



OAS | More rights
for more people

CJI

COMITÉ JURÍDICO INTERAMERICANO / INTER-AMERICAN JURIDICAL COMMITTEE
COMITÉ JURIDIQUE INTERAMÉRICAIN / COMISSÃO JURÍDICA INTERAMERICANA

93rd Regular Session of the Inter-American Juridical Committee
6 – 16 August 2018
Rio de Janeiro, Brazil

**JOINT MEETING WITH THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL
LAW REPRESENTATIVES**

SUMMARY MINUTES

(August 16, 2018)

JOINT MEETING WITH THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW REPRESENTATIVES

The President of the Inter- American Juridical Committee (CJI), Dr. Ruth Correa, began the joint session by welcoming and recognizing the persons present: the members of the inter-American Juridical Committee; two representatives of The Hague Conference on Private International Law (The Hague Conference), Dr. Christophe Bernasconi, Secretary General, and Dr. Ignacio Goicoechea, Representative in the Americas; the legal advisors from ten OAS member states: Argentina, Bolivia, Brazil, Costa Rica, Ecuador, Haiti, Mexico, Peru, United States, and Uruguay; and, the members of the Committee. Also was present a delegation from the African Union Commission on International Law (AUCIL) composed of Dr. Juliet Semambo Kalema and Dr. Betlehem Arega.

The President explained that this session would revolve around two issues, binding and non-binding agreements -which would be introduced by the Secretary General of The Hague Conference - and coordination of regional and global efforts, to be presented by the Department of International Law.

Dr. Christophe Bernasconi expressed his gratitude and honor to be part of these discussions. First, he reflected on The Hague Conference and its celebration of 125 years, pointed out that most American states are members, and that The Hague Conference has a regional office in Buenos Aires for the Americas, as well as one in Hong Kong for Asia and one under consideration for Africa. He noted that the work of The Hague Conference has a great deal to do with human rights, in particular in child protection. He said the conventions in this area have been very successful and have given real effect to fundamental rights under international law. In this area, there has been cooperation with the OAS in the creation of a model law. Currently, their flagship project concerns recognition of foreign judgments, a topic that lends itself to collaboration between the organizations. Dr. Bernasconi expressed his enthusiasm for this meeting and for hearing the opinions from the CJI and legal advisors.

Secondly, he addressed the topic of binding and non-binding agreements and the challenges regarding treaty-making process over the years. He explained that previously The Hague Conference had produced, on average, one convention every 4 years. In fact, out of 38 conventions, 8 (30%) never entered into force and those that did, took an average of 8 years. As The Hague Conference membership has grown, this has had an impact as it becomes increasingly difficult to reach consensus. The last convention was adopted in 2007, and it is expected the next to be completed by 2019. Dr. Bernasconi considers this reality as an impetus to better allocate limited resources towards development of a convention only when necessary and when it will have a practical impact. With this approach, more importance has been given to smaller working groups to develop the topic before it is discussed by the members. Currently, about half a dozen working groups are addressing different projects, such as surrogacy and mediated agreements in family law. Moreover, The Hague Conference is focusing on implementation of existing conventions through the development of guides on best practices. It is also considering whether to focus more on soft law instruments, which can adapt more rapidly to new developments. He explained that the Principles on Choice of Law in International Commercial Contracts has been the first soft law instrument so far. Although faster to develop, these instruments may be the prelude to hard law.

Dr. Dante Negro, Director of the Department of International Law, welcomed the representatives of The Hague Conference and addressed the topic of cooperation between regional and global forums. He noted several prior efforts and the work of the CJI on the two current topics of international contracts and foreign judgements. He outlined the mechanisms by which the CJI initiates studies on private international law: one source is the mandates received by the OAS General Assembly and the other is whereby the CJI initiates topics on its own accord. Dr. Negro recognized that, as mandated by the OAS

General Assembly, this work has to be done in collaboration with organizations, such as The Hague Conference, the United Nations Commission on International Trade Law (UNCITRAL), the American Association on Private International Law (ASADIP), among others,. He stated that there is coordination with these organizations to avoid duplication and waste of resources, but also to avoid contradictions. Dr. Negro also pondered the value of work by a regional organization in these matters and noted there is some evidence that this work, such as drafting model laws or guides, can serve as the first steps towards a global solution. An advantage, in his view, is that due to the smaller size of the regional organization, often consensus can be achieved more easily. The questions that arise, in his view, are how to find solutions that are not contradicting themselves and how these solutions can pave the way for global action. Soft law solutions, such as model laws, are viable as a good approach, due to their flexibility.

The legal advisor of Argentina, Dr. Mario Oyarzábal, expressed his pleasure to have both Hague Conference representatives present at the meeting. He thought both topics were of great relevance. In terms of binding and non-binding instruments, the representative thought that each one offered different advantages. Despite the flexibility offered by soft law, such instruments can pose certain challenges in their implementation. He thought the choice depends on the specific circumstances with hard law more appropriate for use in traditional topics that require harmonization and soft law better suited for developing issues. He also commented on the topic of cooperation and stated that there is much to be done in this issue since there is still duplication. For chancelleries, duplication can siphon some of their resources; however, he acknowledged simultaneous efforts can serve a certain purpose, as had been noted by Dr. Negro, and where regional concerns must be addressed. He welcomed joint sessions such as this and thought that sending delegates to attend meetings of other bodies was also helpful.

The legal advisor of Peru, Dr. Juan José Ruda, welcomed The Hague Conference representatives and thanked all parties present for their inclusion in this meeting. He considered the efforts by The Hague Conference in the field of family law of great importance for citizens. He agreed with the Argentinian representative on the topic of binding and non-binding agreements, in that the use of one or the other can depend on the circumstances. He added that soft law instruments can provide a source of inspiration for drafting national laws or binding instruments. On the issue of cooperation, he acknowledged the importance of a detailed account of the efforts made by multiple organizations. As such, he saw it significant for representatives to be present at such meetings periodically in order to have a complete understanding of the work done by each organization. He also considered it an important mechanism by which to address the interests of States.

The legal advisor of Mexico, Dr. Alejandro Alday, thanked the CJI for the invitation to the meeting. On the topic of binding and non-binding agreements, Mexico has preferred the use of binding instruments due to their greater legal certainty and ease of implementation. However, he also recognized the value of soft law instruments and the trend in that direction. A criteria used in Mexico is the subject matter of the proposed instrument with special attention given to the costs involved in negotiating binding agreements. On cooperation, the representative saw it as crucial; in that regard, it would be key to provide transparent communication on the efforts being made by the CJI. Particularly, he sees it as key to analyze which areas of the law should be dealt with at the regional level.

The representative of the US office of the legal advisor, Dr. Jeffrey Kovar, joined others in thanks to The Hague Conference for their presence at the meeting. He agreed with the points made previously by other representatives, especially in the development of coordinated efforts between organizations. The representative also commented on the interplay of regional and global instruments. He saw that parallel developments could sometimes serve as a key factor to mobilize efforts on a specific topic. An example would be the 1958 New York Convention, which was not widely adopted in the region until a parallel version, the Inter-American Convention on International Commercial Arbitration (the 1978 Panama Convention) was drafted. The representative also addressed the nature of soft law and how it can serve

the purpose of being the stepping stone for national legislators to create new laws as well as providing assistance for practitioners. He mentioned the importance of the work that is being undertaken by the CJI in recognition of foreign judgments which, in the form of a soft law instrument, could have significant impacts.

The legal advisor of Brazil, Dr. George Bandeira Galindo, thanked all those who had made this meeting possible. He was in agreement with many of the interventions that had already been made. His question to the Secretary General of The Hague Conference concerned his view as to the desirability of a hard or soft law instrument.

The representative of the African Union Commission (AUCIL), Dr. Juliet Semambo Kalema, focused her intervention on the topic of coordination. In her opinion, these efforts are of great importance. Interactions between the AUCIL and the CJI are indicative of the importance of collaboration since both organizations have been dealing with similar issues that can be addressed jointly. She also asked Dr. Bernasconi what efforts could be made on the part of the African Union Commission (AUCIL) to encourage more African states to join The Hague Conference, seeing that so few are members.

Dr. Christophe Bernasconi thanked all representatives for their interventions. In response to the question posed by the Brazilian representative, he clarified that, ultimately, it is not the choice of the secretariat but rather that of the member states. He has noted greater willingness to consider development of soft law instruments within The Hague Conference, which does not have much experience in the field. Upon reiterating that the Principles on Choice of Law in International Commercial Contracts is the only soft law instrument developed by The Hague Conference to date, he explained that On this issue the majority of the member states had considered that a hard law instrument would be of little benefit since they already had national laws dealing with the subject. However, they did recognize that, in other parts of the world, choice of law was not accepted in theory or in practice and this was an incentive for states to develop guidelines on these issues. By way of another example, Dr. Bernasconi said that, on the topic of direct grants of jurisdiction, due to the technical difficulties that would be involved in translating that subject into a convention, he would propose to explore the possibility of a soft law instrument, such as a model law.

The Hague Conference Secretary General also endorsed the comments that had been made in regard to coordination. He recalled that the OAS has had observer status at The Hague Conference for many years. For The Hague Conference, avoiding duplication is key, and towards that goal, they maintain ongoing communications with multiple organizations around the world. He was delighted to learn about the work of the CJI in relation to recognition and enforcement of judgements and noted that it does not fall within the purview of The Hague Conference to develop procedural rules for domestic courts. In that regard, he mentioned the work of the International Union of Judicial Officers, an NGO that has developed a code by experts for actual execution of judgements that has been welcomed around the world. In matters of promotion, he referred to efforts made by the Secretariat of The Hague Conference, in conjunction with universities, to work with PhD students and researchers in the establishment of internships. He also noted the use of technology, in particular the possibility of webinar and other initiatives aimed at holding virtual meetings of the Conference away from their headquarters in The Hague.

In response to comments by the representative of the African Union Commission (AUCIL), he stated that this meeting was a good step forward and he noted that The Hague Conference does have a strategy in place to expand in Africa. He saw this as key for greater visibility in the continent and suggested bilateral discussions between both institutions.

Dr. Jose Moreno saluted the representatives that had joined the meeting and recounted his experiences working within The Hague Conference and the development of the regional office in Latin America.

At Dr. Moreno's invitation, Dr. Ignacio Goicoechea, representative of The Hague Conference for the Americas, briefly recounted the work done by The Hague Conference regional office over the past 13 years. Dr. Goicoechea said it is clear that we share a legal culture, which facilitates the possibility to develop projects and instruments within the Conference. He reminded the audience that the essential "reason of being" and the purpose of The Hague Conference is to generate and maintain peace in the world. Within the hemisphere, people are starting to see the connection between the protection of human rights, such as the rights of children, and private international law instruments that are required to give effect to those rights and of all stakeholders involved. An example would be enforcement of maintenance agreements. At the same time, he recognized that on the desk of legal advisors there is a plethora of demanding issues, including those relating to private international law. Thus, he asked for suggestions on how international organization and States could best work together to reach out and provide better services to citizens through sustainable mechanisms on these important matters.

The President of the Committee requested the invited guests to reflect upon the development of efficient methods of work, and in particular, to respond to issues regarding how to optimize the work of international organizations in relation to the work carried out by States.

Dr. Carlos Mata noted the significance of the topic and said that first, it is important to maintain these forms of inter-organizational dialogue. Secondly, he noted that analysis is needed on these various instruments, whether to proceed with the universal or the regional instrument. If this could be done more efficiently, it would be possible for States to be more diligent in the ratification process.

Dr. José Moreno mentioned that collaboration is considered in all these meetings and continuous effort is made to avoid duplication. He then recounted the complementarity of developments regionally and globally on the law of international contracts, starting with the Mexico Convention in 1994, which was ratified by only two States but served to encourage soft law, such as The Hague Conference Principles. Now the Committee has considered further developments at the regional level, also in the form of a soft law instrument, it is working on a Guide that will encourage member states to take the best of both instruments. He noted that the Committee has asked the United Nations Commission on International Trade Law (UNCITRAL), the International Institute for the Unification of Private Law (UNIDROIT) and The Hague Conference for comments on this draft; thus, this cooperation is already ongoing and will only become intensified.

The legal advisor of Peru, Juan José Ruda, agreed with remarks already made: first, to hold periodic meetings such as this to avoid duplicity of work and greater complementarity; secondly to make use of the regional representative, particularly to provide assistance during legislative initiatives. He also suggested use of new technology, such as the services offered by the audio-visual library of the UN, a tool without excessive cost.

The Hague Conference Secretary General wholeheartedly agreed with the proposal to institutionalize these meetings and also expressed commitment to keep channels open in between with informal exchanges. He mentioned cooperation agreements with universities and noted the inability on the part of The Hague Conference to follow all new developments and their gratitude that academics are willing to assist with this work. He was in full agreement as to the use of modern technology and to holding more meetings outside of The Hague, but noted this is also a function of time and travel costs.

Dr. Ignacio Goicoechea acknowledged the difficulties faced by legal advisors to stay abreast of all these developments but noted also the limited resources of The Hague Conference. He suggested

initiatives such as internships or an in-house “trainee” from the Ministry of a member state who could also contribute to the research being undertaken to facilitate the implementation of international instruments in their own countries. He also proposed to have an open channel to facilitate the coordination of information, including research, technical production and analysis, among the Secretariat of The Hague Conference, legal advisories and academia, in light of priorities of governments, and he expected that the end result would be useful for government and operators to facilitate informed and prompt decisions.

Dr. Jeffrey Kovar of the United States said he had found the discussion very useful. While exchanges between international organizations are important, he said it is equally important for Ministries to engage their own stakeholders. He mentioned that the US State Department regularly consults with the Advisory Council on Private International Law and stressed the value of these internal stakeholder meetings.

The President, Dr. Ruth Correa, thanked the representatives of The Hague Conference for their participation. She said the exercise had been very valuable and should be reciprocated, possibly with the use of virtual communication. She said the experience had been greatly enriched with the presence of the legal advisors and the participation of the representatives from the African Union Commission (AUCIL). She closed the session stating that the CJI has been inspired by the recognition to its work and is thereby invigorated to continue on that path.

* * *