplace. Money and valuables start being stolen at home to defray the cost of drugs. Guilt feelings become perceptible.

The third stage is the urge to take drugs more frequently or to use more potent drugs. The mask comes off and with it the need to live a double life, because drug use has become shameless. Criminal activity moves onto "the street." Performance at school or in the workplace deteriorates sharply and visibly.

The fourth stage, of total breakdown, is characterized by chronic headaches, suicidal thoughts that are frequently acted upon, loss of self-esteem, neglect of one's appearance. Sometimes, this stage is referred to as "prison." (http://www.entrerios.gov.ar).

At any of these stages, with varying degrees of difficulty, recovery is possible, given the necessary will power and the help that is essential.

Addiction

Addiction is the consequence of introducing drugs into the body that are capable of "altering the way the central nervous system functions," according to Carla Santaella, whereby the dependency created may be either physical, psychological, or both.

One or more of the following principal triggers of drug addiction have been identified: family conflicts, influence exerted by a given environment, curiosity, emotional problems, and traumatic illness.

Factors

Factors that influence drug use include: a person's biological make-up, the environment, and adolescence. Those are factors that the State must bear in mind as it assumes responsibility for implementing prevention policies involving the family, schools, and the media (http://www.drugabuse.gov.ec).

Consequences

If people were aware of the terrible consequences of drug abuse, the vast majority would avoid falling prey to it. Its sequels include, according to modern medical findings:

The onset of new diseases;

- The exacerbation of existing diseases;
- Deterioration of overall health;
- Deterioration of social behavior;
- Loss of self-esteem;

- Flouting of rules;
- Financial distress;
- Deteriorating performance at work or in the exercise of a profession;
- Addiction; and
- Irreversible brain damage, to name but a few.

Abusive drug use has a detrimental impact not only on individuals but on society as well, because millions cease to produce and become a burden for others, in addition to their impact on the crime rate.

Overdosing

Among the many risks run by a drug addict is not knowing how much his or her body can tolerate, while at the same time it is craving more or more powerful drugs. Overdosing is thus almost inevitable, leading to serious physical reactions, convulsion, loss of consciousness, cardiac arrest, and death.

Alcoholism

It is hardly surprising that the State should take on the role of protective parent when it comes to drugs, treating citizens as if they were immature and irresponsible children or mentally disabled, telling them what to do and what is forbidden, what they must consume, eat, drink, smell, inhale, smoke, or inject themselves with. A good example of this was the so-called "prohibition," in the sense of a ban on selling alcoholic drinks, imposed by the U.S. government through the XVIII Amendment to the Constitution and in effect from January 17, 1920 to December 5, 1933, when it was repealed by the XXI Amendment; the most vivid image of that time being the mafia king Al Capone.

The statistics on the prohibition show that alcoholism did not stop and did not decline. On the contrary, the number of alcoholics increased.

Nowadays, alcohol is the most frequently consumed drug in the world, although its price is not altered by a ban creating super profits, except tariffs that are not high enough to encourage the formation of mafias and barely encourage smuggling.

Smoking

It would hardly be surprising if one of these days it occurred to the government of some country to wage war on smoking and declare the planting, processing, trade, and use of tobacco punishable by law, adducing the same arguments that today are used against "prohibited" drugs, namely: that smoking is bad for health, which is true; that it affects the brain, which is also true; that it generates addiction, likewise true; that it diminishes years of economic activity and output, which is undeniable; that it leads to catastrophic illnesses, a proven fact; that it inexorably induces a long and painful death, which is evident; that its victims become a burden for public health, indisputable; that it lowers life expectancy, which has also been proven; that it encourages the use of other drugs, which is possible; that it sets a bad example for children, pupils, and minors in general, which nobody doubts; that it perversely saps resources that could be used to meet pressing social needs; the list could go on and on.

Predictable outcome

The predictable outcomes of waging a war on smoking would be: the immediate formation of mafias profiting from the new now punishable business; a sustained increase in the legions of smokers; earlier initiation into smoking; expansion of the number of addicts; increased overcrowding in prisons because of sentences meted out to producers, retailers, and smokers; a huge increase in the price of tobacco; the replacement of traditional crops with stigmatized tobacco plantations; a new network of corruption and bribery of policemen, the military, judges, prosecutors, and law enforcement authorities; further distress and abandonment for addicts; increased violence and organized crime thanks to the addition of a new illicit trade, and a host of other disastrous consequences.

The decline in the number of smokers

Consumption of cigarettes has declined in recent decades thanks to awareness campaigns about the disastrous consequences for health and about how smokers stupidly expose themselves to the risk of cancer of the palate, tongue, and bronchials, with others trapped by pulmonary emphysema which takes them to an early and distressing death, with their mouth grotesquely open and gasping for breath to bring oxygen into their blood.

The decline in smoking is also due to its having lost the social appeal it enjoyed years ago, to the stigmatization of a useless habit, the ban on advertising that encourages smoking, the obvious and widespread discomfort of people in the vicinity, less permissive public policies, more restrictions on places where smoking in public is permitted, so much so that one person claimed, as an excuse, that he continued smoking for ecological reasons,

to preserve a species in extinction!

Rehabilitation

The first and most decisive step for any rehab therapy is for the individual to accept that he or she is an addict, which is difficult and none too common. For that reason, according to Luciana Vecchi, specialists prefer that the addiction be "self-diagnosed."

To ensure recovery, a drug addict has to consent to individualized treatment and submit to a process that begins with an evaluation and a diagnosis and ongoing intervention until full and permanent recovery is reached, because any interruption leads to recidivism and relapse.

The rehabilitation of drug addicts is a costly and lengthy process with meager success, little acceptance, constant interruptions, and social discrimination. It receives very little priority in public health policy.

Drug use by minorities

Historically, drug use was the preserve of aristocrats, priests, fortune tellers, witches, shamans, warriors, castes, artists struggling for inspiration, and the sons and daughters of the wealthy, so it was not massive and did not rise to the level of a "public health" problem. Perhaps for that reason, such use did not catch the attention of, or trigger responses by, the State and the churches. Except in the case of a few passing Puritan provisions, it was not declared a crime or a sin. Nobody bothered about the planting, processing, transportation, sale, possession, and use of drugs or the consequences of addiction.

Massive expansion of drug use

It was around the time of the Vietnam war that drug use took on the characteristics of a pandemic.

Up to half a million U.S. soldiers took part in the invasion of Vietnam, which began in 1963. They were mainly recruited from ethnic minorities and the immigrant population. Imagine how many millions of young people then took part in successive tours of duty over the 10 years that the intervention lasted, ending in 1973 with the defeat of the invaders and, two years later, with the fall of Saigon and reunification of the divided peninsula. In that war, almost all combatants began taking drugs and those who survived returned to their homes as addicts and as agents spreading addiction.

> When those youths in a strange land surrounded by real and potential enemies see their peers doing something quasi-legal, social taboos collapse and either you belong to the group or you are out on a limb. (http: www.guerradevietnam.foros.ws).

In Hamburg, in 1973, I heard the story of a veteran who gave a prostitute in the Riperban red-light district one of the bars of chocolate they were given in Vietnam before combat and which kept them awake for three days and nights until replacements arrived. The drug in that bar of chocolate prevented that poor woman from sleeping for a week so that she almost went mad and was keen to find her generous donor and kill him.

> The use of cannabis (marijuana) among U.S. soldiers in Vietnam was undoubtedly common, above all after 1968. From then on, over half all American soldiers used some kind of drug: By 1970, 65 percent did so. (http://www.guerradevietnam.foros).

Another study of the effects of that invasion on drug use states: "During the Vietnam war, the U.S. Army itself studied and experimented with drugs to enhance combat capability." (http://www.youtube.com).

The *hippies*

The widespread rejection by the North American public and global public opinion of the invasion of Vietnam led to a pacifist movement among young people, known at the time as "hippies," whose slogan:

"Let's make love, not war" became famous throughout the world.

The favorite way of avoiding the draft was to become a drug addict, which then had a multiplier effect which covered the entire planet like a blanket, particularly in the industrialized North, where purchasing power was higher. Despite everything done to stop it, drug use is, on the contrary, increasing.

Drug use in the Third World

The mass use of banned drugs was initially limited to countries in the industrialized North; in the poorly developed South, drug traffickers paid in dollars for services provided for processing, packaging, shipment, use of airfields, storage, police protection, and other requirements. As of the 1990s, more or less, payments were made in kind, in other words, some of the drugs originally destined for users in economically advanced countries stayed in the countries of origin and transit, where local mafias found themselves forced to sell them on their own territories to convert them into dollars, thereby inducing extensive drug use in the Third World as well.

Cartel

This commercial law concept refers to the union or partnership entered into by several enterprises in a given sector, aimed at controlling the production and distribution of a given item through market share agreements that eliminate or reduce competition. Thus, a cartel is a collusive arrangement akin to oligopoly and oligopsony.

Nowadays, the media have taken to assigning the word "cartel" to the activity of well organized groups of drug traffickers, adding the name of the country or city where the group is established, the name used by the group itself, or the nickname of whoever purports to run it. Thus "cartel" has become a synonym for "mafia."

Mafia

This is the term used to describe organized crime in its various manifestations, particularly international drug trafficking. "Mafioso" is an Italian word which, funnily enough, means "a man of honor."

Banning the use of certain products, based on domestic and international norms designed to stop, reduce, or even eradicate the practice altogether, has a perverse and opposite effect, exacerbated by that fact that the day after such a ban is imposed a mafia has already been formed to profit from the illicit trade.

Narcotics trafficking moves money on a scale equal to or greater than some State budgets and wields such power to corrupt that it has infiltrated the law enforcement and judicial authorities and both public and private institutions, while triggering huge increases in drug use and in the number of addicts. All that States have achieved through police repression and the criminalization of producers, traffickers, and users has been to over-fill prisons with thousands of small-scale distributors and the occasional drug lord.

Hired assassins

Drug trafficking mafias have established armed wings to impose their will through the unbelievable cruelty of hired assassins. In other words, they form well-trained groups of paid killers, who perform collection functions, settle scores, intimidate, take reprisals, blackmail, spy on people, and carry out vendettas. They have ties to broader areas of organized crime that terrify people all over the world.

This dire state of affairs has led experts to believe that the war on drugs, as waged today, has been lost and that the only way to get rid of the mafias would be to lift the bans on drugs.

Official OAS documents state that

As recent investigation shows, drug use appears to be increasing in many member states. (http://www.oas.org).

It is true that mafias are not limited to drug trafficking. Some are active in other equally criminalized fields, but without the overwhelming power and impact of those devoted to drugs.

Money laundering

The huge sums of money generated by the drug trade need to enter domestic and international financial flows to disguise their origins. That activity, known as "money laundering" and also defined as a crime, persists, in different countries and to differing degrees, despite all the mechanisms introduced to curb it. It is particularly evident in certain states known as "tax havens" that offer depositors secret numbered accounts, security, discretion, confidentiality, anonymity, bank secrecy, sophisticated technology for moving capital, direct exemptions, very low indirect taxes, residence, and even the nationality of the host country.

According to Daniel Estulín, a journalist, it takes eight months for drug trafficking money to be absorbed into the global economy.

Retailers

Experts calculate that, out of every US$100 of the drug trade, US$90 stays in the drug user countries. The "big money and profits" are made in the last link of the chain, because it is at the retail stage that the value of the drugs increases exponentially, while leaving something for producer and transit countries. According to a report by the "Diario de las Américas" Group,

> The drug trade profit margin, i.e. the mark-up between the cost of the raw material and the final retail price, is 5,000 percent.

This final stage of the marketing chain for prohibited drugs requires an army of retail sales persons, who are recruited among the drug addicts themselves, the down-and-out, criminals, the unemployed, and minors, who receive good pay for their services and therefore strive to win new customers.

At the same time, those same retailers are granted immediate and generous credit facilities by the mafia that supplies them, on terms impossible to imagine with any normal bank, because the recovery of such loans to street sellers and also to large businesses is guaranteed thanks to the ruthlessly effective hired assassin system (sicariato), which dispenses with the formalities and paperwork associated with notaries, judges, policemen, and attorneys.

Overcrowded prisons

States' collective criminalization of the production, trafficking, and use of drugs has led to overcrowding in prisons and detention centers on an unprecedented scale and has overburdened an already deficient justice system. The number of prisoners held without trial has mushroomed, along with the sensation of widespread citizen insecurity, without any solution in sight.

Over the past three decades in the United States, the number of those incarcerated for using or selling narcotics has increased by more than 500%, reaching an unbelievable total of 1,600,000, which is likely to increase, according to Gary Becker and Kevin Murphy of Stanford University's Hoover Institute (El Comercio, Quito, Monday, January 7, 2013).

The engine of economic growth

In all regions and to varying extents, the manufacturing and trading of banned drugs may be the main source of foreign currency and they may account, directly or indirectly, for such a large share of the resources available to States, banks, stock exchanges, and enterprises that a sudden downturn in those assets could disrupt the global economy, unless mitigating measures, substitutes, or staggered procedures are used.

Citing a report by the United Nations Office on Drugs and Crime, Sergio Ferragut, the author of “A Silent Nightmare”, asserts that the drug trafficking business leaves some US$125 billion a year in the United States.

A report by Stratfor, a U.S. consulting firm, estimates that the drug trade adds some US$40 billion each year to the Mexican economy, roughly equal to its oil revenue, twice as much as

immigrant remittances, twice as much as all foreign direct investment, and four times more than revenue from the tourism industry (El Universal, 12/04/2010) (http://www.drugabuse.gov.ec).

A study of Colombia has determined that its economy “is now to a certain extent dependent on the revenue from drug trafficking," in that it feeds into investment, generates employment, alleviates the balance of payments deficit, helps to maintain exchange rate stability, and forms part of the country's monetary reserves (http://www.gestiopolis.com).

The laws of the market

Like any other merchandise, banned drugs are subject to the laws of the market, i.e., the interplay of supply and demand; if supply is reduced, demand will cause prices to increase and vice-versa. So long as demand exists, there will always be someone to satisfy it, no matter where or how difficult shipment may be. Again according to Farragut, the trade in prohibited drugs means "income, sales, and employment."

Because the illicit drug trade allocates huge sums of money to bribery and corruption, it cannot afford to allow sharp and sustained falls in prices. An effective and well-tried remedy is for one cartel to denounce another one competing with it, after infiltrating it with agents who provide precise details of a shipment, its size, means of transportation, and destination. In most such cases, seizure of the shipment is described as a feat brought about by the law enforcement authorities. The scandal surrounding the seizure then immediately boosts prices.

A supportive press

Even without intending to, radio, television, and the printed media assist the drug trafficking mafias by chronicling and publicizing the bloody crimes committed by the drug traffickers' armed wing, because those reports serve to put fear into competitors, distributors who fall behind with their payments, middle-men who fail to deliver, informers, authorities who betray or refuse to collaborate, judges who hand down convictions, and so on.

The press also collaborates when it displays and highlights cases in which illicit drugs are seized. Once publicized, that information triggers panic among drug users that supplies might be cut off, forcing market prices to rise.

International condemnation

The international response has been to ban the drug trade, using police and punitive methods that have failed miserably.

Let us mention the main instruments agreed upon:

a) The Shanghai Opium Commission of 1909, sponsored by the United States, to eliminate international trafficking;

b) The International Opium Convention of the Hague, 1912, the first international drug control treaty;

c) The widely ratified Geneva Convention of 1925, to control opium supply;

d) The 1931 Drug Control Convention, which drew up the first list of drugs.

e) The 1936 Convention to eliminate the growing drug trade, which never entered into force;

f) The 1939-40 Conference, which was convened to adopt an anti-drug agreement, but came to nothing because of World War II;

g) The 1948 Convention, to control synthetic narcotic drugs;

h) The Opium Protocol of 1953, which aimed to limit cultivation of the poppy plant but was rejected by the countries growing it;

i) The Single Convention on Narcotic Drugs of 1961, which banned, among other practices, the chewing of coca, an ancient custom of subsistence farmers in the highlands of South America (until the ban was removed in 2012, despite U.S. opposition); paradoxically, in Bolivia there are thousands of hectares planted with coca bushes, whose leaves are used to make the essences to flavor the internationally renowned "coca cola" drink, first concocted by a local apothecary;

j) The Convention of 1971 on Psychotropic Substances, which adds new substances to the banned list;

k) The 1972 Protocol amending the Single Convention in order to emphasize drug control issues.

l) In July 1989, the G-7 group of most developed countries established a body, based in Paris, to combat the "laundering" of money derived from drug trafficking; they called it the Financial Action Task Force (FATF). A number of States and international organizations and agencies have joined it.

m) The South American branch of the FATF, known as GAFISUD, was created in 2000. Based in Buenos Aires, it comprises 15 States, plus observers.

Criminalization

Almost all countries in the world have criminalized the planting and harvesting of hallucinogenic plants, trade in the chemical precursors needed to process drugs, and the manufacturing, transportation, trafficking, and use of narcotics and psychotropic substances, thereby invading the personal sphere of whoever decides to take drugs and even commit suicide in so doing.

Let us not forget that there used to be criminal codes strongly influenced by religious views that characterized suicide as a crime and even went to the absurd length of dispatching any hapless individual who made a botched attempt to kill himself to prison instead of the cemetery. When he or she succeeded in committing suicide, the tragedy was felt by the family because they were denied space for the body in cemeteries run by the church, once it was discovered that the deceased had died committing a sin.

The aforementioned U.S. professors Gary Becker and Kevin Murphy expect that:

> a more vigorous war on drugs will prompt traffickers to respond with even more violence and corruption." (*El Comercio*, Quito, Monday, January 7, 2013).

The United Nations and drugs

The U. N. has taken a prohibitionist stance on drugs from the time it was created, as evidenced by the international instruments negotiated in its name, the bodies established to combat trafficking, and the major conferences on the subject.

a) In 1968, the U.N. established the International Narcotics Control Board (INCB) to monitor compliance with drug conventions. It was the head of that Board who, in 2012, expressed concern at the imminent adoption in Uruguay of a law decriminalizing the distribution and use of marijuana and even warned the Government of the dire consequences. The Government answered that the law constituted "a (more) effective way of combating drug trafficking than repressive policies."

b) In 1988, the United Nations adopted the Convention against Illicit Traffic in Narcotics and Psychotropic Substances, directed primarily to combating organized crime and drug trafficking.

c) In 1997, the United Nations Office on Drugs and Crime (UNODC) was established in Vienna with the following principal functions: to conduct research, persuade governments to pass laws against drugs and crime, and provide technical assistance.

d) In 1998, there was a special session of the U.N. General Assembly aimed at inducing States to commit to reducing both the demand for and the supply of drugs.

The OAS and drugs

The Organization of American States has devoted both time and resources to combating the illicit trafficking in narcotics on the grounds that

> it poses a threat to the stability of the government forces (fuerza pública) responsible for maintaining public order and civil society and all it leaves in its wake are violence and destruction. (http://www.oas.org)

It does not strike me as credible that it is "government forces" that maintain civil society, or that the illicit drug trade only leaves "violence and destruction" in its wake, with no mention made

of the huge flow of money it generates and which now constitutes an important part of the global economy.

The regional Organization's focus is on reducing both demand and supply and that is what the specialized agencies established along the way have been doing. They include:

- CICAD, the Inter-American Drug Abuse Control Commission established in 1990;
- OID, the Inter-American Observatory on Drugs, established in 2000;
- MEM, the Multilateral Evaluation Mechanism, which was established at the suggestion of the Second Summit of the Americas, held in Chile in 1998, and which maintains close ties with other mechanisms established by the OAS, including
- projects such as SAVINA, TIDA, LEDA, DAIS, IS, etc.

The OAS has also engaged in activities to combat money laundering by drug traffickers, through the "Group of Experts" established in 1990, and ERCAIAD, the Anti-drug Intelligence School of the Americas.

In 2012, the OAS entered into an agreement with the Pan American Health Organization aimed at reducing the demand for illicit drugs.

Gratuitous fears

Curiosity is a powerful motive for getting into contact and experimenting with substances whose trade is prohibited and all it does is increase the number of users. There is no evidence to support the fear or worry that the unrestricted sale of drugs will increase the number of drug addicts. That is something that might happen at first but would then decline thanks to appropriate and timely information.

The problem

The real problem with drugs is not their use, or even their impact on public health, but rather the rise of mafias that make money out of prohibition, with all its disastrous consequences, including: the compulsion to find new consumers every day, the expansion of organized crime, increased citizen insecurity, money laundering with the complicity of States, banks, and stock exchanges on a scale that distorts the global economy, the degradation of public institutions, and, perhaps worst of all, the abject dependence of the global economy on the massive amounts of money derived from drug trafficking.

A change of tack

After almost a century of insistence on prohibition, voices and schools of thought are now emerging that are calling for a new approach. The United Nations Secretary-General reported in 2009 that criminalization of the use of injectable drugs was hampering efforts to combat AIDS and he asked for depenalization.

In the Americas, the discovery that the prohibition of drugs has failed also calls for a change of stance. A 2012 OAS document that reflects research done by several bodies states that:

Decriminalization of drug use needs to be considered as a core factor in any public health strategy.

Another OAS paper, of May 2013, reviewed in an op ed of La Nación of Buenos Aires, states that

it opted for decriminalization of drugs and for policies that do not criminalize users in the Americas, who, in the case of marijuana, account for a quarter of the world's users. (Cited in El Comercio, Quito, December 24, 2013.)

In his book entitled "Telling the Truth about the War on Drugs," the North American journalist and war correspondent, Walter Cronkite says:

I cannot help but wonder how many more lives, and how much more money, will be wasted before another Robert McNamara (who 20 years after the Vietnam War stated that it had been a mistake) admits what is plain for all to see: the war on drugs is a failure.

A growing number of countries are considering pursuing national policies that diverge from the prohibitionist approach. The Governments of Colombia and Mexico advocate legalizing

marijuana. Other, European, governments already allow it. In Holland, the recreational use of cannabis has been allowed since 1976. In Canada, since 2001, it has been allowed for curative purposes, as has been the case also in Colorado and Washington states in the U.S. since 2012.

Juan Gabriel Tokatlian, a distinguished North American professor at Di Tella University, writes in his book "Drugs: A Lost War" that

despite being a colossal failure, the war on drugs is still being waged.

The same scholar claims that:

the consequences of the war on drugs raise fundamental concerns regarding the health, wellbeing, and freedom of human beings.

The pioneer

José Mujica, no ordinary politician, who was once labeled a terrorist, tortured, and incarcerated for 17 years, was elected President by the people of Uruguay and then donated 90 percent of his salary and lived with exemplary austerity. That stance earned him the nickname of "Poorest President in the World," in stark contrast to the usual candidates for the job who strive for power in order to boost their fortunes and largely resolve their financial problems. Well, he was the President who took the brave initiative of pushing for the decriminalization of the cultivation and sale of marijuana (its use had been allowed for several decades). The Uruguayan Congress adopted the "Marijuana Regulation Law" on December 10, 2013, making Uruguay the first country in the world to take such a measure aimed at

"snatching the drug trade away from drug traffickers."

In 2013, the British newspaper, The Economist, dubbed Uruguay "the country of the year" for legalizing cannabis, because that step

started reforms that "do not merely improve a single nation but, if emulated, might benefit the world." (Agence France Presse, EL Comercio, Quito, December 20, 2013).

The same wire service went on to cite The Economist's phrase that

this change was "so obviously sensible, squeezing out the crooks."

In a wire dated December 12, 2013, AFP reported that 114 organizations all over the world

"had welcomed the recently adopted law".

Regulations in the marijuana law

The State reserves for itself a monopoly over the sale of marijuana through drugstores, in order to guarantee purity and correct pricing.

The law permits domestic cultivation of up to seven plants for personal use.

It permits the formation of user clubs of at least 15 and at most 45 members, with a capacity to cultivate 99 plants under the control of the State agency created for that purpose.

It does not allow the sale of cannabis to minors.

It does not allow advertising.

Reactions

It was obvious that traditionalists and prudes would throw up their arms in horror at Uruguay being opened up to the marijuana trade, starting with the spokespersons of institutions established for prohibition. In angry and shrill statements, the head of the United Nations International Narcotics Control Board (INCB) called the Uruguayan Government a "pirate" and pontificated that that was "not the correct way to go about things." One notes the desperation of that official, who senses that his agency might disappear because it serves no purpose and is counterproductive (El Comercio, Quito, December 13, 2013, EFE news agency).

Actions

State policies worth recommending and that substitute for the banning of drugs must provide:

a) Ample and sufficient information about the terrible harm to health, irreversible brain damage, and the increase in suicide;

b) Preventive measures to protect vulnerable groups;

c) Regulation of use; and

d) Rehabilitation for addicts.

Global or regional solution

It would appear that the lack of decisiveness in tackling the drug trafficking problem may have to do with a potential economic collapse caused by the elimination of the vast profits generated by illicit trafficking.

It us surely up to the United Nations to take the brave initiative of legalizing drug use so as to rid humanity of much of today's organized crime, mafias, hired assassins, broken judicial systems, corruption of institutions, kidnappings, disappearances, terrorism, arms trafficking, money laundering, overcrowded prisons, ever more extensive drug use, illicit enrichment, rifts in the social fabric, addictions, the exploitation of minors, and many more of the evils of our time.

As a valid and appropriate alternative, given the likelihood that the United Nations will fail to act, the OAS might emulate the Treaty of Tlatelolco, in which the countries of Latin America declared the subregion to be a "nuclear-weapons-free zone," by sponsoring an agreement capable of leading this same zone to become "drug trafficking mafia-free" by decriminalizing the use of drugs.

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REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE. ALTERNATIVES FOR REGULATING THE USE OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES AND FOR PREVENTING DRUG DEPENDENCE, ESPECIALLY WITH RESPECT TO MARIJUANA OR CANNABIS SATIVA

INTRODUCTION

On August 7, the Inter-American Juridical Committee decided to embark on a study of the aforementioned topic proposed by Dr. Fernando Gómez Mont Urueta, and to ask him to act as the corresponding rapporteur.

At the session held in March 2014, Dr. José Luis Moreno Guerra presented a study on the subject and a decision was then taken to give it further consideration.

At the request of Heads of State, members of our organization such as Colombia and Mexico, the Secretaries-General of the Organization of American States and the United Nations have provided opportunities for hemispheric and global reflection aimed at reviewing international legislation on the matter, now more than fifty years after it first entered into force (1961).

Experts on health, security, law, and economics, as well as former Heads of State and high-level national and international officials, have all taken part in the debate, to share their experiences and knowledge.

The Committee wishes to make the following observations:

I. LAWS CURRENTLY IN EFFECT

A) The international legal regime for the use of narcotic drugs, as well as for the prevention of drug dependence

The regulatory framework in effect is based on the following International Conventions signed at the United Nations:

- The Single Convention on Narcotic Drugs, of 1961;
- The Convention on Psychotropic Substances, of 1971;
- The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 1988.

The 1961 Single Convention on Narcotic Drugs repealed and replaced the treaties negotiated between 1912 and 1953. It also strengthened the international regime for control and re-organized its administration in the framework of the United Nations. It also regulated over 100 substances classified into four categories, each one subject to different and stricter levels of control than in earlier conventions. They included, first, the narcotic drugs produced from the *adormidera* ***(poppy)***, *coca* and *cannabis* plants and their respective derivatives and the raw materials used for their production, along with some synthetic drugs such as methadone. It should be stressed that this convention was amended in 1972 by a protocol which in essence broadened the powers of the organ of the United Nations in charge of its implementation.

Despite the adoption of the Single Convention of 1961, the use and abuse of drugs grew notably more intense all through the following decades, particularly in the more developed countries.[1] The increase was especially significant with regard to synthetic psychotropic substances created since World War II, such as amphetamines, barbiturates and lysergic acid. [2]

In order to control such substances, the Convention on Psychotropic Substances was adopted in 1971 to regulate, inter alia, stimulants, sedatives, tranquilizers and hallucinogens. All of

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[1] ROTH, Mitchell P. **Global Organized Crime**. ABS CLIO (Santa Barbara, Denver, Oxford: 2010), 25.

[2] **Report of the International Narcotic drugs Control Board**. United Nations (January 2009), E/INCB/2008/1, p. 2.
http://www.incb.org/documents/Publications/AnnualReports/AR2008/AR_2008_Spanish.pdf

these were classified, in a manner similar to the provisions of the Single Convention of 1961, according to four categories, depending on their capacity to cause addiction and abuse, and their therapeutic value. The Convention established detailed regulations governing international trade in psychotropic substances, including measures for the strict control of exports and imports.

The two previous conventions were supplemented in 1988 by the adoption of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which was designed mainly to strengthen national penal legislations and encourage international cooperation in fighting such activities. This Convention is essentially an instrument of international criminal law and was meant to harmonize national legislations that criminalize drugs. Under it, the Parties are obliged to establish and implement specific penal provisions aimed at suppressing illicit traffic in narcotic drugs and psychotropic substances. Those provisions establish measures for dealing with the issues involved in each of the various aspects of traffic in narcotic drugs and psychotropic substances. Provisions are therefore included that deal with illicit crops and the trade in chemicals, materials and equipment used to manufacture controlled substances, but also money laundering, seizure of assets, extradition, mutual legal assistance, and the remanding of documents relating to criminal proceedings.

The International Narcotic drugs Control Board is the quasi-judicial organ of the United Nations in charge of monitoring the three aforementioned treaties. Using a statistical information system, the Board supervises licit drug-related activities so as to ensure that there are adequate supplies for medical and scientific purposes and that no diversions are made to illicit channels.[3] It also detects any deficiencies in national and international control systems related to the manufacture, traffic and illicit use of drugs and, whenever necessary, is authorized to ask governments for explanations in cases of apparent violation of the treaties, notify the United Nations Commission on Narcotic Drugs and the Economic and Social Council of such cases, and, finally, recommend to the Parties to the respective conventions that they stop importing or exporting drugs to the State in question.[4]

Article 3 of the United Nations Convention of 1988 clearly establishes the obligation of the Parties to classify as crimes in their respective domestic laws the various activities related to traffic in narcotic drugs and psychotropic substances, from production to consumption. Although subtle differences can be seen between this provision and similar provisions in the Single Convention of 1961 and the 1971 Convention, for the purposes of this chapter it suffices to refer only to the provision of the 1988 Convention, which subsumes the other two.

The above-mentioned Article 3 requires that the following activities, *inter alia*, be established as criminal offences:

1. The production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

2. The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

3. The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in 1. Above.

In the case of these crimes, the Parties will provide that sanctions be applied proportionate to their gravity, such as imprisonment or forms of deprival of freedom, pecuniary sanctions and seizure of assets.

Furthermore, Article 3 itself requires criminal classification of various activities linked to the commission of the aforementioned offences, such as: the manufacture, transport or distribution of equipment, materials or of substances to be used in or for the illicit cultivation, production or

[3] International Narcotic drugs Control Board, https://www.incb.org/incb/es/about.html

[4] See articles 22 and 23, United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, https://www.unodc.org/pdf/convention_1988_es.pdf

manufacture of narcotic drugs or psychotropic substances; the laundering of assets derived from committing the referenced crimes and instigation to commit them or to illicitly use drugs or psychotropic substances. At the same time, the same provision contemplates various aggravating factors in respect of the aforementioned crimes as well as the establishment of long statutes of limitation and the impossibility of considering them as fiscal or political offenses.

Furthermore, according to the same article, each of the Parties, while maintaining their constitutional principles and the fundamental concepts of their juridical system, must adopt the necessary measures to establish as criminal offenses the possession, purchase or planting of narcotic drugs or psychotropic substances for personal consumption. This is contrary to the provisions of the Amended Convention of 1961 and the 1971 Convention. However, mitigating somewhat the severity of the 1988 Convention, the Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.

The aforementioned provision may be regarded as a safeguard clause within the regime described earlier, since the legal obligation of States to criminalize such conduct is subject to the condition that their constitutional principles and the fundamental concepts of their juridical system allow for criminalization. Accordingly, criminalizing these acts is not obligatory when the constitutional regime of each State recognizes the legal autonomy of users to decide on their personal consumption of narcotic drugs or psychotropic substances, and when it establishes for such cases the intervention of agencies other than those responsible for operating the criminal justice system/.

B) The International Legal Regime with respect to Organized Crime

Traffic in narcotic drugs and other psychotropic substances is an activity conducted transnationally and clandestinely.[5] It is basically carried out using collective structures able to outsmart the State strategies used to intervene and suppress such criminal conduct.[6] This is one of the reasons why in 2000 the United Nations drafted the United Nations Convention against Transnational Organized Crime.

This Convention requires criminalizing belonging to or collaborating with organizations carrying out criminal activities of a transnational nature, especially human trafficking, the illicit smuggling of migrants and activities relating to goods subject to regulatory controls such as arms, narcotic drugs and psychotropic substances or protected species of flora and fauna. Also, it proposes criminalizing civil servants' ties of collaboration and protection with these kinds of organization, as well as the assistance provided by financial and business managers, above all in respect of money laundering. The Convention also criminalizes acts that tend to obstruct the work of police, ministerial and judicial agencies in their fight against transnational organized crime.

At the same time, the Convention provides for a series of procedural measures to be incorporated by the signatory States in their domestic legal systems with a view to prosecuting and trying such organizations, as well as to facilitate international cooperation in this matter. Finally, the Convention establishes the obligation to adopt public policies to prevent the conditions that have led to the ongoing strengthening of these criminal organizations.

C) Human Rights legislation

The conventions described in the two preceding sections help States comply with their duty to protect the human rights of the people who live in their territories, their personal freedom and safety, due legal process and access to health. Hence it is worth analyzing those instruments in the light of international human rights law.

Both the Universal Declaration of Human Rights and the American Convention on Human Rights contain various provisions relating to principles concerning the protection of individuals

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[5] United Nations Office on Drugs and Crime. **Transnational Organized Crime: The Globalized Illegal Economy**, available at*:* http://wpfdc.org/blog/society/18692-transnational-organized-crime-the-globalized-illegal-economy. Spanish: http://www.unodc.org/documents/mexicoandcentralamerica/TOC12_fs_general_ES_HIRES.pdf (consulted on August 14, 2014).

[6] *Ibid.*

vis-à-vis acts of the government, as well as the obligation of States to guarantee access by the public to satisfaction of basic needs in education, health, social protection, employment, housing, as well as the certainty of being able to lead their lives in a democratic, safe and sustainable environment.

The Universal Declaration of Human Rights recognizes the following fundamental rights:

1. The right to equality, human dignity and non-discrimination. (Art.1 and 2).

2. The right to life, freedom and "security of person." (Art. 3).

3. Effective remedies against discrimination or infringement of their human rights (Art. 7 and 8).

4. To be submitted to criminal justice only in those cases provided for in legislation that is in effect prior to the acts committed, whenever these refer to limitations of personal rights and liberties meant to ensure the recognition of and respect for the rights and liberties of others, and to satisfy the just requirements of morality, public order and general welfare in a democratic society. In any case, the application of criminal laws will be subject to principles that guarantee due legal process under the premise of presumption of innocence (Art. 9, 10, 11, 12 and 26.2); and

5. Personal and family access to sanitary, medical, educational and social-protection services, as well as to employment and housing opportunities (Art. 25, 26 and 27).

All these rights are also found in in the American Convention on Human Rights (Art. 4, 5, 7, 8, 9, 24, 25, 26 and 32.2).

II. REVIEW OF LEGISLATION ON THE USE OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, AND THE PREVENTION OF DRUG DEPENDENCE 50 YEARS AFTER ITS ENTRY INTO FORCE

The prohibitionist approach in this area has proved to be counter-productive in a number of important ways that need to be assessed with a view to either maintaining existing regulations or developing the potential benefits of new regulatory options that offset the costs to States of the current rules.

1. With respect to health, the evidence suggests that:

a) The prevalence of the global demand for narcotic drugs and psychotropic substances has not only not declined; on the contrary, over the past five decades,[7] it has grown moderately but steadily. The main reasons for this growth are:

a.1) The reason adduced to explain the demand for these substances by consumers, namely that they must be drug addicts, was far too simple. Several States are now increasingly inclined to allow recreational use of some of these substances and there is no evidence of a substantial increase in consumption patterns due to addiction. In some of these cases, similarities have been observed between the consumption patterns of psychoactive substances such as tobacco and alcohol, which are legally permitted, and some substances that are not legally recognized, such as *cannabis*.[8]

a.2) The medical uses of narcotic drugs and other psychotropic substances have been underestimated, despite increasingly broader acceptance by the medical community. Indeed, a higher demand for controlled substances used under medical supervision has been observed in the treatment of problems related to human behavior. [9]

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[7] *See* "The Drug Problem in the Americas" Report of the Organization of American States (OAS) (2013), p.75. http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-194/13

[8] MOSHER, Clayton & AKINS, Scott. *Drugs* **and Drug Policy. The Control of Consciousness Alteration** [hereinafter, Mosher & Akins](California, London, New Delhi: SAGE Public., 2007), 66.

[9] *E.g.* http://www.abc.es/hemeroteca/historico-02-02-2005/abc/Sociedad/los-medicos-aceptan-recetar-cannabis-pero-temen-que-se-banalice-su-uso_20353571928.html (consulted on August 14, 2014).

a.3) The deep roots and robustness of traditional uses of narcotic drugs and psychotropic substances have been underestimated. The acceptance of these substances in certain cultures for curative or ritual purposes is something very difficult to modify. [10]

b) Regulatory obstacles to the use of these substances have encouraged the production of new synthetic products. In many cases this substitution poses higher risks to the health of users than the substances replaced. [11]

c) Narcotic drugs or psychotropic substances with different potential effects on users are regulated in the same way. This is the case of marijuana, which is treated in the same way as cocaine, heroin or its derivatives. That gives rise to a "Gateway" effect, making it easier for users to switch drugs, as they can be obtained in the same (illegal) market. The trigger for such a switch is the vendor, not the substance itself. [12]

d) The clandestine use of certain injectable narcotic drugs or psychotropic substances encourages syringe reuse, which leads to the expansion of certain contagious diseases such as HIV/Aids.[13]

e) Forced drug-dependence treatment has shown poor results compared to voluntary treatment. Forced intervention is only justified to prevent immediate harm to problematic drug users themselves or to those around them.[14]

f) The stigma created by prohibition hinders addicts' access to rehabilitation centers. In addition, the emphasis on a criminalization solution has deprived the medical and public health approach to the problem of both attention and resources. [15]

The potential of these centers to dissuade drug use and serve as an alternative for users who belong to or cooperate with criminal organizations has been underestimated.

2. With respect to security and democratic governance, the evidence shows that:

a) Suppression of the supply of narcotic drugs and psychotropic substances has created an opportunity for gains for criminal organizations that seek to evade regulatory controls through violence and corruption. [16]

b) The strengthening of criminal organizations has increased levels of violence against the agencies in charge of fighting them, their competitors or even gang members themselves. This has generated more insecurity than that attributed to drug users' criminal behavior.[17]

c) Criminal organizations grow stronger by diversifying their criminal activities in order to ensure sufficient control of territory to dissuade or obstruct the work of governmental agencies, neutralize their competitors by either eliminating or absorbing them, and subdue the population.[18]

d) In addition, incentives for subverting regulatory controls through corruption of police forces and ministerial or judicial authorities in charge of combating criminal organizations

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[10] BEWLEY, David R. - TAYLOR. **The United States and International Drug Control**, 1909-1997 (London and New York: Pinter, 1999).

[11] *Ibid.*

[12] *E.g.* "Experts debate whether marijuana is a 'gateway' drug", http://www.abc2news.com/news/health/experts-debate-whether-marijuana-is-a-gateway-drug (consulted August 14, 2014).

[13] GRAY, Judge James. **Why our Drug Laws Have Failed and What We Can Do About It** (Philadelphia: Templet University Press, 2001), 190- 194 (about the "Needle Exchange Program").

[14] OAS Report, p.75.

[15] *Ibid.*

[16] See KUGLER, Maurice, VERDIER, Thierry and ZENOU, Yves. "**Organized crime, corruption and punishment**, Journal of Public Economics" 89 (2005): 1639- 1663.

[17] See *e.g.* Ríos, Viridiana (2013a) "Why did Mexico become so violent? A self-enforcing violent equilibrium caused by competition and enforcement", in: *Trends in organized crime*, June, vol. 16, 2, p. 138-155.

[18] See e.g. Ríos, Viridiana (2013a) See, *e.g.* Viridiana Ríos, http://www.nexos.com.mx/?p=15461

has weakened the democratic development of those institutions and the ability of States to consolidate conditions that allow the normal daily exercise of public freedoms and the fundamental rights of citizens. [19]

e) Finally, crime indices in prisons have been underestimated. Low-risk inmates, such as drug users and small retail traffickers, are recruited and trained by the criminal organizations to commit crimes, which has a multiplier effect of violence. [20]

3. With respect to the promotion and protection of human rights, the evidence points to the following trends:

a) Constitutional courts are increasingly ruling that the decision to use narcotic drugs or psychotropic substances falls within the scope of the moral autonomy of adults and may only be criminalized when such use harms third parties or puts them at serious and immediate risk. [21]

b) Furthermore, there is a growing consensus that there is discriminatory treatment of users of illicit substances such as cannabis versus alcohol or tobacco users. [22]

c) This has resulted in a change of approach ranging from the paternalism that sustains the prohibitionist regime toward one stressing consumer liability.

This has also resulted in a series of domestic public policies seeking to decriminalize the production, growing and distribution of narcotic drugs, such as *cannabis* for personal use. This is a growing trend (with some exceptions such as Uruguay).

d) The current approach has increased the prices of certain medicines to treat pain (and anxiety), which results in their being distributed unequally. As a result, some terminally ill patients face death in very different circumstances from others in the population who are admitted to hospital.

e) Finally, as mentioned earlier, the increase in violence has generated an atmosphere of insecurity that in turn fosters abuse of authority and the subjection of the population to the control of criminal organizations. [23]

4. With respect to international cooperation, the evidence suggests that:

a) A unequal share of costs and risks is borne by the States that get involved in the implementation of the existing regulatory framework, for the following reasons:

a.1) The incidence of violence is higher in producer and transit countries than in consumption countries. [24]

a.2) Value added in end prices is lower in producer and transit countries than in consumption countries. [25]

a.3) The production of narcotic drugs and psychotropic substances has increased in high-demand centers, except in the case of some substances that, for micro-climate reasons,

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[19] SERRANO, Mónica. **México: Narcotráfico y Gobernabilidad,** (México: COLMEX), 251; CHABAT, Jorge. **Narcotráfico y Estado: el discreto encanto de la corrupción**", *Letras Libres* (Sept., 2005): 15.

[20] PÉREZ CORREA, C. "Delitos contra la salud y el principio de proporcionalidad en México" [hereinafter, Pérez Correa 2013], in: PALADINES, Jorge Vicente (coord.). **El equilibrio perdido: drogas y proporcionalidad en las justicias de América** (Quito: Defensoría Pública de Ecuador, 2013) , 18.

[21] See, *e.g*. **Sentencia No. C-221/94.** Corte Constitucional de Colombia (Bogotá: May, 1994), available at: http://www.corteconstitucional.gov.co/RELATORIA/1994/C-221-94.htm

[22] MOSHER, Clayton J. and AKINS, Scott. **The Effects of Drugs** in: *Drugs and Drug Policy*, (Thousand Oaks: SAGE, 2014), 67.

[23] See HEINLE, Kimberly, RODRÍGUEZ FERREIRA, Octavio and SHIRK, David A. **Drug Violence in Mexico Data and Analysis Through 2013**, University of San Diego (April, 2014).

[24] BUXTON, Julia. **The political economy of narcotic drugs: production, consumption and global markets**, (London, New York: Zed books, 2006), 110.

[25] For an example in the Middle East, see Buxton, 106.

can only be produced in certain parts of the world.[26] Even in these cases, the technological substitution of those substances by new synthetic products sustains the trend toward import substitution, thereby relativizing the difference between producer, transit and consumption countries. [27]

b) Different rules apply to personal narcotic drugs and psychotropic substance use in producer and transit countries than in the larger markets, such as Canada, the United States of America and the member states of the European-Union.[28] This has resulted in ambivalence and frustration in producer and transit countries.[29] The growing trend towards liberalizing recreational, medical and traditional uses of these substances has lowered the institutional incentives to absorb the costs of criminalizing the production and trafficking of narcotic drugs and other psychotropic substances.

c) In the field of international law, some tension can be observed in the interpretation of several provisions. For example, contradictions can be seen between the obligation to criminalize the trafficking of narcotic drugs and the obligation to generate alternatives aimed at disrupting the activities of criminal organizations. There is also a contradiction between the obligation to criminalize the use of these substances and respect for the moral autonomy of individuals.

CONCLUSIONS

In light of the above, a change in the regulatory approach is proposed, based on the following:

a) The list of narcotic drugs and other psychotropic substances needs to be revised, on the basis of scientific criteria, with a view to classify them according to the risk of personal use leading to violent behavior (psychotizing effect). Criminalization of their use should be based on this criterion only. With respect to their addiction potential, regulation should be based on medical and public health criteria.

b) The right of (adult) consumers to decide whether or not to use said substances has to be recognized, provided that such use does not harm third parties or put them at certain risk.

c) Users of those substances must be treated in a non-discriminatory manner vis-à-vis users of other substances that are currently permitted, such as alcohol and tobacco.

d) Informative campaigns for consumers must be implemented, warning about the risks that the use of these substances poses for their health and personal performance.

e) Regulation of the use of such substances should take a damage-control approach. Thus, separate markets should be generated for tolerated and non-tolerated substances, in an attempt to ensure that use of the former replaces use of the latter, thereby protecting consumers.

f) In view of the persistent demand for these substances, policies need to be implemented that lean toward holding consumers liable for the impact of their use on public health and social protection systems. In particular, the adoption of special excise regimes is an alternative that has proved successful in the case of other substances.

g) Consideration needs to be given to aligning the production of these substances and the various different regulations governing them with the demand for them, with a view to reallocating international regulation in such a way as to allow each State greater flexibility in setting its own domestic policies.

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[26] See FERRAGUT, Sergio, NIGHTMARE, A. Silent. **The bottom line and the challenge of illicit drugs** (Lexington: 2007), p. 53- 62.

[27] *Ibid.*

[28] CÁRDENAS, Miguel Eduardo. **Narcotráfico: Europa, Estados Unidos, América Latina. rev. estud. soc**. [online]. 2008, n.30, p. 124-126. ISSN 0123-885X.

[29] See e.g. DANIELS, Alfonso. "EE UU y la guerra contra las drogas en Latinoamérica", *Política Exterior*, v. 20, n. 112 (Jul. - Aug., 2006): 131-140, also available at: http://www.jstor.org/stable/20645955Accessed: 15-08-2014 16:28 UTC.

h) It should be acknowledged that the existence of illicit markets generates violence and corruption. Therefore, regulatory alternatives must be sought so that these markets can become subject to democratic controls.

i) In order to implement this change of approach and advance the international learning process it entails, consideration could be given to regulating the use of marijuana or *cannabis sativa*, for the following reasons:

i.1) Its addictive potential is lower than that of alcohol or tobacco.

i.2) The risk of overdosing is much lower than for alcohol or tobacco.

i.3) Scientific development has shown that it is increasingly indicated for a variety of medical uses.

i.4) The incidence of marijuana-induced criminal behavior is lower than that of alcohol.

i.5) Some studies indicate that the use of marijuana displaces use of more dangerous substances.

i.6) The higher demand for these types of substance is generated by the market.

i.7) The production of this substance is relatively less complex and therefore takes place near the demand areas. It also allows for self-production scenarios.

i.8) Its production has industrial uses other than its psychoactive effect.

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7. 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.

At the 84th regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2014), the rapporteur for the issue, Dr. José Luis Moreno, presented document CJI/doc.456/14, in keeping with the mandate issued by the Juridical Committee at its 83rd regular session in August 2013, to draw up a model bilateral agreement on migration.

The Rapporteur proposed that a legal framework for resolving existing problems be devised, and to that end he submitted a list of possible steps and concerns related to this issue.

Dr. Hernán Salinas Burgos wanted to know what the practice was in terms of cases that could provide some framework within and outside the region.

Dr. José Luis Moreno explained that the aim was to prepare a model applicable to bilateral relations, particularly with respect to States with common borders or adjacent islands, and to facilitate settlement of disputes with the nearest neighbors. In this context, he recommended using the example of the Neighborhood Commission in border relations, bearing in mind the experience gained in the movement of capital and people. His view was that amnesty and partial agreements had not been an effective remedy. The Rapporteur explained how immigration had influenced the survival of the human species, stressing that the sedentary nature of hominids dates back 30,000 years, with the adoption of agriculture and animal domestication. According to the Rapporteur, migration was a basic and inherent part of Human Rights.

Dr. Novak commended the Rapporteur for raising this issue, which is of utmost importance for all countries. He cited the example of Peru, which for many years has been an exporter of migrants and is now taking in immigrants, especially from European countries. He argued for consideration to be given to differences in the reality among the countries of the region. He therefore proposed that a study be done with legal responses to those realities.

The Rapporteur pointed out that in conducting his study, various bilateral agreements had been taken into consideration. He cited the example of the Mexico-Canada agreement for temporary migrant workers. Legal migration between Haiti and the Dominican Republic would also be much less costly, he observed, pointing to the example of migration waves in South America, including Ecuadorians going to Colombia at one point, but the direction has changed in recent years with Colombians now the ones going to Ecuador. Finally, he gave the example of Mexico and the United States, handled mainly through amnesty and reciprocity. From his standpoint, ideally a comprehensive solution would be proposed through a model agreement.

Dr. Salinas said he had apprehensions about the mandate, particularly as regards policy guidelines, since the Committee was expected to present legal studies. He suggested changing the title to "guidelines for migration regulation."

The Chair shared these concerns as well, asking the rapporteur to propose a new title for the topic.

Dr. Novak said there was no clarity as to what kind of document or product the Committee was to deliver. He further proposed drawing up guiding principles instead of a model bilateral agreement, given how hard it is for model agreements to "reflect the diverse bilateral realities" between countries in the region.

Dr. Moreno Guerra observed that although bilateral agreements were already in place, there was some resistance to changing behaviors and internal practices. He stressed that guiding principles would

not be enough. He said models should be proposed to promote existing agreements. The Juridical Committee could propose a model for governments.

The Chair stressed that there would be not just one model agreement but several, as the realities of each case demands.

Dr. Salinas supported the position expressed by the Chair and other members of the Committee. He said the specificity of a single agreement would be very complex as it could not represent those multiple realities.

The rapporteur said he had taken note of the comments from all the members and would take them into consideration when drafting his report.

During the 85th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August, 2014), Dr. Moreno Guerra presented the report entitled "Bilateral Agreement on Migration", document CJI/doc.461/14, which, at the behest of the Chairman, the Committee reviewed section by section.

The exchanges of views among Committee Members regarding the first three chapters yielded the following comments:

Dr. Miguel Aníbal Pichardo asked whether the draft bilateral agreement was intended as a guideline for possible agreements. He had, furthermore, ascertained that many of the suggested provisions were already incorporated in domestic laws, as evidenced, for instance, in the case of the Dominican Republic, where a new migration law was recently enacted that contains many of the formulations put forward in the draft.

Dr. José Luis Moreno Guerra explained that in today's environment it would be impossible to reach a regional agreement on migration. For that reason, in his view, it would be best to start with bilateral relations and lay the foundations for a future shared understanding of the issues.

Dr. Carlos Mata Prates congratulated the Rapporteur and said that he agreed with the vast majority of the solutions built into the draft agreement. All he queried was the title of the document. He suggested changing it to "Guidelines for Bilateral Treaties," since, due to its constitutional implications, it would be difficult for States to abide by a bilateral agreement.

Dr. Hernán Salinas shared Dr. Mata Prates's view of the nature of the document, which should serve as a set of guidelines to refer to with respect to bilateral treaties and domestic laws dealing with migration. At the same time, he said that the minimum wage issue was regulated in domestic legislations and so should not be included in this document, particularly since it could be a source of discrimination against migrants.

Dr. Elizabeth Villalta also said she agreed with the other Members' comments regarding the nature of the document to be presented, while pointing out that States may not be ready to make the most of the rules suggested in the draft agreement. Therefore, she suggested that it take the form of guidelines for reaching agreements.

Dr. Moreno Guerra took note of the comments and proposed the following title: ¨Standards for Regulating Migration."

After the Rapporteur for this area had read out Chapters IV and V, the Committee Members came up with the following comments:

Dr. José Moreno Guerra said he intended to cover a wide range of social security options. He also regarded it as essential to make immigrants contribute to social security in order not to perpetuate the image of their being a burden on the State and to diminish the prejudice that immigrants are in the countries of destination to steal jobs from nationals.

Dr. Carlos Mata Prates mentioned that, with respect to Chapter IV, on facilitating the acquisition of nationality, there could be snags, given that regulations in that area are subject to national Constitutions and would be very difficult for States to adopt. He suggested altering the wording of the

document, using more general terms. In addition, he mentioned his fear that the document could trigger an unwanted reaction, in the sense that the more developed States could be less willing to allow the entry of migrants, given the proposals for their acquiring citizenship. With respect to the social security provisions, he noted difficulties in identifying obligations with respect to contributions to that system, especially as regards the identification of who pays. In the case of scholarship-holders, in particular, would the obligation apply to the country sending the scholarship-holder or to the host country?

Dr. José Luis Moreno Guerra pointed out that most Constitutions provide for two ways of acquiring nationality: at birth and later through naturalization. He explained that his proposal aimed to regulate those options. He went on to say that several countries in the Americas espoused the family unity ideal, so that it was important for spouses and children to be provided facilities for acquiring the nationality of the country where they live or the nationality of their parents. Concerning social security, he said that the main thing was that all foreign nationals should have access to social security, whereby all practical aspects should be regulated by the countries, because the essential point was that nobody should be in a country without having social security.

Dr. Miguel Aníbal shared Dr. Mata Prates's view that the wording in Chapter IV needed to be more general. As for Article 55, the expression "may access nationality" should be replaced with "must access", because it was an obligation of States to register their nationals.

Dr. José Luis Moreno Guerra said that in Latin America, the legal ties of ¨*jus sanguinis*¨ or ¨*jus soli*¨ had to be basic premises, with no room left for statelessness. He gave the example of the son of a Colombian born in Quito, whose nationality would be determined by "*jus soli*". That Ecuadorian child could also be registered by his parents in the Colombian consulate to ensure a second nationality for him.

Dr. Hernán Salinas was of the opinion that the idea of entering into social security agreements should be stipulated separately.

Dr. Elizabeth Villalta mentioned the difficulties encountered in some Central American legislations under which nationality is acquired through naturalization and based on place of birth. She urged that a study be conducted of the constitutional differences among countries and concluded that this would be too complex an issue to be regulated through a bilateral agreement.

Dr. Fernando Gómez Mont backed the Rapporteur's suggestion and stressed that the instrument should serve to develop obligations derived from conventions and should even take human rights instruments on the subject into account. He said that the effort was worth it, even if it triggered a health tension in countries because it would serve to create new spaces and opportunities for change. He mentioned the debate in Mexico and the United States about changing paradigms in respect of the rights of migrants.

After the Rapporteur on the subject had read out Chapters VI and VII, the Committee Members had this to say:

Dr. Hernán Salinas noted that the tax issue raised in Chapter VI should encourage the conclusion of agreements on avoiding double taxation. With regard to the recognition of titles/degrees, addressed in Chapter VII, States are entitled to uphold minimal criteria for acquiring them, as well as guarantee that there is no discrimination *vis-à-vis* nationals. Therefore, everyone should observe the prerequisites and requirements.

Dr. José Luis Moreno Guerra pointed out the injustice inflicted on migrants, who, after the effort of working in a country and paying taxes in that country, also had to pay further taxes when remitting part of their wages to family members in their country of origin. As for equivalence of titles/degrees, he said he was concerned about the obstacles to foreign nationals exercising their profession and using their know-how in the host country, especially considering their scant resources.

Dr. Hernán Salinas referred specifically to Article 47, aimed at avoiding double taxation. In his view, the topic would be better addressed in a treaty specifically about taxation. As for recognition of

titles/degrees, States had a social responsibility to respect standards guaranteeing the responsible exercise of professions, as well as the suitability of professionals.

Dr. Carlos Mata Prates had the impression that the Rapporteur's proposal in Chapter VII had not been achieved in any integration process in the Americas. While he sympathized with the objective, he explained that no integration process had managed to agree on the criteria for recognizing titles/degrees or on the criteria for practicing a profession. As an example, he cited doctors and attorneys, who, in some countries, could practice after receiving a degree, while in others they had to pass an exam.

He further proposed that Article 55's equivalence of training standards be accompanied by other mechanisms for smoothing out discrepancies between countries, because these were very complex matters, for which no solutions had yet been found. He suggested amending the wording of the proposed provisions and using expressions such as "equivalence will result" or "equivalence will be proposed."

Chapter VIII gave rise to the following comments:

Dr. Carlos Mata Prates noted that the extradition concept did not belong in Article 77, because it was a question of someone requested by another country because he was suspected of having committed a crime. Dr. Elizabeth Villalta seconded that opinion.

Regarding Chapter IX, the Members had the following to say:

Dr. Hernán Salinas noted that Article 86 dealt with civil status, which is subject to internal regulation and falls within each State's exclusive sphere of competence. It should not therefore figure in the instrument proposed by the Rapporteur.

Dr. José Luis Moreno Guerra acknowledged that his proposal affords an opportunity to change domestic laws and benefit States that lack a similar provision. In addition, he stressed that he knew of no Constitution that bans recognizing domestic partnerships, which are a universal trend. He underscored that marriage was deliberate and possessed three core characteristics: it was (i) religious; (ii) contractual; and (iii) involved a social commitment.

The Chairman thanked the Rapporteur for his proposal. He noted the importance of having "Guidelines" rather than "an Agreement" as the best way to represent a collective view of the Committee members in an area fraught with difficulties. He also urged the rapporteur to work with Committee members, especially Hernán Salinas and Carlos Mata, who had come up with valid comments designed to facilitate the drafting of a document that is realistic and practical. He said approval would be left pending for the next working session of the Inter-American Juridical Committee.

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8. 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.

At the 84th regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2014), the rapporteur for the issue, Dr. David P. Stewart, sought the Committee's opinion on steps to be taken with respect to the General Assembly mandate on this issue. He said several other regional organizations, such as the European Union, had submitted a set of principles, all of which have been included in the Juridical Committee's report.

The new mandate could therefore be interpreted to be a request for a model law to be prepared. The rapporteur felt nonetheless that it would be better for a more in-depth study of the principles to be done. He argued that it would be very difficult to develop a model law as there were many ways to deal with the matter, since the countries of the Hemisphere had chosen different ways to follow up on this issue.

A detailed explanation of those principles with a view to the Member States accepting and applying them would be more suitable than proposed model legislation. Each State would thus decide how best to amend its legislation.

Thanking the Rapporteur, the Chair said he was in favor of a legislative guide.

Dr. Mata Prates said that this is one of the important issues in the hands of the Juridical Committee. He noted that the hemisphere had made significant progress on access to public information, but that more progress needed to be made in terms of the protection of personal data. Regarding the work to be done, he proposed a guide and a model law be done, and that in every instance it would be useful to mention the impact on the interpretation of the countries' constitutional rules.

Dr. Lindsay shared about the work done in Jamaica by Parliament, and undertook to study the matter further.

Dr. Moreno Guerra quoted from the Romans who had said "give me the facts and I will give you justice." The facts are already there; we would stand naked before the states and the prospects for privacy protection. Progress in access to information, computers, and the Internet have transformed the system. His understanding was that the Committee could take the lead on this issue, as what was being pursued was a pioneer effort. He proposed that a declaration of principles be produced, rather than a model law.

The Chair pointed out to the existing underlying agreement on the merits, and suggested starting with a definition of principles, and then either a guide or a declaration. While principles are important, how they are to be presented should be discussed as well.

Following this, Dr. Dante Negro reported on the event held in Guatemala with the Ibero-American Personal Data Protection Network, for which the OAS obtained observer status. He said there were apparently various schemes, the European System being the most comprehensive on several levels. The United States also had a more sector-specific scheme. Meanwhile, the system established in Latin America based on *habeas data* involves an aggrieved person filing a claim with the courts and then being granted access to personal information in databases in order to correct and update the information. Reminding the Juridical Committee Members that a Guide to Principles for access to information and protection of personal data had already been produced, he argued that the General

Assembly mandate was broad and gave the Committee enough latitude to either develop the principles or work on an explanatory guide to the principles already adopted.

Dr. Villalta said she had taken part in the meeting of the Ibero-American Network as a representative of her State. She noted the importance of striking a balance between access to information and protection of personal data, and pointed to the importance the country delegates had ascribed to the report that was with the Committee.

Dr. Novak, explaining that the mandate issued by the General Assembly was not specific in its wording, said that the mandate referred to "various ways of regulating" data protection. He therefore asked the staffers who had attended the General Assembly about the spirit of the mandate.

Dr. Dante Negro said the resolution on access to information and data protection was submitted by the delegation of Peru; and because the mandate was not discussed, there were no further details on the resolution. He noted at the same time that within the CAJP the expectation was that model legislation would be drafted.

The Rapporteur agreed with the information shared by Dr. Dante Negro. Given its complexity, the issue of privacy was more of a challenge than access to information, even though the model itself was considered. But he felt privacy would be too broad an idea and, thus, difficult to implement. Hence his doubts with respect to the final outcome. The Rapporteur said he had consulted with various stakeholders engaged in the issue. Specific guidelines should be provided for legislators when the work is completed.

At the end of the discussion, the plenary of the Committee decided to change the title of the mandate to reflect its specificity: "Protection of personal data", mindful that the Committee has already worked on access to information.

At its forty-fourth regular session (Paraguay, June 2014), the OAS General Assembly reiterated the mandate from the previous year and instructed the Inter-American Juridical Committee 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", prior to the forty-fifth regular session of the General Assembly. The General Secretariat and the Inter-American Juridical Committee were also instructed to continue "promoting channels of collaboration with other international and regional organizations currently undertaking efforts on the matter of data protection, in order to facilitate the exchange of information and cooperation

During the 85th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August, 2014), the rapporteur was unable to attend due to health issues. Nevertheless, he remitted the report entitled “Privacy and Data Protection,” document CJI/doc.465/14, which summarizes the current status of research in that field and the rapporteur’s commitment to provide legislative guidelines for the Committee’s next session. Given the rapporteur’s absence, Chairman Fabián Novak suggested addressing the matter during the 86th regular session, in March 2015.

On December 4, 2014, Dr. David P. Stewart made a presentation before the Committee on Juridical and Political Affairs of the OAS where he explained the advances made in the study concerning the mandate assigned to the Juridical Committee through the General Assembly’s Resolution on Access to Public Information and Personal Data Proteccion, document AG/RES. 2842 (XLIV-O/14). On the same opportunity, Dr. Steweart presente the document “Principles on Privacy and Personal Data Protection in the Americas”, document CP/CAJP/INF – 244/14, in which he shows the advancements in the subject which will be presented at the 86th Regular Sessions, on March, 2015.

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9. Law applicable to international contracts

Documents

CJI/doc.464/14	Law Applicable to International Contracts (presented by Dr. Ana Elizabeth Villalta Vizcarra)
CJI/doc.466/14 rev.1	Inter-American Convention on Law Applicable to International Contracts (presented by Dr. Gélin Imanès Collot)

At the 84th regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2014), Dr. Elizabeth Villalta introduced a new topic, which had not been on the agenda established in August 2013. In that connection, she presented a document entitled "Private International Law" (CJI/doc.446/14) aimed at promoting certain conferences held under the purview of the CIDIP, in particular the Convention of Mexico on the Law Applicable to International Contracts, ratified by two OAS Member States. She briefed the plenary on her participation in the ASIDIP Symposium, where she observed an interest in that Convention on the part of private international law experts, which proposed innovative and modern solutions in international contracts.

Among reasons for such few ratifications she cited the lack of promotion and awareness about it and the fact that back then (1994) these solutions would have been too novel; the provision for autonomous free will; and the reference to *Lex Mercatoria*. Her conclusion was that Mexico could settle many international contracts problems with the Hemisphere's own solutions.

Dr. Novak also thanked Dr. Villalta for keeping the Committee abreast of developments in private international law. Dr. Salinas joined in commending Dr. Villalta and asked whether the fact that it had not been ratified could be because other international instruments may have superseded the Convention or the need for it.

Dr. Stewart commended Dr. Villalta as well, and explained his interest in studying the instruments on international contracts, including ways to facilitate the dissemination and ratification of the Convention of Mexico.

Dr. Dante Negro, who also took part in the ASIDIP meetings, noted that there was consensus that certain Conventions adopted by the CIDIPs, particularly the 1994 Convention of Mexico, needed reviewing. He noted the interest in having Inter-American Juridical Committee support to disseminate those conventions.

Dr. Dante Negro also spoke about the last CIDIP and the impasse about consumer protection, as well as the States' lack of agreement on holding another CIDIP. He said no specific new resolution on CIDIPs had been adopted, in terms of new topics or finding a solution to the consumer issue. He said the Department of International Law had informally approached states to promote ratification of the Conventions on Private International Law.

Meanwhile, Dr. Arrighi, who has also took part in the ASADIP meetings, noted that some members of the ASADIP held senior positions with their governments and never suggested ratification of the Conventions was a priority. He added that doing protocols or amendments to conventions already signed and ratified would depend on the willingness of States Party. A review of the Convention of Mexico should therefore be proposed by Mexico or Venezuela - the only ones to have ratified it. Finally, he noted the important role played by the Inter-American Juridical Committee in creating a network of experts who supported initiatives in this area.

Dr. Salinas said what Dr. Arrighi spoke about was important to understanding why the Convention had not been ratified by a significant number of countries. He pointed out further that if consultations were to be held, they should include experts and practitioners in this field.

The Chair said that some consensus was already developing: Firstly, on keeping the issue on the agenda for August; Secondly, that a study of the convention would be useful; and thirdly, that consultations should be held with the states and experts and practitioners as well.

Dr. Collot hailed Dr. Villalta for proposing this topic. He said Dr. Villalta had touched on several concepts that were important to private international law, particularly the concept of *Lex Mercatoria*.

Dr. Villalta said that the position of the members of the ASIDIP was that the Committee could play a key role in the promotion of private international law.

The Chair said that if all the members so agreed, the consultations and studies ought to move forward.

The Members of the Juridical Committee decided to change the title of the new mandate from "Private International Law" to "Law applicable to international contracts." During the 85th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August, 2014), Dr. Elizabeth Villalta presented another report, entitled “Law Applicable to International Contracts,” document CJI/doc.464/14, which refers to all the Conventions on Private International Law adopted at the Inter-American Specialized Conferences on Private International Law (CIDIPs). She pointed out that the Mexico Convention of 1994 had been the subject of intense negotiations, including a meeting of top-level academic experts to develop its legal and structural foundations.

Dr. Villalta pointed out that over the years numerous leading jurists have praised the aforementioned Convention. Professor Bréton, for instance, had proclaimedthat “post-modern expression par excellence of Private International Law is achieving the most solid progress in the field.” For her part, Professor Albornoz had voiced her view that “The Convention constitutes significant progress in the codification of private international law in America, because it unifies conflict of interest provisions in contract law by adopting modern solutions, tailored to constantly shifting international trade practices.”

She explained that despite those favorable comments, some countries indicated that the translations of the Conventions were not particularly felicitous, and that that was an obstacle to its ratification. However, she mentioned that there were ways of correcting those deficiencies, so she suggested that the Committee bring countries' attention to the mistakes.

She said the Convention needed to be more widely disseminated, especially considering the current importance of international contracts and international arbitration. The conventions on this subject could resolve many of today's legal issues, such as the free will (contractual freedom) principle. This principle had been incorporated into Venezuelan legislation and in a bill (draft law) in Paraguay. Thus, material incorporation could, she said, be the path to reception of the principles enshrined in the Convention.

Finally, she said that the benefits of the Convention included receptivity to the principles of *lex mercatoria* and various other principles developed in international forums and trade customs and practices.

The Co-Rapporteur on the subject, Dr. Gélin Collot, gave an oral presentation of his report, called "Inter-American Convention on Law Applicable to International Contracts,” document CJI/doc.466/14 rev.1. He highlighted the applicable legal instruments and broadly compared the inter-American instrument with the European Treaty. He also expounded the principles regarding determination of the consent of the parties and the equivalence or near-equivalence of the considerations. He noted that the Convention on the Law Applicable to International Contracts does not cover extra-contractual obligations derived from the performance of contracts. Accordingly, he proposed directing the discussion toward the possibility of expanding the domain of applicable law under the Convention.

Regarding the translations, Dr. Arrighi said there had been no clear indication of where errors had been committed. In his view, the problem had to do with the difficulty of reconciling the vehicles

used for solutions: uniform laws and uniform conventions. In that connection, and recalling the views of the eminent jurist Eduardo Jiménez de Arrechaga, he noted that the importance of a convention lay not in the number of States that ratified it but in the practical uses to which it was put. He suggested that the problem could be resolved by devising new legislative vehicles.

Dr. Hernán Salinas said he agreed with Dr. Arrighi that there was a substantive issue at stake that maybe explained why the Mexico Convention had not been ratified. Failure to ratify signaled disinterest in the Convention. For that reason, he suggested pondering Dr. Arrighi's query about pursuing new legislative initiatives. He also suggested verifying with Member States and operators their views about their interest regarding the adoption and ratification of legal instruments concerning contracts through a questionnaire.

The Chairman pointed out that silence with respect to ratifying was in itself a form of political response. Dr. Salinas said that some instruments adopted in The Hague suffered the same fate as some of the inter-American conventions, in the sense of being ratified by only a handful of States.

Dr. Elizabeth Villalta pointed out that her report mentions the possibility of incorporating solutions (developed in the Convention) into domestic law, as Venezuela had done and Paraguay was in the process of doing.

Dr. Pichardo said he agreed with Dr. Salinas's proposal of consulting the States.

The Chairman then proposed, as a way of concluding this discussion that the rapporteurs consult the States, including practitioners and academics, about the interest that represents such legal instruments, and that they come up with pertinent questions for the Secretariat to distribute in the form of a questionnaire. This proposal was adopted by the plenary.

Following are the reports submitted:

CJI/doc.464/14

LAW APPLICABLE TO INTERNATIONAL CONTRACTS

(presented by Dr. Ana Elizabeth Villalta Vizcarra)

I. MANDATE

Bearing in mind that, at the 84th Regular Session of the Inter-American Juridical Committee, held in Rio de Janeiro, Brazil, from March 10 to 14, 2014, the undersigned introduced the topic entitled "Inter-American Convention on the Law Applicable to International Contracts," known as the Convention of Mexico of 1994, as, pursuant to Article 99 of the Charter of the Organization of American States, an initiative to promote the progressive development and the codification of Private International Law.

It was deemed useful to review some International Private Law Conventions signed in the framework of the Inter-American Specialized Conferences on Private International Law (CIDIP), in order for Member States of the Organization to take advantage of and benefit from the novel solutions proposed in those Conventions.

As a point of reference for this review and analysis process, it was decided to take the aforementioned Inter-American Convention on the Law Applicable to International Contracts (Convention of Mexico) as it constitutes a significant advance toward harmonization of the legal systems of the States comprising the inter-American system by unifying provisions regarding conflict of laws on contractual matters and tapping modern solutions adapted to constantly changing international circumstances.

In the discussion of the Report, the Inter-American Juridical Committee agreed on the importance of the topic for the codification and progressive development of Private International Law and that it would remain on the Committee's agenda as "Law Applicable to International Contracts."

As one of the rapporteurs on the subject, I hereby present the following rapporteur's report.

II. BACKGROUND

As in the previous report presented to the Inter-American Juridical Committee at its 84th regular session, it is worth recalling that the Fifth Inter-American Specialized Conference on Private International Law in 1994 was particularly important in the CIDIP process, because by that time Canada and most of the Caribbean States had joined the OAS, which meant that the Organization was confronted with the challenge of harmonizing *Common Law* and *Civil Law*. Furthermore, for the first time, there were Meetings of Experts, such as the one convened on the subject of International Traffic in Minors in Oaxtepec, Morelos, Mexico from October 13 to 26, 1993, and the Meeting of Experts on international contracts held from November 11 to 14 of that same year in Tucson, Arizona, United States of America. The latter was co-sponsored by the National Law Center for Inter-American Free Trade and resulted in the approval of a draft to be worked on at CIDIP-V, particularly by the delegations participating in Committee 1.

The Fifth Inter-American Specialized Conference on Private International Law adopted two Conventions: a) the Inter-American Convention on International Traffic in Minors and b) the Inter-American Convention on the Law Applicable to International Contracts. At the time, both were regarded as being of vital importance for the Organization of American States.

Already existing documents taken into account in the drafting of the Inter-American Convention on the Law Applicable to International Contracts include: United Nations Convention on the International Sale of Goods (CISG), Viena, 1980; the Rome Convention of June 19, 1980 on law applicable to contractual obligations, the Convention of The Hague of December 22, 1986 on the law applicable to contracts for the international sale of goods, the Montevideo Conventions of 1939-1940 and 1889-1890 regarding the determination of the law applicable to international contracts, the Bustamante Code of 1928, especially Title Four thereof, which contains provisions on international obligations and contracts, and the legislation of the Member States.

Due to the fact that these instruments into account, the Inter-American Convention on the Law Applicable to International Contracts, known as the "Mexico Convention," is based on the Principle of Party Autonomy and on modern tendencies, because contracts are governed by the law chosen by the parties.

This Convention is a result of the codification and progressive development of International Law and it is worth underscoring the importance of the work done in this area by the OAS. Since 1975, when the series of Inter-American Specialized Conferences on Private International Law (CIDIP) began, it has devoted itself to harmonizing Private International Law provisions in the region, including international contract provisions.

As the text of the Inter-American Convention on the Law Applicable to International Contracts indicates, its principal purpose has to do with the diserability of harmonizing and modernizing international trade arrangements.

In that sense, the Inter-American Convention on the Law Applicable to International Contracts constitutes, in the words of Venezuelan Professor and Jurist Eugenio Hernández Bretón, “the post-modern expression par excellence of Private International Law, the most solid progress to date in this field."

For her part, María Mercedes Albornoz, the Argentine professor and jurist currently residing in Mexico, has stated that: "The Convention constitutes significant progress with the codification of Private International Law in America, because it unifies the provisions on conflicts in laws applicable to contracts and adopts modern solutions tailored to the constant changes in international trade practices."

The Paraguayan professor and jurist, José Antonio Moreno Rodríguez, has said: "The modernity of the solutions found in the Inter-American Convention on the Law Applicable to Commercial Contracts has been greatly admired. It has been regarded as a highly important regulatory reform worthy of being ratified and incorporated by other means into countries' domestic legislations."

The Argentine jurist Diego Fernández Arroyo wrote in his article on the Inter-American Convention on the Law Applicable to International Contracts adopted by CIDIP-V: "some roads lead beyond Rome," meaning that this Convention transcends the Rome Convention in its

openness to transnational law, even though the Rome Convention had been considered one of the most successful conventions for resolving conflicts in modern times.

The Convention of Mexico constitutes an important contribution by the Americas to the development of International Law: one of a series of contributions that have achieved in some case universal impact. In that regard, the part played by the OAS in the codification and progressive development of International Law through the CIDIP Conferences has been fundamental, because it eschewed the global codification technique in favor of a sectoral and progressive approach, above all on specific issues that matter most to the Organization's Member States, while at the same time harmonizing the region's two legal systems -- *common law* and *civil law* -- in an attempt to consolidate the codification of American Law.

It is worth pointing out that this Convention refers to the latest forms of international contract, in order to permit even the inclusion of transactions carried out through the exchange of electronic data or by computer: that is to say all kinds of contractual relationships, including ones that may arise in future.

The Inter-American Convention on the Law Applicable to International Contracts was signed by Bolivia, Brazil, Mexico, Uruguay, and Venezuela, but ratified only by Mexico and Venezuela. It entered into force on December 15, 1996, pursuant to its Article 28. So far, no member state has entered any declaration of reservation.

It was one of the Inter-American conventions for which the Organization of American States worked hardest to secure adoption: it was preceded by a questionnaire circulated to all the Member States, a source document containing supporting documentation, a draft text of the Convention prepared by the Inter-American Juridical Committee, a Meeting of Experts in which a draft was adopted, and the CIDIP-V conference itself. Despite all that, only two OAS Member States have ratified it, even though ideally all the Member States should ratify it so as to make the most of the instrument's unifying potential.

Here it would be useful to determine what has stopped the OAS Member States from ratifying it. Some experts say they are convinced that the reason is lack of information and dissemination of its contents and of how the countries in the Inter-American system might apply the solutions provided by this Convention. That work could prove easier now thanks to the progress made in recent years with arbitration and because conditions are no longer the same as in 1994, the year the Convention was adopted. Other experts have stated that the solutions offered in this Convention might not be well-balanced for States on the weaker side of a contractual relationship.

Despite the above, as a Convention in force in the Inter-American system, it achieves its purpose of unifying Private International Law applicable to international contracts by being an international treaty, through "incorporation as a point of reference" (“Incorporación por Referencia”): a practice employed by various States which adopt rules of interpretation from a number of articles in different treaties. As Professor Hernández Bretón has shown, "this is a form of unilateral acceptance of the international treaty without an obligation being created for the State that adopts that approach, which then gives rise to autonomous rules of law." A number of States have resorted to this when they have incorporated rules of interpretation from a number of articles in different treaties.

There may also be room for "material incorporation," meaning complete transcription of the treaty in a domestic law, i.e. a process of acceptance that turns international law into domestic law, thereby unifying solutions without creating international obligations for the receiving State.

Professor Hernández Bretón also highlights another kind of incorporation, which consists of "incorporation of the underlying tenets (Principios Informadores) by a process of law and residual application of the general principles of the Inter-American Convention on the Law Applicable to International Contracts."

This was how Venezuela, for instance, incorporated the underlying tenets of the Convention in its International Private Law Act of 1998. Unlike "material incorporation", it was not a question here of copying whole articles of the Convention, but rather of taking it as a basis for achieving domestic legislation regarding international contracts. In this scheme, the

Convention supplements the law and, in addition, becomes a key element for interpreting and implementing the solutions provided in the law.

Thus, Venezuela, for its part, has incorporated these solutions into its International Private Law Act of 1998, in addition to ratifying the Inter-American Convention on Law Applicable to International Contracts, and Argentina, for its part, has resorted to the CIDIP's as a source of law when it came to planning reforms of its civil codes.

The CIDIP's are a constant source of reference for legal doctrine, jurisprudence and domestic legal reform in the countries of the Americas, so much so that many of the solutions found in its Conventions have been used as points of reference for model laws, as guidelines for legislators on questions of Private International Law.

III. CONSIDERATIONS

Given all these contributions, the OAS Member States need to take another look at the Inter-American Convention on the Law Applicable to International Contracts as a unifying element of Private International Law applicable to international contracts, thereby helping to ensure that the legislations of the States adapt to the requirements of today's world, unifying provisions regarding conflicts of laws relating to contracts, and using modern solutions tailored to the constant changes taking place in international trade practices.

While the above is true, it represents the abandonment of the closed conflictualism (choice-of-law mentality) embodied in previous conventions in favor of a flexible conflictualism aimed at achieving substantive justice, and that could make it difficult for States to ratify the Inter-American Convention on the Law Applicable to International Contracts. In that case, they could adopt any of the forms of "incorporation" and thereby benefit in their domestic laws from the modern solutions offered by this Convention.

It must also be borne in mind that in the Feasibility Studies of the Hague Conference on Private International Law regarding the Choice of Law Applicable to International Contracts, the 1994 Convention of Mexico was a source of inspiration for the "Hague Principles on Choice of Law in International Contracts."

It is thanks to the important part played by the Convention of Mexico of 1994 in the progressive development of Private International Law regarding international contracts that it can be incorporated via ratification or via the adoption of a law that captures its spirit and provisions (as in the case of several Latin American countries.

One must bear in mind that the Inter-American Convention on the Law Applicable to International Contracts refers to applicable law in a general sense ("derecho aplicable") not any specific applicable law ("ley aplicable"). Not only is the former term more appropriate in Spanish. It is also broader, because it encompasses in its regulation international practices, the principles of international trade, "*lex mercatoria*," and similar expressions.

This involves the broadest possible application of the Principle, which is embodied in Article 7 of the Convention, which establishes that: "The contract shall be governed by the law chosen by the parties," whereby the Parties are accorded full autonomy to choose the law applicable to the contract. In that way, the Principle of Party Autonomy serves as the fundamental or principle axis of the Convention, upholding Party Autonomy in its broadest sense: an enormous step forward compared with the traditionalist territory-based approaches that held sway for so long in the Americas.

As mentioned above, this Convention adopts, as a fundamental principle, the autonomy of the parties to choose the law governing the contract, that is to say, the Party Autonomy principle, which is basically the principle adopted by the more recent conventions on the matter and by the more advanced domestic legislations.

In the 1994 Convention of Mexico, the Party autonomy is a substantively novel solution in that it reflects still evolving case law on contracts, substantive law, and comparative jurisprudence, i.e. the contemporary trend in this field.

The acceptance of the Party Autonomy in litigation constitutes a milestone in the Inter-American context, as the governing criterion in rules for international contracts, and its introduction may require adjustments to individual countries' Private International Law systems.

Article 10 of the Convention requires the application, where appropriate, of the guidelines, customs, and Principles of International Commercial Law as well as generally accepted commercial usage and practices, in order to discharge the requirements of justice and equity in a particular case. This Article ties in closely with Article 9 of the Convention, so that it should be construed as a complementary solution.

Lex Mercatoria is virtually the new law governing international trade operators. For Mexican professor and jurist Leonel Pérez Nieto, *Lex Mercatoria* comprises the usage, customs, practices, and principles generated by international trade inasmuch as they constitute a set of norms established in a decentralized manner by international, not necessarily governmental, groups or bodies and adopted by trade operators as rules governing legal relationships among themselves, which in the process become law agreed upon by the parties." Such law could eventually be recognized by States' domestic legal systems and incorporated into domestic law.

Some of the international organizations referred to in Article 9 of the Convention are, for instance: UNICITRAL (United Nations Commission on International Trade Law), UNIDROIT (International Institute for the Unification of Private Law), the ICC (International Chamber of Commerce), and so on. In addition, it is worth bearing in mind that the UNIDROIT Principles of International Commercial Contracts are generally regarded as a codification of *Lex Mercatoria*.

In light of the above, it is necessary to determine whether or not it is advisable for the Member States of the Organization of American States to ratify this Convention or suggest that it be incorporated into the domestic laws of the States, bearing in mind, in particular, that the Convention paves the way for a modernization of the rules governing international contracts in the Americas, or else go the Venezuelan way of both ratifying the Convention and incorporating it into domestic legislation.

While it is true that back in 1994 the Convention put forward entirely modern solutions to the region's inflexible conflicts of Private International Law, we must take into account the fact that we are now focusing on new kinds of international contracts and international arbitration, seeking solutions in international systems, and abandoning regional systems.

It is useful and necessary to keep both ways of codifying Private International Law open -- that is to say, the CIDIP's and the Hague Conference on Private International Law --- even though they both tend to reach substantively similar agreements, because significant peculiarly American circumstances do exist.

That being so, what appears to be needed is an in-depth analysis by experts from the region of how to take advantage of and benefit from the novel solutions put forward in the Inter-American Convention on Law Applicable to International Contracts, which, as mentioned earlier, has managed to integrate *common law* and *civil law* provisions. Perhaps the best thing would be to adopt a follow-up mechanism to ascertain whether there is uniformity in its interpretation and implementation of a kind that could enrich the legal system governing international contracts in the region.

Also needed is proper dissemination and understanding of the Convention in the Member States of the Organization of American States, especially in the offices and departments responsible for adopting international instruments in the Americas. Thus, to elicit a larger number of ratifications by the Member States or incorporation of the Convention into domestic laws via the Legislature, in order to bring the domestic laws of the States making up the Inter-American system into line with the demands of today's international contracts.

As this Report has contended, the Inter-American Convention on the Law Applicable to International Contracts represents a significant step forward in attempts to harmonize the legal systems of the States making up the Americas, thereby asserting and facilitating their harmonious coexistence.

It is a novel and current instrument that has helped to revolutionize Private International Law in the region and even promoted the universal system to reformulate its solutions in the field of international contracts. It represents a significant step forward in the codification of Private International Law in the Americas, because it unifies standards with respect to conflicts of law relating to contracts and takes modern solutions into account.

As we saw earlier, this novelty is reflected in the Convention's upholding of the broadest form of the Party Autonomy Principle; in its application of the Proximity Principle, under which applicable law is determined in accordance with the idea of closest ties; and in its application of *Lex Mercatoria* to the regulations governing international contracts, by including usage, customs, practices and general principles of international trade.

As mentioned above, the Inter-American Convention on the Law Applicable to International Contracts has been ratified only by Mexico and Venezuela. Ideally, other States in the Americas should also ratify it, so as to be able to take advantage of the novel solutions this Convention contributes, thereby benefiting international contracts concluded in the inter-American system.

Paraguay recently submitted to its Congress a bill on the Law Applicable to International Contracts, which aims to endow that country with a set of norms embodying the principles regarding the law applicable to transborder contracts which were taken from the Principles of Party Autonomy in International Contracts recently adopted at the Hague Conference on Private International Law and from the Inter-American Convention on Law Applicable to International Contracts (Convention of Mexico of 1994), which was a source of inspiration for the Hague Principles.

In its preamble, the Paraguayan bill establishes that, thanks to the important part played by the Convention of Mexico of 1994 in the progressive development of Private International Law, it can be incorporated via ratification or via the adoption of a law that captures its spirit and provisions (as in the case of several Latin American countries). For that reason, the Paraguayan bill incorporates the spirit and strengths of the Mexican Convention of 1994, as well as the advances achieved by the Hague Conference.

An analysis of the text of the bill indicates that most of its regulation are taken from the Inter-American Convention on Law Applicable to International Contracts (Convention of Mexico of 1994) and from the Hague Principles on international contracts.

In light of the above, it would be advisable for the States comprising the Inter-American System to have novel legislation with which to confront the new challenges posed by international contracts. As this Report has pointed out, circumstances in 1994, when the Inter-American Convention on Law Applicable to International Contracts (Convention of Mexico of 1994) was negotiated, were very different from today's. Hence the need for modern bodies of law in sync with the latest types of international contracts.

Reviewing the text of the Inter-American Convention on the Law Applicable to International Contracts (Convention of Mexico), some States claim that the English translation of it does not fully match the Spanish version and indeed differs on substantive matters, so that the versions in all the official languages of the Organization should be reviewed, as that may have been an obstacle to the Convention's ratification.

In conclusion, this Report has pointed to the Hague Conference as the universal system for codifying Private International Law. It has also indicated that the Hague Principles on Choice of Law Applicable to International Contracts draw on provision established in the Inter-American Convention on Law Applicable to International Contracts (Convention of Mexico). So do the more original and avant-garde legislations on international contracts in the region, via the incorporation of its major principles.

Thus, if we already have, in the Inter-American System, a Convention on the subject negotiated by eminent jurists from the region immersed in both *common law* and *civil law*, the best path for the region to take in the codification and progressive development of Private International Law would be to ratify said Convention, which, as we have seen, has been a source of inspiration for codification in the universal system because of the novel solutions it brings to this field, while harmonizing provisions governing international contracts in the region.

For this reason, OAS Member States should review the text of said Convention and see that it puts forward the best solutions in the area of international contracts. Ratification in no way precludes States that so wish from incorporating it into their domestic laws, as Venezuela did in its Private International Law Act of 1998, as Paraguay is doing in its bill before congress, and as many other States in the region are doing, by including its principles in their civil codes.

ACRONYMS AND ABBREVIATIONS

CIDIP's Inter-American Specialized Conference on Private International Law.

ICI: International Chamber of Commerce

CJI: Inter-American Juridical Committee

UNCITRAL United Nations Commission on International Trade Law.

OAS: Organization of American States

UNIDROIT: International Institute for the Unification of Private Law

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CJI/doc.466/14 rev.1

INTER-AMERICAN CONVENTION ON LAW APPLICABLE TO INTERNATIONAL CONTRACTS

(presented by Doctor Gélin Imanès Collot)

CONTENTS

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INTRODUCTION

International contracts are the topic that causes most preoccupation in the sphere of Private International Law. These demand the attention of the parties that take on these commitments and consequently of the jurists who contribute to them in more than one way. Many questions arise concerning the signing of such contracts, their execution, the solution to the controversies that they

produce, and above all the applicable law in the cases of divergence between juridical systems, without ignoring competence in cases of conflict of jurisdiction, etc.

The thorny questions posed by the very nature of the law of international contracts are complemented by a great variety and diversity of commercial contracts as a consequence of the ingeniousness of the parties, their total autonomy and contractual freedom. In this context the law of the parties is perhaps reaffirmed with the same authority as the national law of each party.

International contracts are conventions adhered to by parties in circumstances that oblige one or more foreign elements. Such elements may derive from the nationality or domicile (residence) of each of the parties to the contract, the place where the contracts are signed in relation to where they are carried out, the situation of the goods that are the object of commitments, etc.

The law of parties that arises from the international nature of these conventions proposes, among other things, that the applicable law involve its clauses and effects. This problem is addressed in the international legal instruments dealing with the determination of applicable law. The growing interest that arises from this thorny question leads to the emergence of a conventional law directed towards bipolarization of international legal instruments, some of these of general scope and others of regional importance.

With a more informative than comparative focus of complementarity, it seems opportune to begin with an overview to remind us of the main international juridical instruments on applicable law that could apply to some Member States of the OAS (I). This will entail a brief reading of the Inter-American Convention on Applicable Law in order to extract the principles derived from this juridical instrument of regional scope (II).

I. International juridical instruments on applicable law

The international contracts on Commercial Law deal above all with a large production of several types of norms (uses, custom, rules and uses, type laws, agreements, conventions and treaties, agreement protocols, etc.) that constitute international legal instruments in the full sense of *lex mercatoria*. Some are not written (mostly uses and customs); others are written and codified (rules and uses, Incoterms), and published on the initiative of international organizations as diverse as the United Nations Committee on Trade Law (UNCITRAL), International Chamber of Commerce (ICC), the Center of International Trade (CCI) and the International Institute for Unification of Private Law (UNIDROIT), among others.

For certain procedures of codification of the International Chamber of Commerce, the Center of International Trade has created a software called “LegaCarta”, which contains an inventory of 244 international juridical instruments related to trade and international contracts; it is updated according to the plans of the Member States with regard to ratification and is made available to interested parties.

At a first stage, the juridical instruments in the inventory of the LegaCarta would have to be simplified and a selection made of those pertinent to the determination of law applicable to international contracts (A). In this way, one could proceed to indicate those that have been subscribed and ratified by Member States of the OAS and at the same time assess the degree of integration of regional law in international law (B).

A. Instruments announced by the Center of International Trade in the LegaCarta portal on 193 United Nations Countries

The *LegaCarta* portal contains a list of numerous international juridical instruments. The most important of these are the model laws of the UNCITRAL on trade and electronic signatures, the Convention on the Limitation Period in the International Sale of Goods (New York, United Nations, 14 June 1974), the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980), the United Nations Convention of 2005, the Convention dated 5 July 2006, rules and uses, principles and commercial uses, principles of the UNIDROIT, etc.

In the LegaCarta, the importance and pertinence of these international instruments is shown by means of a grading that goes from zero to five. This qualification corresponds to well-defined criteria. Some of these criteria are objective and refer to the matter or scope of application of such

instruments; others are subjective and refer to the ratification by Party States in the general framework of the United Nations.

Among all these juridical instruments, three stand out as being most important for the theme that concerns us: the Convention on the Law Applicable to Agency (The Hague, 14 March 1978), the United Nations Convention on the International Sale of Goods (Vienna, 11 April 1980) and the Convention of Rome dated 19 June 1980, which is the source of numerous commentaries and seen as an extremely important point of reference in the European Community Law Applicable to Contractual Obligations[1].

From the general framework of the 193 Member States of the United Nations to the regional framework of the 35 Member States of the OAS, an assessment can be made of the pertinence of two of these instruments; also, a juridical reflection can be made to set a balance between the point of view of the international sources of the law of international contracts and a comparative focus of applicable law. This is hard work that requires a great deal of time.

B. Project of a European and Latin-American model convention on applicable law

The Inter-American Convention on the Law Applicable to International Contracts, subscribed in the Fifth Inter-American Specialized Conference on Private International Law (CIDIP-V) held in Mexico on 17 March 1994, is affirmed to have been inspired both in form and depth by the Convention on the Law Applicable to contractual obligations (Convention of Rome dated 19 June 1980). Nonetheless, the age or precedence of an international juridical instrument *vis-à-vis* another, and the resemblance between them does not exactly imply that the first was the source of inspiration for the second, that the first influenced the second or that its paternity can be attributed. The dynamic and creative international order usually addresses common problems of harmonization through standardization.

The Rome Convention became the "Community regulation" for the European Union. Therefore, it is directly integrated into the domestic legislation of the Member States of the European Union and is applied to international contracts between parties domiciled in at least two of those States. It is also applied to the contractual relationships in domestic law (without foreign elements) in which the parties agree that the legislation to be applied is that of a third country. Hence we can infer a universal nature or at least an extra-European opening towards said Convention.

The Inter-American Convention on the Law Applicable to International Contracts (Mexico, March 17, 1994) also contains extra-Latin-American provisions of the same sort. In fact, Article 2 establishes that the legislation mentioned in this Convention will be applied even if said legislation is not the legislation of a non-Party State. The provision on the choice of the legislation of a third-Party State gives rise to great similarities between both instruments and facilitates the existence of a highly useful bridge linking the States of two Continents (the European and the Latin-American ones) in this precise topic of contractual obligations.

On the other hand, the definition of international contracts, understood as the area of applications of two Conventions, highlights a difference when details are appreciated. Contrary to the European model, the Inter-American system does necessarily and undoubtedly include the foreign element in the definition of international contracts. It is then understood that a contract is international, pursuant to the provision of Article 1, if and when the parties of the contract reside or have their headquarters in other Party States, or when the contract has objective contacts with more than one Party State.

II. A quick reading of the Inter-American Convention on Applicable Law

The main purpose sought with the international judicial instruments on applicable law, from the oldest to the most recent, is the harmonization through standardizing and modernizing International Trade Law in the Inter-American area, as seen in Europe with the Rome Convention and in Africa with the creation of the Organization for the Harmonization of Trade Law.

[1.] Mention should also be made of the Convention of The Hague dated 22 December 1986 on the law applicable to international contracts of sale of goods.

The Inter-American Convention on the Law Applicable to International Contracts, signed at the Fifth Inter-American Specialized Conference on International Private Law (CIDIP-V) in Mexico, March 17, 1994, is one of the most relevant international instruments for the harmonization of trade law in Latin America. It was signed by Bolivia, Brazil, Mexico, Uruguay and Venezuela but ratified only by Mexico and Venezuela. By virtue of the ratification of two Member States (Article 28), the Convention has been in force since December 15, 1996.

Contract law in domestic or national legislation varies from one legal system to another and from country to country, so it is easy to get lost. The parties that sign a contract in good faith do not know beforehand how their will is to be interpreted when passing from one national legal system to another, inasmuch as the parties cannot claim to know both systems thoroughly or guarantee infallibly the applicability of one system in detriment of the other.

However, the parties may fill the contractual gap by expressing their sovereign will and indicating that the law to be applied to the agreement will be considered as being the law of the parties. This is the solution promoted by international legal instruments of a general scope, as well as the regional instruments (A). However, if no applicable law is mentioned in the law of the parties, the problem still subsists (B).

A. The principle consecrating the election of the law of the parties

The law applicable is the one chosen by the contracting parties (the law of the parties) in accordance with the principle of Party autonomy. This is always so in the conventions of this kind which are not extremely innovative in this sense. But how is the will expressed or evidenced? Is it expressly or tacitly expressed through the explicit provisions of the contract?

The law of the parties can designate expressly the law applicable to the contract in all its aspects, in case of disputes or in any other situation of lack of understanding in which the interpretation of the details of the contract becomes necessary, and seek for the common will of the parties in the expression of their commitments and obligations. In these cases, the problem on the divergence of legal systems is resolved in a final and efficient manner.

On the contrary, the law of the parties may only focus on tacit references to the right of one of the two parties in the text of certain provisions. This leaves room for interpretations, with all the risks that implies, and for the sovereign appreciation of the judge, thus complicating the situation for the parties themselves or for any other person (a specialist) who reads the contract outside the judicial framework.

B. The law applicable to the interpretation of the contract

In the absence of applicable law or when the legislation chosen is not applied or does not provide the desired results, the judge will apply, in an objective manner, the governing law during the circumstances in which the contract was drafted or executed or, in a subjective manner, the law that most approximates to the parties or the characteristic obligations, the law of proximity or the principles of the *lex mercatoria* (usages, customs, rules and usages, principles, and so on). The most common and practical case is the use of Incoterms in agreements addressing the international purchase of goods.

1. Determining the common will of the parties

In all contractual relationships subject to interpretation and submitted to the sovereign appreciation of a magistrate, the common will of the parties is sought. If necessary, this search may help to discover the parties' intention of making implicit reference to a legal system applicable to the contract. To that end, a binding clause designating, for example, an arbitration institution of a host State or a judicial organ with jurisdiction by virtue of the domicile or the nationality of one of the parties, could be interpreted as alluding to law or statute applicable, in accordance with the principle *qui elegit judicem, eligit ius principe*. However, regarding the Convention, those references do not exactly imply a designation of the law or of the applicable statute.

2. The principle of proximity or of characteristic obligations

As the contractual relationships create reciprocal rights and obligations (synallagmatic or reciprocal contract), each one of the parties expects the fulfillment of one or more obligations as a

counterpart of their own obligations. However, there are certain, highly relevant obligations in the contract or the situation of one of the parties: the characteristic obligations, when they are more or less traceable, for example, the delivery of goods to a certain location, the performance of engineering works and any other obligations referring to real-estate property, in accordance with the terms of the contract.

CONCLUSION:

The Convention on the Applicable to International Contracts is limited to contractual obligations. It does not take into consideration extra-contractual obligations. However, some extra-contractual obligations originate in the performance of the contracts; for example, criminal liability in the cases in which the goods resulting from the implementation of a contract cause damage to third parties (consumers, for example), the return of quantities unduly received, and so on.

In our modest opinion, it is important to turn our thoughts in this direction and see if the scope of the applicable law can be extended to the contractual sphere. In this regard, we may cite, with no guarantee at all, the Convention on the Limitation Perior in the International Sale of Goods (New York, United National, June 14, 1974).

Summarizing, it is essential to think about this in any case. This thought is the basis of all the dealings and actions in favor of commitments, through the adhesion to and ratification by the OAS Member States of the Convention on the Law Applicable to International Contracts (Mexico, March 17, 1994), which, in this case and in many others, could be included in the domestic legislation in two manners, depending on where we are, whether in a monistic or dualistic system: direct integration or applicable law. In the second case, the Inter-American Juridical Committee could be in charge of drafting a model law.

10. Prevention and reduction of statelessness and protection of stateless persons in the Americas

At the forty-fourth regular session (Asuncion, Paraguay, June 2014) the General Assembly issued a new mandate and instructed the Inter-American Juridical Committee to draft, in consultation with the Member States, "a set of Guidelines on the Protection of Stateless Persons, in accordance with the existing international standards on the topic", document AG/RES. 2826 (XLVI-O/14).

During the 85th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August, 2014), the Chairman, Dr. Fabián Novak Talavera, noted the need to choose a rapporteur on the issue assigned to the Committee by the General Assembly, when it mandated preparation of Guidelines on the Protection of Stateless Persons.

Dr. Miguel Aníbal Pichardo stated his objections to a preliminary document presented by Dr. Gélin Imanès Collot, registered as CJI/doc.467/14 of July 30, 2014. He explained that the aforementioned paper did not fulfill the OAS General Assembly mandate, because it dealt with the status of persons of Haitian origin in the Dominican Republic. He went on to explain, moreover, that Committee Members were supposed to put forward their own views, not represent the position of their respective States. He therefore requested that certain mentions of specific countries in Dr. Collot's report be removed.

He stressed also that there is no judgment of the Constitutional Court of the Dominican Republic that leaves hundreds of thousands of Dominicans of Haitian origin in the Dominican Republic stateless. The judgment refers to the *status* of one person in particular and requests that steps be taken to regularize that person's situation and grant Dominican citizenship. That ruling did not remove the nationality of the person referred to because that person had never acquired it. He reported, moreover, that the person referred to in the judgment had already acquired citizenship and an I.D. Dr. Pichardo likewise explained that the Dominican State had published a law to facilitate the acquisition of nationality and intended to issue regulations applicable to any Haitian citizen who had lived in the Dominican Republic in the past four years, aimed at regularizing his/her migration status. In that context, he suggested including, in the second paragraph on page 2, a reference to the judgment confirming what he had explained.

Dr. Gélin Imanès Collot suggested including French as a language for discussions in the Inter-American Juridical Committee because he feared that he might be unable to express his thoughts clearly in English. He explained that it had not been his intention to create tension between two countries on the Committee or to substitute for debate among countries in the region. However, he mentioned that everyone was well aware of the dispute between Haiti and the Dominican Republic and of the various impacts of the decision by the Constitutional Court of the Dominican Republic. He ended by saying he was very much interested in complying faithfully with the General Assembly mandate by producing a report highlighting the interests involved in the matter at hand and giving grounds for reflection, taking into consideration the background to this issue, especially resolution AG/RES. 2787 (XLIII-O/13).

The Chairman suggested that Dr. Gélin Imanès Collot revise the document, deleting the mentions referred to as requested, and that he present it to the session scheduled for March. The latter expressed interest in the document serving as a working paper for the rapporteur on the subject. In response to the Chairman's inquiry about the appointment of a rapporteur, Dr. Fernando Gómez Mont suggested Dr. Carlos Mata Prates. This proposal was backed by the plenary and ratified by the Chairman.

Dr. Carlos Mata Prates thanked Dr. Gómez Mont for the appointment and said he intended to follow the same methodology that was used in the mandate regarding the immunity of States, that is to say, sending States a questionnaire to elicit their views, considering that the request was for guidelines drafted in coordination with them.

Dr. Gélin Imanès Collot stressed the need for objectivity in the discussion of these matters and urged that the committee members work together harmoniously.

The Chairman emphasized that there was no problem with Members voicing their positions but, at the same time, he invited them to avoid mentions of situations between specific countries that did not help the Committee fulfill its mandates.

In putting an end to the debate, the Chairman said that the plenary therefore looked forward to conducting, at its next session, an analysis of the States replies to the questionnaire to be drawn up by its Rapporteur and distributed among the States by the Secretariat.

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OTHER TOPICS

1. Model Legislation for the Protection of Cultural Property in the Event of Armed Conflict

Document	
CJI/doc.451/14	Report on Model Legislation for the Protection of Cultural Property in the Event of Armed Conflict (presented by Dr. Ana Elizabeth Villalta Vizcarra)

Although the discussion on this matter culminated in the Committee's adoption of "Model Legislation for the Protection of Cultural Property in the Event of Armed Conflict," document CJI/doc.403/12 rev.5., during its 82^{o} regular session held in Rio de Janeiro, Brazil, in March 2013, at the 84th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2014), Dr. Elizabeth Villalta presented the document entitled “Report on Model Legislation for the Protection of Cultural Property in the Event of Armed Conflict” (CJI/doc.451/14), which provides an account of her presentation before the Committee on Juridical and Political Affairs, which was designed to explain the aforementioned model legislation to the representatives of the OAS Member States .

Following is the text of the report:

CJI/doc.451/14

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

(presented by Dr. Ana Elizabeth Villalta Vizcarra)

In reference to the topic “Model Legislation on Protection of Cultural Property in the Event of an Armed Conflict,” the author, in her capacity as Rapporteur for this topic, was invited to participate in the meeting of the Committee on Juridical and Political Affairs (CAJP) of the Organization of American States (OAS) held on Thursday, October 24, 2013, to promote an exchange of ideas and generate open dialogue with the representatives of the delegations of the Member States of the Organization on the draft model legislation. This Rapporteur’s participation was authorized by the Chairman of the Inter-American Juridical Committee, Ambassador João Clemente Baena Soares.

Participating in the meeting were 19 delegations. Among those intervening were the representatives of Chile, Peru, El Salvador, Mexico, Dominican Republic, Colombia, Venezuela, and Nicaragua. The Chairman of the Committee on Juridical and Political Affairs expressed appreciation to this Member of the Inter-American Juridical Committee for her presence and valuable presentation, which would facilitate better appreciation of the topic’s substantive aspects.

On December 18, 2013, Ambassador Arturo Ulises Vallarino Bartuano, Permanent Representative of Panama to the Organization of American States and Chair of the Committee on Juridical and Political Affairs, in that capacity invited this Rapporteur to participate in the “Special Session on International Humanitarian Law” held on January 31, 2014, pursuant to General

Assembly resolution AG/RES. 2795 (XLIII-O/13), "Promotion of and Respect for International Humanitarian Law."

In that regard, I was invited to participate as a speaker on the panel on promoting implementation processes for the protection of cultural property. To provide the Chair of the CAJP with confirmation of my attendance, I requested authorization from the Chairman of the Inter-American Juridical Committee. That meeting was held on Friday, January 31, 2014, with participation by delegations of the OAS Member States, as well as the International Committee on the Red Cross (ICRC), and where presentations were given on the actions carried out in the last two years in the area of International Humanitarian Law (IHL).

Another panel discussed the state of the art of protection of cultural property in the event of an armed conflict in light of the model legislation prepared by the Inter-American Juridical Committee, the instruments of International Humanitarian Law, and some countries' practices of identification of areas subject to protection, regarding which a presentation was given by the Rapporteur of the Inter-American Juridical Committee on that topic.

This report is intended as update for the Members of the Inter-American Juridical Committee regarding the dissemination of the draft model legislation on protection of cultural property in the event of an armed conflict that was approved by that Committee.

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2. Inter-American judicial cooperation

At the 84th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2014), the Committee Members decided to conclude discussion of the subject of Inter-American judicial cooperation, considering that in the previous session a document had been presented describing the status of the current legal framework for it.

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3. Representative Democracy

During the 85th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August, 2014), Dr. Hernán Salinas requested adding a new topic to the agenda, "Representative Democracy in the Americas", given the conversation held by the members of the Committee with the Secretary General of the OAS, Mr. José Miguel Insulza. The proposal would consist on a study on the progress achieved by the Organization in this field. Dr. Salinas's initiative was supported by the plenary and he was appointed rapporteur of the topic.

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CHAPTER III

OTHER ACTIVITIES

ACTIVITIES CARRIED OUT BY THE INTER-AMERICAN JURIDICAL COMMITTEE DURING 2014

A. Presentation of the Annual Report of the Inter-American Juridical Committee

Documents

CJI/doc.448/14	Presentation of the annual report of the Inter-American Juridical Committee for the year 2013 to the Committee on Juridical and Political Affairs of the Organization of American States (February 20, 2014, Washington D.C.) (Presented by Dr. David P. Stewart)
CJI/doc.462/14	2013 Report on the work and activities of the Inter-American Juridical Committee (June 3, 2014, Asunción, Paraguay) (Presented by Dr. João Clemente Baena Soares)
CJI/doc.463/14	Report of the Inter-American Juridical Committee to the United Nations Commission of International Law (July 14, 2014, Geneva, Switzerland) (Presented by Dr. Fabián Novak Talavera)

During the 85th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August, 2014), the Chairman, Dr. Baena Soares, gave a presentation on his participation, on June 3, 2014, at the General Assembly session of the Organization of American States in Asunción, Paraguay, document CJI/doc.462/14, in which he drew attention to both the substance of the Committee's work and its administrative matters. He spoke about the two regular sessions of the Committee in 2013, explained which reports had been adopted and what studies were currently under way. He also reported on the Inter-American Juridical Committee's work in the recent months before his presentation, including the holding of the 41st Course on International Law.

Worth noting, as well, is that, on Thursday, February 20, 2013, Dr. David P. Stewart had presented the Committee's Annual Activities Report for 2013 to the Committee on Juridical and Political Affairs of the OAS at its headquarters in Washington, D.C.

For his part, Dr. Fabián Novak described his participation at a meeting of the United Nations International Law Commission. He mentioned that there had been a lot of interest in the subjects of corporate social responsibility and the protection of personal data. He said that many members of the International Law Commission had stated the important to maintain closer ties between the two bodies. They had also inquired about formal aspects of the Juridical Committee's work, including the adoption of the report on sexual orientationand, gender identity and gender expression (CJI/doc.447/13 rev.1), because several members of the United Nations Commission explained the constitutional challenges posed by that matter in their respective countries. Dr.Novak also answered questions regarding other OAS organs, especially queries regarding the jurisprudence of the Inter-American Court of Human Rights. Finally, he underscored the interest shown in both the importance of the issues addressed by the Juridical Committee and its actions, such as reviving the Committee's contacts with the African Commision on International Law.

The texts of the reports by Dr. David P. Stewart to the Committee on Juridical and Political Affairs of OAS (CJI/doc.448/14); by Dr. Fabián Novak Talavera to the United Nations International Law Commission (CJI/doc.463/14); and by Dr. Baena Soares to the OAS General Assembly (CJI/doc.462/14) are as follows:

CJI/doc.448/14

PRESENTATION OF THE ANNUAL REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE FOR THE YEAR 2013 TO THE COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS OF THE ORGANIZATION OF AMERICAN STATES
(Washington, D.C., February 20, 2014)

(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 2013.

Let me begin by expressing the very warm greetings of the Committee's Chairman, Ambassador João Clemente Baena Soares, and our Vice-Chairman, Professor Fabián Novak. Both have asked me to convey their best wishes to you and to this Committee and their sincere regret at not being able to attend this meeting in person. They have also asked me to assure you that, once again, the Inter-American Juridical Committee has had a very active and productive year, working on an agenda of timely and relevant subjects of particular importance to our hemisphere.

This Committee has before it the full and detailed report of our work during the past year, as adopted in document CJI doc.443/13 dated of August 9, 2013 and circulated to you as document CP/doc.4956/14. I will summarize only certain aspects of that report but will be pleased to respond to any questions the members of this Committee may have about our work.

Membership

During 2013, the Committee included the following members: João Clemente Baena Soares (Chairman), Fabián Novak Talavera (Vice Chairman), Freddy Castillo Castellanos, Hyacinth Evadne Lindsay, Miguel Pichardo Olivier, Ana Elizabeth Villalta Vizcarra, Fernando Gómez Mont Urueta, José Luis Moreno, Carlos Alberto Mata Prates, Gélin Collot and myself. In June the General Assembly re-elected Elizabeth Villalta and Miguel A. Pichardo Olivier to another term. In September 2013, the Permanent Council elected Hernán Salinas Burgos of Chile to fill the vacancy created by Dr. Freddy Castillo's departure. Their terms run from January 1, 2014 to December 31, 2017.

Substantive Agenda

Turning now to the substantive work of the Committee, we held two regular sessions during 2013: the 82nd regular session, which took place from March 11 to 14, and the 83rd regular session, held from August 5 to 9. Both sessions were held at the Committee's headquarters in Rio de Janeiro, Brazil.

Over these sessions we adopted three final reports. Two were in response to mandates from the General Assembly:

- one on sexual orientation, gender identity and gender expression (CJI/doc.417/12 rev. 2 corr. 1) (CP/doc.4846/13) and
- one on the protection of cultural property in the event of armed conflict (CJI/doc.403/12 rev. 5) (CP/doc.4847/13).

The third was adopted on the basis of the Committee's own mandate:

- Inter-American Juridical Cooperation (CJI/doc.428/13 rev.1)

Other Topics

During the past year, the Committee also set up four rapporteurships to deal with new mandates on which it has embarked:

- One on drafting and elaborating principles relating to privacy and the protection of personal data (pursuant to the mandate established last June by Resolution AG/RES. 2811 (XLIII-O/13) of the General Assembly);
- A second on corporate social responsibility in the field of human rights and the environment in the Americas (see CJI/doc.436/13);
- A third on alternatives for regulating the use of substances and preventing drug addiction of narcotic psychotropic substances and preventing drug addiction; and
- The fourth on guidelines for migration management in bilateral relations.

In addition, the Committee decided to continue its work on matters relating to sexual orientation, gender identity and gender expression; guidelines for border integration; the immunity of states and international organizations; inter-American judicial cooperation; and electronic warehouse receipts for agricultural products.

From this very brief description of our agenda, Mr. Chairman, you can see that the Committee continues to be engaged -- actively and productively engaged -- in a broad range of issues of practical significance for the Member States of the OAS. All members of our Committee are committed to carrying out the mandates given to us by the General Assembly, as well as those we decide to undertake on our own initiative. Our overall goal is to promote the rule of law, to foster economic development, and to advance efforts to harmonize and unify the law throughout our hemisphere in ways that will have a direct and positive impact on the peoples of the Americas.

Specific Projects

To illustrate this critical point, let me discuss five of our projects in slightly more detail, in order to give the members of this Committee a better idea of our actual work.

First, you will recall, Mr. Chairman, that in 2012, the Committee adopted a "Model Act on Simplified Stock Companies" (*sociedad por acciones simplificada*) (CJI/doc.380/11 corr.1). This proposal contemplates a hybrid form of corporate organization that reduces the costs and formalities of the incorporation at the level of micro- and small-businesses, making use of Colombia's successful experiences in this area. The inclusion of such corporate models in domestic laws can serve to make incorporation feasible and attractive at the level of micro- and small-business, increasing the flow of investment, increasing the protections for consumers, and promoting economic and social development. It has been gratifying to note that this proposed model law has attracted the active attention and approval of experts in other international fora. In UNCITRAL, for example, the Working Group on micro, small and medium sized businesses has specifically referred to the Committee's report.

Second, in 2012, the Committee adopted a "Statement of Principles for Privacy and Personal Data Protection in the Americas," which aimed at encouraging states to adopt measures ensuring respect for people's privacy, reputations, and dignity. See CJI/RES. 186 (LXXX-O/12). These principles are 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. The General Assembly welcomed these principles and this past summer, in Resolution AG/RES. 2811 (XLIII-O/13), asked our Committee to prepare additional "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." We are already working actively on this project. In my capacity as rapporteur for this topic, I have met with a number of experts and actors involved in the issue. Last week, for example, I participated with several legal officers of the Department of International Law in a very useful meeting organized in Guatemala by the Iberoamerican Network for Data Protection.

Third, in 2012, 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 (CP/doc.4847/13). This document offers a legal framework for dealing with situations of internal violence that cannot be classified as either peace or war. It 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 police and security forces on the one

hand, and respect for human rights on the other. Among the Guide's 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 provide effective judicial remedies that ensure that the measures taken by police and prosecutorial authorities are respectful of the individual rights protected under the American Convention on Human Rights.

Fourth, the Committee adopted a very important document entitled "model legislation on the protection of cultural property in the event of armed conflict" (CJI/doc.403/12.rev.5) (CP/doc.4847/13). In it, the Committee identified a number of concrete, preventive steps that states should take in peacetime – before the outbreak of armed conflict – to protect cultural property, such as preparation of inventories, planning emergency measures, transfer of cultural property, designation of authorities, and publicity on said measures. It also recommended developing rules related to identification and marking, identification cards, an international registry, promotion as well as capacity building, and modalities related to monitoring and enforcement obligations. This model legislation has received positive reviews at the Hemispheric Conference of National Committees on International Humanitarian Law held in Costa Rica, in September 2013. Moreover, in recent months, the rapporteur, Dr. Elizabeth Villalta, has visited twice this Committee (the CAJP) to present this model legislation and in order to obtain some reactions from Member States.

Finally, the Committee is working on the development of a model law on electronic warehouse receipts for agricultural products. This rather technical project aims at modernizing the law that governs when a small farmer delivers his products to a local warehouse for transportation to a distant market. To illustrate, if you purchased fruit or flowers from a local store for the recent St. Valentine's Day, those products were probably grown far away, perhaps even in Central America and maybe by someone working just a few hectares. On the way from the farm to your store, the flowers or fruit passed through many hands, including warehouses and shippers. Often, these transactions are recorded by hand on paper forms, and it takes a long time for the money to get from your purchase back to the farmer. A modern electronic system can speed the process and can be structured so that the farmer can get credit for his products much more quickly, say from a local bank. Obviously this could have a very positive impact on economic development; that is why similar efforts have been undertaken in other parts of the world. The Committee is building on the framework created by the OAS Model Law on Secured Transactions and is working with the support of its technical secretariat at the Department of International Law as well as other experts in the field.

<u>Assistance from Member States</u>

Mr. Chairman, these are useful and worthy projects with the potential to have real and positive impact in our hemisphere. Our Committee brings real expertize to bear on these issues, and I am confident that members of this Committee will agree that they are deserving of support.

Please permit me to reiterate our genuine desire to obtain the considered views of Member States on all of these initiatives. As members of this Committee know, we often ask for reactions and suggestions or other information in order to get a more accurate understanding of the situation on a particular issue and to ensure that our proposals will be useful and serve their purpose. Normally we do get *some* responses. For example, over the past year, we received 6 responses on issues regarding sexual orientation, 1o on the question of the immunity of States and international organizations, 6 on corporate social responsibility in the field of human rights, and 6 on electronic

warehouse receipts. We are of course very grateful to those who provided these responses. But we need more. In too many instances the Committee never hears from missions or capitals. The lack of response makes it more difficult for our reporters to work with up-to-date, accurate information and to make proposals that reflect the interests and experiences of Member States.

Promotion of International Law

As you know, Mr. Chairman, the Committee also continues to promote international law throughout the region. As part of those efforts, the Committee held meetings with members of the International Law Commission of the United Nations in Geneva, as it has been done for the past several years. Efforts to establish closer relations through both secretariats have been encouraged.

Importantly, we welcomed the first visit made by members of the African Union's Commission of International Law in August. We hope we can strengthen our relations with this body and that professors and students from the African Union attend our course in August 2014.

The Committee also received visits from representatives from the United Nations Office on the Prevention of Genocide and the Responsibility to Protect, from the International Humanitarian Fact-Finding Commission (part of the International Committee of the Red Cross), and from the Federal Institute for Access to Information and Privacy in Mexico (IFAI).

From within the OAS itself, we had the honor of welcoming the President of the Inter-American Commission of Human Rights and a judge from the Inter-American Court of Human Rights.

Course on International Law

The Committee again held its traditional International Law Course between August 5 and 23, 2013. The aim of this course is to reflect, discuss, and provide updates on different topics in the area of international public and private law.

During the past year the Course celebrated its forty years of existence and accordingly its central theme was "40 years promoting 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 13 Brazilian and foreign participants who covered the costs of their own participation. I invite the delegates to promote this course among your ministries of foreign affairs so we may have a strong group of highly qualified and diversified students.

Budgetary and Administrative Matters

Finally, I am compelled again to express the Committee's concerns about the financial difficulties that obligate us to curtail our meetings. Not many years ago, our sessions lasted four weeks, allowing us to accomplish much more. Now, we have been forced to reduce our sessions to one week in length. This means, of course, that our work is pressured and constrained, especially in light of the General Assembly's growing number of mandates and the very technical nature of our work. Simply put, our ability to make positive contributions to the Organization, to its Member States, and to the people in our hemisphere has been sharply limited.

We understand that the Organization as a whole faces financial difficulties. But we are concerned 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. Because the host country defrays some of the costs, that is one way to ease the burdens on the Committee's budget. We welcome invitations from Member States which are not now represented on our Committee.

In our last session, we were able to discuss these issues with the Chief of Staff of the Secretary General, Ambassador De Zela. We consider it of the utmost importance that you be aware of this situation and help find ways to address these concerns.

Conclusion

It should be apparent 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 personal opinion, an essential resource for the Member States and an activity of which all OAS Members can justifiably be proud.

I want to stress 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. This Committee 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. The Organization has much to be proud of in these professionals and the work they do.

Thank you very much. I am prepared to respond to any comments or questions. Our Committee's next meeting will take place in just a few days, during the week of March 10, 2014 and I will be happy to convey any messages this Committee may have for my colleagues.

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CJI/doc.462/14

PRESENTATION OF THE ANNUAL REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE (2013) TO THE GENERAL ASSEMBLY OF THE OAS

(Asunción, Paraguay, June 3, 2014)

(presented by Doctor João Clemente Baena Soares)

Dear Secretary General,

I have the great honor of presenting to the Chairmen and Heads of Delegations, Delegates and Representatives of Member States meeting at this regular session of the General Assembly the report on the work and activities of the Inter-American Juridical Committee of the OAS for the year 2013.

a. Composition

In 2013 the Inter-American Juridical Committee was made up of the following members: Fabián Novak Talavera (Peru, Vice-Chairman), Ana Elizabeth Villalta Vizcarra (El Salvador), David P. Stewart (United States), Hyacinth Evadne Lindsay (Jamaica), Freddy Castillo Castellanos (Venezuela), Miguel Aníbal Pichardo Olivier (Dominican Republic), Fernando Gómez Mont Urueta (Mexico), Jose Luis Moreno (Ecuador), Carlos Mata Prates (Uruguay), Gélin Imanès Collot (Haiti) and myself.

In June 2013 the General Assembly meeting in La Antigua, Guatemala elected Ana Elizabeth Villalta Vizcarra (El Salvador) and Miguel A. Pichardo Olivier (Dominican Republic) for a new period; in September the same year, the Permanent Council elected Dr Hernan Salinas Burgos of Chile for a mandate of four years.

b. Agenda

In 2013 the Inter-American Juridical Committee held two regular sessions in its headquarters in Rio de Janeiro, Brazil, corresponding respectively to the 82nd regular session held in March and the 83rd regular session held in August.

At these sessions the Inter-American Juridical Committee adopted three reports, two of which attending to mandates of the General Assembly: "Sexual orientation, gender identity and gender expression" (CJI/doc.417/12 rev.2 corr.1); and "Protection of cultural heritage in cases of armed conflicts" (CJI/doc.403/12 rev.5). In turn, the report on "Inter-American judicial cooperation" corresponds to a mandate established by this organ, document CJI/doc.428/13 rev.1.

With regard to the former, a preliminary evaluation can be made: the Inter-American Juridical Committee complies with the mandates commissioned by the States, in addition to the mandates that appear on the initiative of the Committee itself.

It should be pointed out that during the year 2013 the Committee appointed four rapporteurships to consider new mandates installed at its headquarters: Preparation of a Model Law on Access to Information (mandate installed by resolution AG/RES. 2811 (XLIII-O/13) of the General Assembly); Social Corporate Responsibility in the field of human rights and the environment in the Americas; Alternatives to regulation of the use of narcotic psychotropic substances, as well as prevention of drug addiction; and Guidelines for migratory management in bilateral relations. Finally, the plenary of the Committee decided to proceed with addressing the following themes: General guidelines for border integration; Immunity of States and international organizations; Electronic warehouse receipts for agricultural produce; and Inter-American judicial cooperation.

A second idea worth underscoring is the practical aspect of the themes addressed and the serious commitment of the Juridical Committee concerning the promotion and codification of International Law. Over the last few years the Committee has adopted a wide gamut of juridical instruments, among which can be highlighted the following:

- A Model Legislation on simplified stock companies proposing a way of reducing costs and procedures for the incorporation of these societies;
- A Declaration of Principles on privacy and data protection providing the basis for the protection of information and privacy of persons in the Hemisphere;
- A Guide on the regulation on the use of force and the protection of persons in situations of domestic violence that do not reach the status of armed conflict, seeking to establish a balance between the implementation of norms by police and security forces and respect of human rights, and
- A Model Legislation on the protection of cultural assets in cases of armed conflict identifying concrete actions in times of peace in order to protect those assets.

As a third element we deem it important to thank the States for their constant support, especially in view of the consultation work carried out by the Committee with the aim of reflecting the interests and experiences of all the States in their work. We urge the States that have never replied to our consultations to make endeavors in order to fulfill those requests so as to ensure the usefulness of those proposals for the Committee and to serve their own purposes.

Finally, we wish to mention a request received from the Members of the Committee on the follow-up work conducted by States on the work already performed. On several occasions the Inter-American Juridical Committee has not received feedback to its reports, and consequently the necessary continuity of the works fails. In this regard, I invite the States to conduct the initial works already considered by the Committee.

c. Finance

In last years, the Inter-American Juridical Committee has reported on the serious concerns of its Members regarding the increase in the costs of the working sessions.

One of the options leading to reduce budgetary expenses has been to organize the working sessions in several Member States, such as in the cases of Colombia (2009), Peru (2010) and Mexico (2012).

However, these mitigation measures do not provide an answer to the main concern involving the reduction of the financial budget in real terms, which led to the reduction of the sessions, in addition to selecting and prioritizing certain mandates and themes, by time limits. In August of last year we had the pleasure of the visit to the Committee Headquarters in Rio de Janeiro of the Chief of Cabinet of the Secretary General, Ambassador Hugo De Zela, to whom we reported the situation, and for that reason I wish to record this to the plenary of the Assembly on behalf of the Committee.

d. Promotion of International Law

In the area of promotion of International Law, the Juridical Committee has held meetings with Members of other International Organizations, such as the UN Commission of International Law and of the African Union, in addition to the Course on International Law.

The Committee also held the traditional Course on International Law, which is organized in coordination with the Department of International Law in the city of Rio de Janeiro, Brazil, between 5 and 23 August, 2013. This activity, organized for forty years now, had as its central topic “40 years promoting international law”. On this occasion the Course was attended by 20 scholars ship holders from several countries in the Hemisphere, financed by the Organization, plus 13 participants, both national and foreigners, who paid for their own expenses at the course.

All of these activities of the Committee receive technical and secretarial support provided by the employees of the Department of International Law of the Secretariat of Legal Affairs.

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CJI/doc.463/14

PRESENTATION OF THE REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE TO THE INTERNATIONAL LAW COMMISSION OF THE UNITED NATIONS

(presented by Dr. Fabián Novak Talavera)

Distinguished Chairman and Members of the United National International Law Commission

- It is an honor for me to represent the Inter-American Juridical Committee of the Organization of American States (OAS), to convey its greetings to you, and to inform you about our work in 2013.

- As you all know, the Inter-American Juridical Committee serves the Organization as an advisory body on juridical matters of an international nature. In so doing, it conducts studies and does work on international legal matters, either at the behest of the OAS General Assembly or on its own initiative.

- The Inter-American Juridical Committee is, moreover, the oldest organ of the OAS, having been founded in 1906, that is to say, several decades before today's Organization of American States was established in 1948.

- In 2013, the Inter-American Juridical Committee held two working sessions at its headquarters in Palacio de Itamaraty, in Río de Janeiro, Brazil. Those were the Committee's 82nd and 83rd sessions.

- Following is a summary of the juridical reports completed in 2013 and of the work we have been doing in the Committee regarding problems and concerns that have emerged in the Americas.

1. The first report completed in 2013 addresses the issue of *Sexual Orientation, Gender Identity, and Gender Expression.* This report analyzes the progress made in the domestic laws of the countries in the Americas, with respect to protection of the right to nondiscrimination for reasons of sexual identity or orientation. It also analyzes the jurisprudence handed down in this area by the domestic courts of some of the Member States. Finally, it establishes the Inter-American instruments that may prove useful for protecting that right and progress made in the case law of the Inter-American Court of Human Rights in favor of equality and nondiscrimination based on sexual orientation.

2. The second report -- on *Protection of Cultural Property in the Event of Armed Conflict* -- ended with the preparation of a model legislation designed to help OAS Member States incorporate the standards and principles on this matter found in International Humanitarian Law into their domestic legislation. Thus, the proposed model legislation comprises 12 chapters: general provisions, scope of the law, and 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; planning of emergency measures; appointment of responsible authorities; responsibility in the protection of cultural property; monitoring and compliance measures; cultural property protection fund, and others. However, perhaps the principal contribution of this model legislation is the fact that its

objective is to get the American States to adopt a set of preventive measures in times of peace that ensure protection and the effective preservation of our cultural heritage in the event of an armed conflict.

3. Our third report addresses the issue of *Inter-American Judicial Cooperation*, prompted by the presence in our region of a set of threats to security that need to be countered by cooperation among the authorities of the countries in the Hemispehre. We are talking, for instance, of the human trafficking, illicit drug trafficking, terrorism, the illegal arms trade organized crime, and so on. Accordingly, the Juridical Committee's report aims to put forward a set of measures designed to harmonize procedures and legislations and achieve coordination among competent domestic authorities, training of those authorities, and the elimination of obstacles to smooth intraregional judicial cooperation.

4. The fourth report, completed in 2013, deals with the preparation of a *Guide to Corporate Social Responsibility Principles in the Area of Human Rights and the Environment in the Americas*. These guidelines seek to fill a gap in the Americas and at the same time to address a concern voiced at all OAS General Assembly sessions in the 2000s. They took into account not just the work done on corporate social responsibility by the OECD, the United Nations, the ILO, and so on, but also, and above all, the peculiarities of our region. The report also addresses both the progress made in our countries' domestic legislations and progress achieved in corporate practices toward a harmonious business environment that is respectful of human rights and environmental concerns. Clearly, the report also points out the shortcomings and difficulties persisting to this day, that have prompted calls by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights for tighter monitoring by States of the activities of the enterprises operating on their territories.

5. The fifth and last report, entitled *General Guidelines for Border Integration*, contains more than 50 recommendations to facilitate cross-border cooperation and integration agreements. Those recommendations draw on the best experiences of border integration within and outside the Americas and cover institutional matters and specific issues, as well as follow-up mechanisms.

6. At the same time, Mr Chairman, we deem it important to let you know that in 2013 the Inter-American Juridical Committee also began work on other issues relevant to the Americas. Specifically, there are four such issues:

1. *Guidelines for managing immigration at the border level*. Our work on this is geared to providing OAS Member States with information about existing best border control practices, which, while seeking to protect State security, must at the same time respect the human rights of migrants.
2. *The jurisdictional immunity of States.* The document produced as a result of this work seeks to describe current judicial practices under the domestic laws of OAS Member States with respect to the jurisdictional immunity of States, and to determine whether those practices match the standards and general principles established in International Law and built into the United Nations Convention on Jurisdictional Immunities of States and Their Property.
3. *Regulation of the use of narcotics and psychotropic substances*. In this case, the idea is to prepare a report on the current status of domestic regulation of the use of narcotics in the countries of the Americas, bearing in mind that a debate on this matter has been initiated within the OAS. This report will therefore attempt to clarify the various positions taken by the Organization's Member States with respect to "soft" drug use, the outcomes so far, and any reform processes that may get under way.
4. *Electronic warehouse receipts for agricultural products*. The purpose of this report is to compile a set of principles or devise a Model Law to establish a system that enables farmers in our region to store part of their grains after harvesting and to use the use the receipt they get from storing those products as collateral for obtaining loans in the financial system.

As you, Mr. Chairman, will note, the work done by the CJI during 2013 has been both intense and fruitful. Above all, however, it has sought to respond to our region's needs.

At the same time, Mr Chairman, I am pleased to inform you and the other Members of the ILC that the Inter-American Juridical Committee has, with a view to maintaining ties of cooperation with similar bodies, held meetings with the African Union Commission on

International Law and entered into agreements with it regarding reciprocal visits and exchanges of information, with a view to enriching and strengthening the work done by both juridical bodies.

Finally, Mr Chairman, I would like to conclude this brief presentation by pointing out that, in 2013, the Inter-American Juridical Committee held its 40th Course on International Law, which has been conducted every year, without fail, since 1973. That Course is aimed at training young inter-American law specialists through classes and lectures delivered by the most prestigious international law experts from all five continents.

Finally, Mr. Chairman, I would like to thank you and the Honorable Members of this Commission for your attention and I remain at your disposal to answer any questions and concerns you may have.

Thank you very much.

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B. Course on International Law

The XLI Course on International Law was held in Rio de Janeiro, Brazil, from August 4 – 22, 2014. The core topic was the "Peaceful Settlement of Disputes." The purpose of this course is to ponder, debate, and update various issues pertaining to Public and Private International Law. Panelists included distinguished Professors from the Hemisphere and from Europe, legal advisors in the Ministries of Foreign Affairs of a number of Member States, and staff members of International Organizations and the OAS. Of particular note was the contribution of the Secretary General of the Organization of American States, Jose Miguel Insulza, who delivered the keynote opening speech, and the participation of judges Ronny Abraham and Augusto Cançado Trindade of the International Court of Justice and of the President of the International Criminal Court, Judge Sang Hyun Song.

The course was atended by 20 scholarship holders from a number of countries in the Hemisphere, financed by the OAS and 11 participants, both Brazilian and foreign, who paid to participate in the course.

The Course Program was as follows:

PROGRAM
41st Course on International Law

"The International Law"
Río de Janeiro, Brazil
August 4-23, 2014

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 4

9:30 – 10:00 **REGISTRATION**

10:00 – 12:00 **INAUGURATION**

Ambassador João Clemente Baena Soares, Chairman, Inter-American Juridical Committee
Opening remarks
Jean Michel Arrighi, Secretary for Legal Affairs of the OAS
Opening remarks
José Miguel Insulza, Secretary General of the OAS
Opening Lecture on the Interamerican System

Tuesday 5

9:30 – 10:50 **José Luis Moreno Guerra,** Member of the Inter-American Juridical Committee
Border Integration

11:10 – 1:00	**Sang-Hyun Song,** President of the International Criminal Court *The History of International Criminal Law and the Role of the International Criminal Court in a Global Justice Context*
2:30 – 4:30	**Luis Toro,** Chief Legal Officer of the Department of International Law of the OAS *Consideraciones Jurídicas en Materia de Solución de Controversias en el Derecho Interamericano*
Wednesday 6	
9:00 – 10:50	**Ronny Abraham,** Judge of the International Court of Justice *La Jurisprudence de la Cour Internationale de Justice: quelques aspects récents*
11:10 – 1:00	**Sang-Hyun Song** President of the International Criminal Court *The International Criminal Court in Focus – Its Regulatory Framework, Procedure and Activities to Date*
2:30 – 4:30	**Carlos Mata,** Member of the Inter-American Juridical Committee *Inmunidad de Jurisdicción de los Estados y Organizaciones Internacionales en la Práctica Jurisdiccional Americana*
Thursday 7	
9:00 – 10:50	**Ronny Abraham**
11:10 – 1:00	**Antônio Augusto Cançado Trindade,** Judge of the International Court of Justice *Los Tribunales Internacionales y su Misión Común de la Realización de la Justicia*
2:30 – 4:30	**Elizabeth Villalta**, Member of the Inter-American Juridical Committee *Solución de Controversias en el Sistema Interamericano*
Friday 8	
9:00 – 10:50	**Ronny Abraham**
11:10 – 1:00	**Antônio Augusto Cançado Trindade**
2:30 – 4:30	**Hernán Salinas,** Member of the Inter-American Juridical Committee *Protección Diplomática en el Derecho Internacional Contemporáneo*
	Second week
Monday 11	
9:00 – 10:50	**Dante Negro,** Director of the Legal Officer of the Department of International Law of the OAS *Las Convenciones Interamericanas contra el Racismo, la Discriminación e Intolerancia*
11:10 – 1:00	**Jean-Michel Arrighi,** Secretary for Legal Affairs of the OAS *La Solución de Controversias en el Sistema Interamericano*
2:30 – 4:30	**Luis García Corrochano,** Professor of Public International Law of the Diplomatic Academy of Peru
Tuesday 12	
9:00 – 10:50	**Roberto Ruiz Díaz Labrano,** Professor of the National University of Paraguay Member of MERCOSUR's Permanent Appelates Court *El MERCOSUR y sus Sistemas de Solución de Controversias*
11:10 – 1:00	**Jean-Michel Arrighi**
2:30 – 4:30	**Luis García Corrochano**

Wednesday 13

9:00 – 10:50 **Roberto Ruiz Díaz Labrano**

11:10 – 1:00 **Juan Carlos Murillo,** Regional Legal Unit in the Americas of the United Nations High Commissioner for Refugees (UNHCR), Costa Rica
Los Nuevos Desafíos de la Protección Internacional de Refugiados en las Américas al Conmemorarse el 30 Aniversario de la Declaración de Cartagena de 1984

2:30 – 4:30 **Luis García Corrochano**

Thursday 14

9:00 – 10:50 **Roberto Ruiz Díaz Labrano**

11:10 – 1:00 **Juan Ignacio Mondelli,** the Regional Legal Unit in the Americas of the United Nations High Commissioner for Refugees (UNHCR)
El Derecho Humano a una Nacionalidad y el Problema Humanitario de la Apatridia: Camino hacia su Erradicación en el Continente Americano en los Próximos 10 años

2:30 – 4:30 **Roberto Rojas**, Legal Officer of the Department of International Law of the OAS
La Cultura de Paz como Promotor de la Solución de Controversias en el Derecho Internacional Público

Friday 15

9:00 – 10:50 **Miguel Ángel Rodríguez Mackay,** Dean of the School of Law, Political Sciences and International Relations from the Tecnological University of Peru (UTP)
El Principio de Solución Pacífica de las Controversias como de Norma de Ius Cogens del Derecho Internacional y los Medios Alternativos de Resolución de Controversia

11:10 – 1:00 **Miguel Ángel Rodríguez Mackay**

2:30 – 4:30 **João Clemente Baena Soares**
The work of the Inter-American Juridical Committee

Third week

Monday 18

9:00 – 10:50 **Diego Fernández Arroyo,** Professor of the Institut d'Etudes Politiques from Paris (Sciences Po) and the New York University.
El Auge del Arbitraje Internacional frente al Debate sobre su Legitimidad

11:10 – 1:00 **Caroline Kleiner,** Professor of Law, Law school, University of Strasbourg
The Dispute Settlement Mechanisms for Sovereign Debts

2:30 – 4:30 **Javier Ochoa,** Professor of Private International Law of the Central University of Venezuela
Problemas de Acceso a la Justicia y Tutela Judicial Efectiva en el Litigio Civil Internacional: Perspectiva Latinoamericana

Tuesday 19

9:00 – 10:50 **Diego Fernández Arroyo**

11:10 – 1:00 **Caroline Kleiner**

2:30 – 4:30 **Javier Ochoa**

Wednesday 20

9:00 – 10:50 **Diego Fernández Arroyo**

1:10 – 1:00 **Gabriel Pablo Valladares,** Legal Officer for Argentina, Brazil, Chile, Paraguay and Uruguay of the Regional Delegation of the International Committee of the Red Cross (ICRC)

Derecho Internacional Humanitario y los Mecanismos para la Prevención y Sanción de sus Violaciones

2:30 – 4:30	**Javier Ochoa**
4:45 – 6:00	**Gabriel Pablo Valladares**
Thursday 21	
9:00 – 10:50	**Free**
11:10 – 1:00	**Free**
2:30 – 4:30	**Tiina Intelmann,** President of the Assembly of States Parties of the International Criminal Court *State support to the International Criminal Court: the Assembly of States Parties and its functions*
Friday 22	
10:00	**CLOSING CEREMONY AND PRESENTATION OF CERTIFICATES** **Tiina Intelmann,** President of the Assembly of States Parties of the International Criminal Court **Roberto Rojas**, Legal Officer of the International Law Department of the OAS **Christian Perrone,** Secretariat of Inter-American Juridical Committee

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C. Relations and Cooperation with other Inter-American bodies 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 D.C., United States, February 20, 2014
Dr. David P. Stewart (CJI/doc.448/14)

General Assembly of the OAS
Asunción, Paraguay, June 3, 2014
Dr. João Clemente Baena Soares (CJI/doc.462/14)

United Nations Commission on International Law
Geneva, Switzerland, July 14, 2014
Dr. Fabián Novak Talavera (CJI/doc. 463/14)

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 2014:

- **During the 84th regular session, held in Rio de Janeiro, Brazil:**

  There were no visits during this regular session.

- **During the 85th regular session, held in Rio de Janeiro, Brazil:**

1) August 4, 2014, at 3:00 p.m. Visit of the OAS Secretary General, Dr. José Miguel Insulza. During the meeting, the Committee members thanked the Secretary General for coming and exchanged ideas with him regarding the topics being addressed by the Juridical Committee and his vision of the future for the Organization of American States. They also mentioned the Committee's budgetary constraints, particularly over the past year and at the last regular session.

2) On August 5, 2014, at 9:30 a.m. Visit by Dr. Nadia de Araújo and Dr. Lauro Gama of the Catholic University of Rio de Janeiro. The professors underscored the importance of the Juridical Committee for the development of private international law in the Americas. They emphasized the role of the Committee on the question of Law Applicable to International Contracts and thanked the Committee for getting back in touch with academia.

3) August 5, 2014, at 12 noon. Visit by the Secretary of the African Union Commission in the Office of the Legal Adviser, Mr. Mourad Ben Dhiab. The Secretary of the AU Commission reaffirmed interest in reaching a cooperation agreement between the two organizations and put forward a series of proposed joint actions involving both the organs and their secretariats, including, in particular, exchanges of information and training in archive management and document organization; setting up technical training courses and seminars; and exchanges of publications.

4) August 6, 2014, at 12 noon: Visit by Judge Ronny Abraham of the International Court of Justice, who explained some recent development in the ICJ's jurisprudence and exchanged ideas regarding relations between the Court and the United Nations and the way judgments are prepared.

5) August 7, 2014, at 9:30 a.m. Visit by Judge San-Hyun Song, President of the International Criminal Court. President Song said he was grateful for the Hemisphere's contribution to international criminal law and gave a presentation on the ICC's modus operandi, mandates, and jurisprudence. He mentioned that its founding document, the Rome Statute, had been ratified by the vast majority of OAS member states. In the course of his presentation, he also referred to progress with the dissemination of international criminal law and actions with respect to protecting victims and their families. There was an enriching exchange of views on topics relating to the proliferation of courts in international law, developments in the principle of complementarity as applied to and by the Court, the number of cases heard by the Court regarding countries in Africa, and the relationship between the International Criminal Court and the United Nations Security Council, among others. Toward the end of his presentation, President Song invoked solidarity and the wish that one day all the OAS member states would adhere to the Rome Statute and actively participate in the overall architecture of the international criminal law system.

6) August 8, 2014, at 9:30 a.m. Visit by Dr. Juan Carlos Murillo and Dr. Juan Ignacio Mondelli of the Regional Legal Unit in the Americas of the United Nations High Commissioner for Refugees (UNHCR). Dr. Juan Carlos Murillo, the Director of the Unit, gave a presentation on the current status of the UNHCR in the Americas and on the importance of the refugee issue in the Hemisphere. For his part, Dr. Juan Ignácio Mondelli, the Regional Protection Officer (Statelessness), gave a presentation on the subject of statelessness, the reasons for it, and possible ways to address it. He also mentioned ways in which he could support the work of the Committee with regard to the General Assembly mandate to prepare a model law on statelessness prevention and protection.

3. Relations of cooperation through bilateral agreements signed in 2014

- Memorandum of Understanding between the General Secretariat of the Organization of American States and *Universidade Federal do Rio Grande do Norte (UFRN*), Brazil

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