PERMANENT COUNCIL

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ANNUAL REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE TO THE FORTY-SECOND REGULAR OF THE GENERAL ASSEMBLY

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

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Rio de Janeiro, February 29, 2012

CJI/O/1/2012

Excellency:

I have the honor to address Your Excellency to request that you kindly forward to the Permanent Council of the Organization of American States the attached Annual Report of the Inter-American Juridical Committee to the General Assembly (OEA/Ser.Q/IV.42 CJI/doc. 399/11), regarding the activities of the Committee in 2011.

Accept, Excellency, the renewed assurances of my highest consideration.

João Clemente Baena Soares
Chairman
Inter-American Juridical Committee

His Excellency
José Miguel Insulza
Secretary General
Organization of American States
Washington, D.C.
U.S.A.

ORGANIZATION OF AMERICAN STATES

INTER-AMERICAN JURIDICAL COMMITTEE

CJI

79th REGULAR SESSION
August 1 to 6, 2011
Rio de Janeiro, Brazil

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ANNUAL REPORT

OF THE INTER-AMERICAN JURIDICAL COMMITTEE TO THE GENERAL ASSEMBLY

2011

General Secretariat
Organization of the American States
www.oas.org/cji
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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 2011, in accordance with the terms of Article 91.f of the Charter of the Organization of American States and Article 13 of its Statute, 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.

During 2011, the Inter-American Juridical Committee held two regular sessions and adopted reports fulfilling three mandates of the General Assembly on issues relating to 1. peace, security and cooperation; 2. participatory democracy and citizen participation; and 3. freedom of thought and expression. Additionally, four new rapporteurships were created in compliance with requests adopted by the General Assembly in June 2011 in San Salvador. The new rapporteurships are for human rights, sexual orientation and gender identity; access to public information and protection of personal data; international humanitarian law; and strengthening the human rights system. Furthermore, it was decided to incorporate a new mandate with the purpose of developing a model law on simplified joint stock companies, and to continue addressing the following topics: access to justice, cultural diversity in the development of international law and private international law. Finally, the Committee decided to terminate the study of migration issues and the International Criminal Court.

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 the period covered in this Annual Report. The second chapter considers the issues that the Inter-American Juridical Committee discussed at the regular sessions in 2011 and contains the texts of the resolutions adopted at both regular sessions and related documents. Lastly, the third chapter concerns the Juridical Committee's other activities and the other resolutions adopted by it. Budgetary matters are also discussed. Annexed to the Annual Report are lists of the resolutions and documents adopted, as well as thematic and keyword indexes to help the reader locate documents in this Report.

Dr. Guillermo Fernández de Soto, Chairman of the Inter-American Juridical Committee, approved the language of this Annual Report.

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, in special cases it may meet elsewhere that may be appointed 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. Seventy-eight regular session

The 78th regular session of the Inter-American Juridical Committee took place on March 21 to 28, 2011, 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":

João Clemente Baena Soares
David P. Stewart
Fabián Novak Talavera
Mauricio Herdocia Sacasa
Hyacinth Evadne Lindsay
Miguel Aníbal Pichardo Olivier
Jean-Paul Hubert
Guillermo Fernández de Soto
Freddy Castillo Castellanos
Ana Elizabeth Villalta Vizcarra

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; Manoel Tolomei Moletta, Secretary of the Inter-American Juridical Committee; and Luis Toro Utillano, Principal Legal Officer.

The Chairman of the Juridical Committee, Dr. Guillermo Fernández de Soto, welcomed the members of the Committee and informed them of Dr. Jorge Palacios Treviño's resignation from the Committee for health reasons, following which a resolution was adopted expressing the Committee's solidarity with him. He noted that this vacancy would lead to an election in the Permanent Council, since Dr. Jorge Palacios, along with Drs. Hyacinth Evadne Lindsay and João Clemente Baena Soares, had begun their new four-year mandates on January 1, 2011.

Then, in compliance with Article 12 of the Rules of Procedure of the Inter-American Juridical Committee, the Chairman gave his verbal report on activities since the last meeting. Finally, the Chairman requested the inclusion on the agenda of a closed meeting of the Committee for joint consideration of methods and work relating to budgetary issues.

On this occasion, the Inter-American Juridical Committee adopted resolution CJI/RES. 173 (LXXVIII-O/10), "Date and venue of the seventy-ninth regular session of the Inter-American Juridical Committee," in which it decided to hold its 79th regular session at its headquarters in the city of Rio de Janeiro, Brazil, commencing on August 1, 2011.

CJI/RES. 173 (LXXVIII-O/11)

DATE AND VENUE OF THE SEVENTY-NINEGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that article 15 of its Statutes provides for two regular sessions annually;

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 79th regular session at its headquarters in the city of Rio de Janeiro, Brazil, as of August 1, 2011.

This resolution was unanimously adopted at the session held on March 28, 2011, by the following members: Drs. João Clemente Baena Soares, David P. Stewart, Fabián Novak Talavera, Maurício Herdocia Sacasa, Hyacinth Evadne Lindsay, Miguel Aníbal Pichardo Olivier, Jean-Paul Hubert, Guilhermo Fernández de Soto, Freddy Castillo Castellanos and Ana Elizabeth VillaltaVizcarra.

The Inter-American Juridical Committee had before it the following agenda, adopted by means of resolution CJI/RES. 169 (LXXVII-O/10), "Agenda for the Seventy-eight Regular Session of the Inter-American Juridical Committee":

CJI/RES. 169 (LXXVII-O/10)

AGENDA FOR THE SEVENTY-EIGHTH REGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE
(Rio de Janeiro, as of March 21, 2011)

Topics under consideration

1. Peace, security and cooperation
   Rapporteur: Dr. Mauricio Herdocia Sacasa
2. Participatory democracy and citizen participation
   Rapporteur: Dr. Fabián Novak Talavera
3. Access to justice in the Americas
   Rapporteur: Dr. Freddy Castillo Castellanos
4. International Criminal Court
   Rapporteur: Dr. Mauricio Herdocia Sacasa
5. Considerations on an inter-American jurisdiction of justice
   Rapporteur: Dr. Guillermo Fernández de Soto
6. Implementation of International Humanitarian Law in OAS Member States
   Rapporteur: Dr. Jorge Palacios Treviño
7. Cultural diversity in the development of international law
   Rapporteur: Dr. Freddy Castillo Castellanos
8. Migratory topics
   Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and David P. Stewart
9. Asylum
   Rapporteuse: Dr. Ana Elizabeth Villalta Vizcarra

10. Freedom or thought and expression
    Rapporteur: Dr. Guillermo Fernández de Soto
11. Topics on Private International Law: Inter-American Specialized Conference on Private International Law (CIDIP)
    Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra, David P. Stewart and Guillermo Fernández de Soto

This resolution was unanimously adopted at the session held on August 11, 2010, by the following members: Drs. Miguel Aníbal Pichardo Olivier, Hyacinth Evadne Lindsay, João Clemente Baena Soares, Freddy Castillo Castellanos, David P. Stewart and Jean-Paul Hubert.

The Juridical Committee adopted two resolutions rendering homage to jurists of the Hemisphere. By means of resolution CJI/RES. 171 (LXXVIII-O/11), the Committee paid homage to the memory of Ambassador Ramiro Saraiva Guerreiro, distinguished Brazilian diplomat and jurist, who passed away in Rio de Janeiro on January 19, 2011.

CJI/RES. 171 (LXXVIII-O/11)

A TRIBUTE TO THE MEMORY OF AMBASSADOR RAMIRO SARAIVA GUERREIRO

THE INTER-AMERICAN JURIDICAL COMMITTEE,

FEELING DEEP CONSTERNATION at the passing of Ambassador Ramiro Saraiva Guerreiro, the distinguished Brazilian diplomat and jurist, which took place in Rio de Janeiro on January 19, 2011;

CONSIDERING his eminent career in the service of his country, the Federative Republic of Brazil, and his brilliant work for nine years on the Committee, where he occupied the Presidency and as a member performed his duties with skill, consideration and wisdom, and demonstrating his outstanding capacity as a jurist, together with his diplomatic ability;

HAVING, through his distinction, won the respect and appreciation of the members of the Inter-American Juridical Committee,

RESOLVES:

1. To express its most sincere recognition and homage to the memory of Ambassador Ramiro Saraiva Guerreiro;

2. To convey the terms of this resolution as an expression of the condolences of the Inter-American Juridical Committee to the Federative Republic of Brazil and to the family of Ambassador Ramiro Saraiva Guerreiro.

This resolution was approved unanimously at the regular session held on March 28, 2011, by the following members: Drs. João Clemente Baena Soares, David P. Stewart, Fabián Novak Talavera, Mauricio Herdocia Sacasa, Hyacinth Evadne Lindsay, Miguel Aníbal Pichardo Olivier, Jean-Paul Hubert, Guillermo Fernández de Soto, Freddy Castillo Castellanos and Ana Elizabeth VillaltaVizcarra.

By means of resolution CJI/RES. 172 (LXXVIII-O/11), the Committee paid homage to Ambassador Jorge Palacios Treviño, who presented his resignation due to health issues.

CJI/RES. 172 (LXXVIII-O/11)

TRIBUTE TO AMBASSADOR JORGE PALACIOS TREVIÑO

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that on February 28, 2011 Ambassador Jorge Palacios Treviño presented his resignation from the position he held at the Inter-American Juridical Committee for health reasons;

RECALLING that Ambassador Palacios was a member of the Inter-American Juridical Committee from January 2007 to December 2010, having been reelected by the 40th General Assembly of the Organization of American States for the period from January 2011 to December 2014;

CONSCIOUS of the valuable contribution of Ambassador Palacios to the works of the Juridical Committee throughout his mandates, and acknowledging that his reports made an inestimable contribution to the development and codification of international law and of the Inter-American System, especially the reports on "The international criminal courts", "War crimes in international humanitarian law", "The implementation of international humanitarian law in OAS Member States", the "Manual on Human Rights for all migrant workers and their families", and the "The legal situation of migrant workers and their families in international law", among others;

HIGHLIGHTING the many talents of Ambassador Palacios Treviño, among them his broad juridical and academic culture, his diplomatic skills and his amenable manner, which distinguished him among the members of the Juridical Committee,

RESOLVES:

1. To express its deep gratitude to Ambassador Jorge Palacios Treviño for his dedication and invaluable contributions to the work of the Inter-American Juridical Committee.

2. To wish him great success, with the hope that he will continue to maintain his relationship with the Inter-American Juridical Committee.

3. To convey this resolution to him and his family, as well as to the Organs of the Organization.

This resolution was unanimously approved in the regular session of March 28, 2011, by the following members: Drs. João Clemente Baena Soares, David P. Stewart, Fabián Novak Talavera, Mauricio Herdocia Sacasa, Hyacinth Evadne Lindsay, Miguel Aníbal Pichardo Olivier, Jean-Paul Hubert, Guillermo Fernández de Soto, Freddy Castillo Castellanos and Ana Elizabeth Villalta Vizcarra.

B. Seventy-ninth regular session

The 79th regular session of the Inter-American Juridical Committee took place on August 1 to 6, 2011, 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:

João Clemente Baena Soares
Hyacinth Evadne Lindsay
Jean-Paul Hubert
Fernando Gómez Mont Urueta

David P. Stewart
Ana Elizabeth Villalta Vizcarra
Fabián Novak Talavera
Guillermo Fernández de Soto
Mauricio Herdocia Sacasa
Freddy Castillo Castellanos

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; and Luis Toro Utillano, Principal Legal Officer with that same department.

The Chairman, Dr. Guillermo Fernández de Soto, welcomed the Committee's members and congratulated Drs. Carlos Mata Prates (Uruguay) and Luis Moreno Guerra (Ecuador) as new members of the Inter-American Juridical Committee, elected by the OAS General Assembly held in San Salvador, El Salvador, in June of this year, with their terms in office to begin in January 2012.

The Chairman of the Committee also presented Dr. Fernando Gómez Mont Urueta, who was elected by the Permanent Council on May 4, 2011, to cover the vacancy left by Dr. Jorge Palacios Treviño, whose term is to expire on December 31, 2014.

Dr. Fernando Gómez Mont Urueta then expressed his pleasure and shared some information on his professional experience in both private practice, in his own law firm, and in the public sector, most recently as Mexico's Secretary of the Interior.

The Chairman of the Inter-American Juridical Committee, in compliance with Article 12 of the Committee's Rules of Procedure, then gave his verbal report on activities since the last meeting.

The Chairman spoke of his attendance at the meeting of the Permanent Council's Committee on Juridical and Political Affairs held on Thursday, April 7, 2011, when he gave a verbal report on the activities carried out by the Committee during 2010, at its 76th and 77th periods of sessions, in accordance with the Annual Report of the Inter-American Juridical Committee, classified as document (CP/doc.4547/11). He also described the presentation given by Dr. Villalta to the General Assembly in San Salvador in June, the report of which may be found in document CJI/doc.379/11.

Moving on to other areas, the Chairman of the Committee stated that a document from the Chair had been distributed among the members, containing the commitments assumed by the members at the March period of sessions, together with a document prepared by the Department of International Law indicating the mandates established by the General Assembly (DDI/doc.4/11).

He also reported on the official meetings that took place during his visit to OAS headquarters in April–with Secretary General José Miguel Insulza, and with the chair of the Committee on Juridical and Political Affairs, Ambassador Hugo de Zela, Permanent Representative of Peru to the OAS–with whom he dealt with a range of issues, including the problem of funding. He also spoke of his meeting with the Ambassador of Mexico to the OAS to clarify the mandates handed down to the Juridical Committee, and of his working meeting with Dr. Catalina Botero, the IACHR's Rapporteur on Freedom of Expression, at which they addressed the conclusions of the meeting held in Los Angeles that the Chairman was unable to attend.

Finally, he noted the work carried out by the personnel of the General Secretariat in planning this period of sessions, in preparing for the panel on democracy, and in producing the publication on the Committee's work between 1946 and 2010 ("Democracy in the Work of the Inter-American Juridical Committee").

At its 79th regular session, the Inter-American Juridical Committee had before it the following agenda, which was adopted by means of resolution CJI/RES. 174 (LXXVIII-O/11), "Agenda for the seventy-ninth regular session of the Inter-American Juridical Committee":

CJI/RES. 174 (LXXVIII-O/11)

AGENDA FOR THE
SEVENTY-NINE REGULAR SESSION OF THE
INTER-AMERICAN JURIDICAL COMMITTEE
(Rio de Janeiro, as 1 of August, 2011)

Topics under consideration

1. Peace, security and cooperation
   Rapporteur: Dr. Mauricio Herdocia Sacasa
2. Participatory democracy and citizen participation
   Rapporteur: Dr. Fabián Novak Talavera
3. Access to justice in the Americas
   Rapporteur: Dr. Freddy Castillo Castellanos
4. International Criminal Court
   Rapporteur: Dr. Mauricio Herdocia Sacasa
5. Cultural diversity in the development of international law
   Rapporteur: Dr. Freddy Castillo Castellanos
6. Migratory topics
   Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and David P. Stewart
7. Freedom or thought and expression
   Rapporteur: Dr. Guillermo Fernández de Soto
8. Topics on Private International Law: Inter-American Specialized Conference on Private International Law
   Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra, David P. Stewart and Guillermo Fernández de Soto

This resolution was unanimously adopted at the session held on March 28, 2011, by the following members: Drs. João Clemente Baena Soares, David P. Stewart, Fabián Novak Talavera, Mauricio Herdocia Sacasa, Hyacinth Evadne Lindsay, Miguel Aníbal Pichardo Olivier, Jean-Paul Hubert, Guillermo Fernández de Soto, Freddy Castillo Castellanos and Ana Elizabeth Villalta Vizcarra.

At its August meeting, the Inter-American Juridical Committee decided to hold its next session in the city of Mexico, D.C., beginning on March 5, 2012, through resolution CJI/RES. 181 (LXXIX-O/11), "Date and Venue of the Eightieth Regular Session of the Inter-American Juridical Committee." It also adopted resolution CJI/RES. 182 (LXXIX-O/11), "Agenda for the Eightieth Regular Session of the Inter-American Juridical Committee."

CJI/RES. 181 (LXXIX-O/11)

DATE AND VENUE OF THE EIGHTIETH REGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that article 15 of its Statutes provides for two regular sessions annually;

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;

TAKING INTO ACCOUNT that the Government of Mexico, through Dr. Fernando Gómez Mont, has notified the Inter-American Juridical Committee its interest in holding the 80th regular session in Mexico,

RESOLVES to hold its 80th regular session in Mexico starting on March 5, 2012.

This resolution was approved unanimously at the session held on 5 August, 2011, by the following members: Drs. João Clemente Baena Soares, Hyacinth E. Lindsay, Jean-Paul Hubert, Fernando Gómez Mont Urueta, David P. Stewart, Ana Elizabeth Villalta Vizcarra, Fabián Novak Talavera, Guillermo Fernández de Soto, Mauricio Herdocia Sacasa and Freddy Castillo Castellanos.

CJI/RES. 182 (LXXIX-O/11)

AGENDA FOR THE EIGHTIETH REGULAR SESSION OF THE INTER-AMERICAN JURIDICAL COMMITTEE
(Mexico City, from 5 March, 2012)

Topics under consideration

1. Access to justice in the Americas
   Rapporteur: Dr. Freddy Castillo Castellanos
2. Cultural diversity in the development of international law
   Rapporteur: Dr. Freddy Castillo Castellanos
3. Topics on Private International Law: Inter-American Specialized Conference on Private International Law
   Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra, David P. Stewart and Guillermo Fernández de Soto
4. Protection of Personal Data
   Rapporteur: Dr. David P. Stewart
5. Strengthening the Inter-American System of Human Rights
   Rapporteurs: Drs. João Clemente Baena Soares and Fabián Novak Talavera
6. Sexual orientation, and gender identity
   Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and Freddy Castillo Castellanos
7. Model legislation on protection of cultural property in the event of armed conflict
   Rapporteurs: Drs. Ana Elizabeth Villalta Vizcarra and Freddy Castillo Castellanos
8. Guide for regulating the use of force and protection of people in situations of internal violence that do not qualify as armed conflict
   Rapporteur: Dr. Fernando Gómez Mont Urueta

9. Simplified stock corporation
Rapporteur: Dr. David P. Stewart

This resolution was approved unanimously at the session held on August 5, 2011, by the following members: Drs. João Clemente Baena Soares, Hyacinth Evadne Lindsay, Jean-Paul Hubert, Fernando Gómez Mont Urueta, David P. Stewart, Ana Elizabeth Villalta Vizcarra, Fabián Novak Talavera, Guillermo Fernández de Soto, Mauricio Herdocia Sacasa and Freddy Castillo Castellanos.

Finally, the Juridical Committee adopted two resolutions rendering homage to each of the members whose mandate ends in December of this year, Dr. Guillermo Fernández de Soto the current President, and Dr. Mauricio Herdocia Sacasa, who acted as President of the Committee during 2005-2006 .

CJI/RES. 177 (LXXIX-O/11)

TRIBUTE TO DR. MAURICIO HERDOCIA SACASA

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that Dr. Mauricio Herdocia Sacasa's mandate comes to an end on 31 December 2011;

RECALLING that Dr. Herdocia Sacasa has been a member of the Inter-American Juridical Committee since January of 2004, occupying the position of President in the period 2005-2006, and participating as President in the organization of the IAJC's Centenary celebrations;

AWARE of the valuable assistance given by Dr. Herdocia Sacasa to the work of the Committee during the entire length of his mandates, and that his reports represented an invaluable contribution to the development and codification of international law and the inter-American system. Special mention should be made of his contributions to the area of law of identity; the essential elements of democracy; the fight against corruption and impunity; the right to information; access to and protection of information and personal data; the International Criminal Court; and peace, security and cooperation;

EMPHASIZING Dr. Herdocia Sacasa's various qualities, among them his vast juridical and academic culture, especially in matters pertaining to international negotiation, social integration and international law, his commitment to the principles and development of human rights, and the amiable and cordial manner that made him a distinguished colleague in the Juridical Committee,

RESOLVES:

1. To express its heartfelt gratitude to Dr. Mauricio Herdocia Sacasa for his dedication and invaluable contribution to the work of the Inter-American Juridical Committee.

2. To wish him great success in his future work, in the hope that he will maintain his relationship with the Inter-American Juridical Committee.

3. To send this resolution to the various bodies of the Organization.

This resolution was approved unanimously at the session held on 5 August 2011 by the following members: Drs. João Clemente Baena Soares, Hyacinth E. Lindsay, Jean-Paul Hubert, Fernando Gómez Mont Urueta, David P. Stewart, Ana Elizabeth Villalta Vizcarra, Fabián Novak Talavera, Guillermo Fernández de Soto and Freddy Castillo Castellanos.

CJI/RES. 178 (LXXIX-O/11)

TRIBUTE TO DR. GUILLERMO FERNÁNDEZ DE SOTO

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that Dr. Guillermo Fernández de Soto's mandate comes to an end on 31 December 2011;

RECALLING that Dr. Fernández de Soto has been a member of the Inter-American Juridical Committee since January 2008, occupying the position of Vice-President in the year 2009 and President during the period 2010-2011;

AWARE of the valuable contribution provided by Dr. Fernández de Soto to the work of the Committee, and that his reports represented an invaluable contribution to the development and codification of international law and of the Inter-American System, especially his reports in the areas of inter-American jurisdiction of justice and freedom of thought and expression;

UNDERLINING the various attributes of Dr. Fernández de Soto, among them his exceptional juridical and academic culture and cordial leadership, together with the pleasant working atmosphere during his term as President that distinguishes him among the member of the Committee,

RESOLVES:

1. To express its sincere gratitude to Dr. Guillermo Fernández de Soto for his dedication and invaluable contribution to the work of the Inter-American Juridical Committee;

2. To wish him success in his future activities, in the hope that he will maintain his relationship with the Inter-American Juridical Committee;

3. To forward this resolution herein to the various bodies of the Organization.

This resolution was unanimously adopted at the session held on 5 August, 2011 by the following members: Drs. João Clemente Baena Soares, Hyacinth E. Lindsay, Jean-Paul Hubert, Fernando Gómez Mont Urueta, David P. Stewart, Ana Elizabeth Villalta Vizcarra, Fabián Novak Talavera, Mauricio Herdocia Sacasa and Freddy Castillo Castellanos.

CHAPTER II

TOPICS DISCUSSED BY THE INTER-AMERICAN JURIDICAL COMMITTEE AT THE REGULAR SESSIONS HELD IN 2011

I. THEMES UNDER CONSIDERATION

During 2011, the Inter-American Juridical Committee held two regular sessions and adopted reports fulfilling three mandates of the General Assembly on issues relating to 1. peace, security and cooperation; 2. participatory democracy and citizen participation; and 3. freedom of thought and expression. Additionally, four new rapporteurships were created in compliance with requests adopted by the General Assembly in June 2011 in San Salvador. The new rapporteurships are for human rights, sexual orientation and gender identity; access to public information and protection of personal data; international humanitarian law; and strengthening the human rights system. Furthermore, it was determined to incorporate two new mandates, one with the purpose of developing a model law on simplified joint stock companies and another regarding the regulation of the use of force and protection for persons in situations of internal violence that do not qualify as an armed conflict. It was also decided continue addressing the following topics: access to justice, cultural diversity in the development of international law and private international law. Finally, the Committee decided to terminate the study of migration issues and the International Criminal Court.

Each of those topics is dealt with below, including, when appropriate, the relevant documents drawn up and adopted by the Inter-American Juridical Committee.

1. Access to Justice in the Americas

At its 66th regular session (Managua, February 28–March 11, 2005), the Inter-American Juridical Committee included the topic Principles of Judicial Ethics on its agenda.

In June 2005, the General Assembly called on the Juridical Committee to "conduct studies with other organs of the inter-American system, in particular with the JSCA, on different matters geared toward strengthening the administration of justice and judicial ethics resolution AG/RES. 2069 (XXXV-O/05).

At the 70th regular session of the Inter-American Juridical Committee (San Salvador, February-March 2007), Dr. Ana Elizabeth Villalta Vizcarra, rapporteur of the topic, presented report CJI/doc.238/07, "Principles of Judicial Ethics". The Inter-American Juridical Committee adopted resolution CJI/RES. 126 (LXX-O/07), "Administration of Justice in the Americas: judicial ethics and access to justice". Said resolution appointed Drs. Ricardo Seitenfus and Freddy Castillo Castellanos as co-rapporteurs to work alongside with Dr. Ana Elizabeth Villalta Vizcarra.

During the 71st regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2007), it decided to instruct the rapporteurs to present a report at the next regular session concerning the scope of the topic of judicial ethics and access to justice in the context of international law, including alternative forms.

During the 72nd regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2008), the Inter-American Juridical Committee decided to change the title of the topic to "innovative forms of access to justice in the Americas".

At the 73rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2008), Dr. Freddy Castillo Castellanos, rapporteur on the subject, presented document CJI/doc.315/08, "Access to Justice: Preliminary Considerations", with a view to receiving comments on his approach to the topic, so that he could subsequently draw up a more detailed report.

During the 74th regular session of the Inter-American Juridical Committee (Bogotá, Colombia, March 2009), Dr. Dante Negro reported that in January 2009, the Department of International Law began implementing a project financed by CIDA-Canada, involving support for free counseling services at two universities in the Hemisphere, one in Honduras and the other in Paraguay, in order to increase access to justice on the part of the poorest sectors.

Dr. Jean-Michel Arrighi, Secretary for Legal Affairs, reported on the program of judicial facilitators in rural areas, which originated in Nicaragua and has now been extended to Panama, Paraguay, and Ecuador, and soon to Honduras. He also reported on the work with Ecuador to implement mediation centers in civil matters.

After an exchange of views, the Committee decided that the most important issue was to approach access to justice in innovative ways and to expand channels of access to justice, and that the role of the Committee in this effort would be similar to that played in the area of the right to access to information. In other words, it would approve general guidelines to promote access to justice.

During the 75th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2009), Dr. Freddy Castillo Castellanos presented report CJI/doc.336/09, "Innovative forms of access to justice in the Americas," which sets forth principles and gives alternatives with a view to guiding the Committee's future work. After a rich exchange of views, the Rapporteur was asked to present an initial draft of principles for the Committee to look at in March 2010.

During the 76th regular session of the Inter-American Juridical Committee, (Lima, Peru, March 2010), the rapporteur on the topic, Dr. Freddy Castillo Castellanos, presented the report

CJI/doc.353/10 on the "Comprehensive training of judges: a requirement for justice," drafted in light of the manual on principles presented at the previous regular session and the debates that ensued. On that occasion, he highlighted the importance of providing more solid training for judges.

Members then commented on the training and election of judges in their countries, and confirmed that the manual of principles to be approved by the Committee should underline the fundamental importance of an independent Judiciary, and of modernizing it and ensuring that all communities have equal, timely, and proportional access to it.

It is also worth noting that on March 22, 2010, the Committee received a visit from Dr. Javier La Rosa, head of the "Access to Justice" area of the Peruvian Legal Defense Institute (IDL). Dr. La Rosa spoke on the importance of the issue of access to justice in the region and of the action countries need to take to overcome barriers that are not only geographic, but also linguistic, economic, and cultural. In this context, he supported the relevance and impact of the manual of principles to be approved by the Committee. He said that the guidelines would strengthen declarations and provisions intended to protect sectors traditionally denied access to justice.

At the 77th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2010), the rapporteur for the topic, Dr. Freddy Castillo Castellanos, presented his report on "Innovative Forms of Access to justice", document CJI/doc.361/10. This report follows up on the various international instruments that uphold the right of access to justice as an inherent element of human rights, the rule of law, and the principle of social justice. The report contains some documents prepared and reviewed to date by the rapporteur, in particular the decalogue of principles he presented at the August 2009 meeting as document CJI/doc.336/09, in addition to suggestions from organizations dedicated to studying the topic of access to justice, chiefly the Legal Defense Institute of Peru and the Due Legal Process Foundation.

The rapporteur also noted that his document was intended to guide state actions in establishing and improving channels for access to justice. In this context, he emphasized the role of education, which fosters public awareness of the enjoyment of rights. In addition, the rapporteur reaffirmed certain principles that should prevail, such as an intercultural approach in all countries, an independent administration of justice, attention to the most vulnerable groups (indigenous people, migrants, people with disabilities), and the adoption of alternative conciliation methods prior to involving judicial venues. He also stressed the importance of training justice system workers, continuing education for judges, and the availability of resources to foster more simplified judicial proceedings. To summarize, a set of actions is needed to reduce bureaucratic barriers to access to justice, as well as ongoing educational efforts for both employees of the judiciary and society in general.

Dr. Fabián Novak, after congratulating the rapporteur on his work, said that since this was a draft declaration, the document would benefit from the inclusion of an introduction, in order to clarify the course taken by the discussions, its grounding, the goals sought with the declaration, and the problems existing in the region that inspired the Juridical Committee to address the topic. He also said it was important to understand the paths taken by the two nongovernmental organizations cited by the rapporteur in order to arrive at a declaration. He finally urged analysis and proposals on "innovative forms of access to justice" instead of traditional access methods.

Dr. Freddy Castillo recalled the preliminary discussions when the Juridical Committee began its study of the topic, its development under the rapporteurship of other members, and the abundant material existing on the matter. He welcomed the suggested inclusion of a brief introduction summarizing the Committee's work in producing the draft declaration. He added that studying innovative methods did not preclude an analysis of traditional forms of justice, and that the title had

been given to emphasize more modern procedures which, incidentally, could warrant a separate chapter in a future version of the draft. Finally, he clarified that the proposed declaration presented by the two organizations was based on his earlier report and, since it had been improved, he held it to be a work of joint authorship.

Dr. Mauricio Herdocia thanked the rapporteur for his synthesis efforts in identifying the principles that could be included in a declaration. In connection with this, he asked whether the proposed declaration was intended to be adopted by the Member States, or whether, as he deemed more appropriate, it was to be a set of guiding principles adopted by the Juridical Committee. He supported Dr. Novak's proposal to include an introduction referring to the Court's rulings and other agencies' opinions, which would invest the draft with greater weight.

Dr. Hyacinth Lindsay joined the above congratulations and went on to say that in item 18, she thought it would be useful to place more emphasis on the training of justice system workers than on their qualifications.

Dr. Elizabeth Villalta suggested deleting, from item 4, the term "political" decisions, which could undermine the principle of separation of powers.

The Chairman noted that the topic did not arise from a General Assembly mandate, but rather from a recommendation from the Committee to examine the issue, with a view to adopting a set of guiding principles; his remarks were seconded by Drs. Jean-Paul Hubert and João Clemente Baena Soares.

Dr. João Clemente Baena Soares also proposed replacing the reference in item 7 to "freedom" with "autonomy" of decisions. With regard to item 11, he said that States must respect customary law and not undermine traditional forms of access. In addition, he suggested deleting the phrase "as a counterpart" in item 12 and, in item 21, say that "States will guarantee" and include "technological" in the list of limitations. Finally, he suggested that the draft should stress innovative forms of access to justice.

Dr. David Stewart suggested dividing the document into three distinct parts: the first would cover the articles dealing with the importance of access to justice; the second would deal with the principles that the Juridical Committee deems important in order to guide the States; and, finally, the third would address a series of measures that States should adopt in order to implement those principles.

The rapporteur on the topic expressed appreciation for the members' contributions, which he welcomed. Regarding the nature of the document, he explained that it was a guide or manual of principles governing access to justice, emphasizing innovative forms. Finally, the rapporteur proposed presenting a document with the suggested amendments at the next period of sessions.

During the 78th regular session held in Rio de Janeiro in March 2011, the President recommended postponing considering the theme until August, which was accepted by the plenary. The rapporteur of the theme, Dr. Freddy Castillo Castellanos, explained his intention to present a guide of principles with developments of the main points of his work, one with regard to training of judges and another concerning the independence of judicial power.

During the 79th regular session (Rio de Janeiro, August 2011), Dr. Freddy Castillo, the rapporteur, presented document CJI/doc.392/11, "Access to Justice". It addressed two key elements: the training of judges and judicial autonomy. He also indicated that he had incorporated the comments made by members at earlier sessions, such as reference to judicial autonomy. A series of principles is set forth at the end of the report.

Dr. Gómez Mont Urueta referred to the relationship between access to justice and the strengthening of democracy. On the training of judges, he proposed that judicial mechanisms be interpreted in light of justice mechanisms. On item four, he suggested that reference to judicial centralism in capitals be clarified. The rapporteur explained that an “adequate social audit service” is meant to be an instrument to ensure that interpretations respect the law, but that he would change it and include the other suggestions.

Dr. Jean-Paul Hubert requested that the rapporteur include in the preambular section of his report the fact that it was a mandate of the Juridical Committee itself, as well as a description of the cases of persons in a vulnerable situation, and that he modify the state’s obligation with regard to the reference to customary law.

Dr. Mauricio Herdocia urged the rapporteur to use more neutral language and avoid examples. More specifically, he recommended that “means of access to justice” be included in paragraph 15, and that paragraph 16 refer to modernization rather than reform of the judicial system.

Dr. Fabián Novak supported Dr. Herdocia’s proposal, and requested that the preamble include an explanation regarding alternative mechanisms for access to justice, and that the reference to equitable results in paragraph 3 and “management” of the judicial apparatus in paragraph 5 be amended.

Dr. Stewart asked the rapporteur about the state’s presence in paragraph 5, and the Rapporteur explained that it referred to justice by consensus In paragraph 7 on judicial review, Dr. Stewart explained that in the United States, not all cases are subject to such review by an independent court. Finally, on social control referred to in paragraph 12, he explained that in some courts in his country, judges are not necessarily attorneys and that there is no magistrate school.

Dr. Elizabeth Villalta suggested that the principles be given a general description, to ensure consensus between the two systems of civil and common law.

The Chairman proposed to the rapporteur that he revise the text, specify the innovative justice mechanisms, and separate the reference to the judgment from the subject of prisons in paragraph 3. With regard to training of the judiciary, consideration should be given to those countries that do not have institutions of this kind.

From a procedural standpoint, he requested the rapporteur to incorporate the proposed changes and then send the translated revised text with all the proposed changes to the English-speaking members, so that they can then submit their comments to the rapporteur, who will be presenting the final version during the next session to be held in March 2012.

2. Cultural Diversity in the Development of International law

During the 74th regular session of the Inter-American Juridical Committee (Bogota, Colombia, March 2009), Dr. Freddy Castillo presented a document in which he proposed to include the topic on cultural diversity and international law entitled "Cultural Diversity in the Development of International Law," document CJI/doc.325/09 rev.1. After presenting it, the Inter-American Juridical Committee decided to include the topic on its agenda and to elect Dr. Freddy Castillo as rapporteur.

In 2009, by resolution AG/RES. 2515 (XXXIX-O/09), the General Assembly requested the Inter-American Juridical Committee to report to it on the progress made on the topic.

During the 75th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2009), Dr. Freddy Castillo Castellanos presented a report on the topic, entitled "Reflections on the topic of cultural diversity and the development of international law" (CJI/doc.333/09).

He initially spoke about the instruments adopted within the United Nations, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights, with which progress has been made in the protection of cultural rights, starting with the recognition that all people have the right to experience in full the cultural life of their communities. States were called on to adopt measures to ensure the full enjoyment of those rights, which were later expanded to include the right to education, to access to information, and, more recently, the provisions governing discrimination on the grounds of age or gender.

Within the inter-American system, he quoted provisions from the American Declaration of the Rights and Duties of Man and from the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights ("Protocol of San Salvador") which also provide protection for cultural rights in the countries of the region.

He emphasized the work of UNESCO, set out in instruments such as the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention on the Protection of the Underwater Cultural Heritage (2001), the Convention for the Safeguarding of Intangible Cultural Heritage (2003), and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).

He concluded by saying that regionally, the Inter-American Juridical Committee could provide a contribution in the form of pertinent guidelines at the international level for the enforcement of the principles contained in the Convention, as well as by exploring other means for the concretion of the paradigm of cultural diversity among the region's countries. Thus, close observation of the Committee's thematic agenda reveals that a considerable number of those matters are connected to cultural diversity. That is the case, for example, with the Convention against All Forms of Discrimination and the topic of innovative forms of access to justice, along with others not yet contained in our catalogue of studies but that will no doubt be included in the future, including the topics of private international law, where cultural diversity plays an undeniably important role.

The Chairman congratulated the rapporteur on his stimulating report, and that sentiment was seconded by the other members. He also spoke of the importance of technology in disseminating knowledge, as a tool that can work either in favor of it or against it, chiefly when real forms of protection are not available.

Dr. João Clemente Baena Soares said that the topic was of great importance and, as a first reaction to the rapporteur's document, suggested addressing the dangers posed by new technologies.

At the 76th regular session of the Inter-American Juridical Committee (Lima, Peru, March 2010), Dr. Freddy Castillo, the rapporteur for the topic, presented a new report: "Cultural Diversity and Development of International Law" (CJI/doc.351/10). He spoke of the legal bases underpinning it, such as Articles 3(m) and 52 of the OAS Charter, and ended his presentation with the following proposals:

- Diversity should be recognized as cultural heritage;
- Different cultural expressions should be promoted;
- Cultural goods should be considered as spiritual assets and not simply as merchandise;
- Educational spaces should be developed to consolidate collective awareness about cultural diversity; and,
- Public and private initiatives should be promoted to reflect on problems arising from recognition of diversity and its impact in the field of international law.

Dr. Hubert thanked Dr. Castillo for his reading of the OAS Charter and spoke about the positive and negative aspects of the cultural exception referred to in Dr. Castillo's document.

Dr. Herdocia noted his support for the rapporteur's work and emphasized the importance of the topic of cultural diversity, particularly at universities. He requested that the rapporteur address the issue of sustainable development. He also urged him to prepare a document to add additional value to the terms already set forth in the aforesaid Convention, in light of the OAS Charter and subregional integration processes. Dr. Villalta supported the idea of preparing a "set of guiding principles" or a "draft practical declaration." In turn, Dr. Hyacinth Lindsay proposed an initiative to support programs in the Caribbean countries on this topic.

The rapporteur expressed appreciation for the reception given to the report and the contributions made for preparation of a complete report in August. With regard to cultural exception, he noted the importance of striking appropriate balances. He also agreed to prepare a set of guiding principles for the Committee's next session.

The Vice Chairman thanked the rapporteur for his report and encouraged Dr. Castillo to submit a final document at the Committee's August session.

In 2010, the OAS General Assembly (Lima, June 2010), requested the Committee to report on the gradual advances on this issue in the development of international law AG/RES. 2611 (XV-O/10).

At the 77th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2010), Dr. Freddy Castillo presented a supplementary report on the topic, titled "Recommendations based on the Previous Report on Cultural Diversity and the Development of International Law" (CJI/doc.364/10), in which he recommended, *inter alia*, the adoption of measures to protect endangered languages, the recovery of areas destroyed by natural disasters, and the creation of diversity observatories. Regarding the language issue, he said that the Americas had a wide range of native languages, which are disappearing as communities' older members die and because their cultures are not preserved. Recovering those languages would therefore require effective action in the field of education. Similarly, the recovery of areas destroyed by natural disasters demands joint actions with the solidarity of other countries, in order to promote the reconstruction of lost historical heritage. The rapporteur gave the example of Haiti, which, following the earthquake had to resort to the people's memory to safeguard its historical heritage and recover its cultural patrimony. He also proposed an additional agency, possibly within the OAS structure: a kind of diversity observatory, to observe and raise the profile of threatened cultural expressions and to record the measures or actions adopted to strengthen them.

Dr. Mauricio Herdocia supported the idea of recording threatened languages, without the need to involve the OAS but rather on account of its intrinsic value.

Dr. Miguel Pichardo spoke about Haiti's intangible cultural heritage, a very current topic, given the destruction of museums and universities, and he added that the Dominican Republic was carrying out an assistance program to recover the Haitian cultural heritage.

Dr. Jean-Paul Hubert reminded the meeting that the topic was addressed by an international convention that had been signed by an impressive number of countries. Given that fact, he queried the Committee's goal in dealing with the matter. In his opinion, defending cultural diversity was a significant challenge that was rendered more difficult by economic difficulties. Finally, he noted that the rapporteur had presented specific and highly relevant ideas regarding the preservation of languages.

Dr. Freddy Castillo proposed taking a first step by implementing a register of endangered languages and agreed to continue working on the proposal and to submit a report at the next sessions.

During the 78th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2011), Dr. Freddy Castillo presented a report entitled "Recommendations on Cultural Diversity and the Development of International Law" (CJI/doc.377/11). It referred to the concepts of cultural diversity and interculturality, and explained developments regarding the Universal Declaration of Cultural Diversity and the UNESCO Convention. The following principles adopted by the Convention were highlighted:

- Recognition of the positive right to cultural diversity
- Return to a treatment of cultural property that is not exclusively mercantile
- Recognition of the diversity of people's wisdom, tradition, and creations
- Principles of solidarity and cooperation to strengthen the means of cultural expression in developing countries

In addition, the rapporteur referred to the legal foundations underpinning the topic, in Articles 3 m) and 52 of the OAS Charter, and proposed consideration of the twelve principles below in addition to those presented in his earlier paper:

1. Constitutional and legal recognition of cultural diversity
2. Fostering of a process in which culture is used as a tool to strengthen democracy and its components
3. Constitutional recognition of multi-ethnicity without favoring any single group
4. Development of effective processes for preserving surviving languages and recovering those at imminent risk of disappearing
5. Bilingual intercultural education programs
6. Recovery of spaces destroyed by natural disasters in keeping with cultural traditions
7. Use of observatories to promote and protect diverse cultural expressions
8. Cultural diversity as part of integration processes in the Americas
9. Inclusion of subjects linked to diversity in educational curricula
10. Dissemination of international laws on the diversity of cultural expressions
11. Coordination of cultural diversity policies with the strengthening of democracy
12. Creation of cooperation networks to facilitate the strengthening of existing cultural industries.

Dr. Baena Soares requested that that topic be qualified as a fact rather than a right. He agreed with the inclusion of the subject in education systems, as stipulated in item 9, and on item 11, he

suggested that governments be encouraged to provide resources. On this point, the rapporteur suggested that they foster the idea of creating a "fund to finance culture in our countries."

Dr. Mauricio Herdocia emphasized the novelty of this topic, which is why it is absent from the protocols and conventions pertaining to economic, social, and cultural rights. He further noted the importance of cultural diversity in the development strategy in Central American countries. The rapporteur on the topic requested that this item remain on the Committee's agenda so that a paper including diversity in development could be prepared. This proposal was supported by Drs. Villalta and Stewart.

Dr. Stewart also thanked the rapporteur for the report, and asked that this discussion be taken to a more concrete level, in view of the important contribution that preservation of cultural diversity could make in areas such as protection of languages, action in the event of natural disasters, establishment of observatories, and the threats of new technologies.

Dr. Hubert in turn referred to the ongoing debate in various countries over multiculturalism and inter-culturalism. He also proposed that the rapporteur's paper be presented at the General Assembly.

The rapporteur on the topic thanked Drs. Stewart and Hubert for their contributions and indicated that they would be incorporated into the revised paper. In this regard, he suggested that Member States be consulted regarding problems they are experiencing in the area of cultural diversity.

The Chairman asked the rapporteur to complete his report by adding practical aspects to present as recommendations to States. A letter will also be addressed to States to invite them to propose topics that they would like to explore, and too give the status of the rapporteur's work.

During the forty-first regular session of the OAS General Assembly (El Salvador, June 2011), the Inter-American Juridical Committee was requested to "present to the General Assembly a final report on the topic of cultural diversity in the development of international law" AG/RES. 2671 (XLI-O/11).

During the 79th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2101), the rapporteur, Dr. Freddy Castillo, presented a "List of principles on cultural diversity in the development of international law" document (CJI/doc.391/11). This report includes the contributions made by the Committee's members and lists general principles on diversity. On this occasion, the rapporteur voiced his interest in keeping the item on the Committee's agenda and, once the mandate pertaining to the list of principles is completed, work could proceed on the link between free trade treaties and cultural diversity.

Dr. Hubert thanked him for the document and proposed that the term "*demanda"* [demand, request] be replaced by "suggest," and the rapporteur suggested that the term "propose" could be used instead. Dr. Novak expressed appreciation for the document, and requested an explanation of the term "*arbitra*r;" and that Article 3 m) be added to Article 52 of the Charter. Dr. Baena Soares suggested that references should be avoided in the part citing principles, and that whenever explanations need to be included, as in the case of Haiti, they be incorporated in other sections of the document. Paragraph 14 should refer to cooperation instead of alliances or partnerships. Finally, he requested that the characteristics of the observatory be explained. Drs. Herdocia and Villalta supported the rapporteur's proposal to ensure the continuity of the new project.

The Chairman proposed that the principles be laid out in a positive format. He also invited English-speaking members to make their comments once they receive the revised text with the comments included. As for the continuity of the topic, the Chairman proposed that the topic be

concluded once the revised document is approved. As regards the discussion of new topics, he requested that precise criteria be submitted. The rapporteur promised that he would present a revised document at the next session, and that it would include the comments by English-speaking members.

3. Topics on Private International Law: Inter-American Specialized Conference on Private International Law

In 2005, the General Assembly adopted resolution AG/RES. 2065 (XXXV-O/05), "Seventh Inter-American Specialized Conference on Private International Law," with the following agenda for CIDIP-VII:

a. Consumer protection: applicable law, jurisdiction and monetary restitution (conventions and model laws).
b. Secured transactions: electronic registries for the implementation of the Model Inter-American Law on Secured Transactions.

It also requested the Inter-American Juridical Committee to present its comments and observations on the topics for the final agenda of CIDIP-VII. In addition, by AG/RES. 2069 (XXXV-O/05) "Observations and Recommendations on the Annual Report of the Inter-American Juridical Committee," the General Assembly requested the Committee to collaborate in preparations for the next CIDIP-VII.

During its 67th regular session (Rio de Janeiro, August, 2005), the Inter-American Juridical Committee adopted resolution CJI/RES. 100 (LXVII-O/05) "Seventh Inter-American Specialized Conference on Private International Law," in which it requested the rapporteurs of the theme to participate in the consultation mechanisms regarding the themes proposed for CIDIP-VII, and principally at the meeting of experts convened for that purpose.

At the 68th regular session of the Inter-American Juridical Committee (Washington, D.C., United States of America, March 2006), Dr. Ana Elizabeth Villalta, the rapporteur for this topic, presented report CJI/doc.209/06, "Seventh Specialized Conference on International Private Law (CIDIP-VII)". On the subject of consumer protection, the rapporteur use mentioned the three proposals submitted: one from Brazil regarding an Inter-American Convention on the Law Applicable to certain Contracts and Consumer Relations; one from the United States on a Model Law on Monetary Restitution regarding the availability of dispute resolution and redress measures for consumers, along with three Model Law annexes: one on Claims for Minor Amounts, one on Electronic Arbitration for Cross-border Claims, and one on Governmental Restitution; and one from Canada regarding a convention on jurisdiction or model legislation on jurisdiction and uniformly applicable legal provisions in consumer contracts.

On the second theme of CIDIP-VII, Dr. Villalta said the idea was to establish a new registry system for implementation of the Model Inter-American Law on Secured Transactions. This proposal was also divided into three components: the creation of standard registration forms; the drafting of guidelines for secured transaction registries; and the drafting of guidelines for electronic interconnection between registries in different jurisdictions.

During this regular session, the Inter-American Juridical Committee adopted resolution CJI/RES. 104 (LXVIII-O/06), "Seventh Inter-American Specialized Conference on Private International Law," which approved document CJI/doc.209/06 presented by the co-rapporteur, and reiterated the request to participate in consultation mechanisms, and to keep the Committee informed of progress in discussions on these topics.

In 2006, the OAS General Assembly adopted resolution AG/RES. 2218 (XXXVI-O/06) in which it asked the Inter-American Juridical Committee to cooperate in the preparations for CIDIP-VII and encouraged the rapporteurs for this topic to participate in the consultation mechanisms to be established for work on the topics proposed for that Conference.

During the 69th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2006), it adopted resolution CJI/RES. 115 (LXIX-O/06), "Seventh Specialized Inter-American Conference on Private International Law (CIDIP-VII)," in which it reiterated its support for the CIDIP process.

At the 70th regular session of the Inter-American Juridical Committee (San Salvador, February-March 2007), the Inter-American Juridical Committee received the report by the Director of the International Legal Affairs Office of the OAS, Dr. Jean-Michel Arrighi.

The Inter-American Juridical Committee approved resolution CJI/RES. 122 (LXX-O/07), "Seventh Inter-American Specialized Conference on International Private Law (CIDIP-VII)", by which it expressed satisfaction with the progress made in negotiations on the drafting of instruments to facilitate the implementation of instruments to facilitate, enforce, and guarantee consumer protection, especially at the aforesaid First Meeting of Experts.

At the 72nd regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2008), Dr. Dante Negro, Director of the Department of International Law, reported that no additional documents had been received after the Porto Alegre meeting and that the informal meetings among the countries that submitted proposals – Brazil, United States and Canada – remained ongoing.

At that regular session, Dr. Antonio Pérez presented document CJI/doc.288/08 rev.1, "Status of Negotiations on Consumer Protection at the Seventh Inter-American Specialized Conference on Private International Law".

At the 73rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2008), Dr. Ana Elizabeth Villalta Vizcarra, rapporteur for the topic, presented document CJI/doc.309/08, "Toward the Inter-American Specialized Conference on Private International Law - CIDIP-VII", with a report on the current status of the prior discussions for CIDIP-VII.

During the 74th regular session of the Inter-American Juridical Committee, (Bogotá, Colombia, March 2009), Dr. Dante Negro indicated that the political organs of the OAS had done no further work on CIDIP-VII. At the same time, he pointed out that with the assistance of Fondo Espana, the Department had begun implementing a project to establish a network of central authorities on inter-American conventions on the family and children, and specifically with regard to adoption of minors, international restitution of minors, and alimony obligations.

The rapporteur on the subject, Dr. Ana Elizabeth Villalta, referred to the history of this issue, and underlined the current impasse involving the three proposals under discussion, put forward by Brazil (on the applicable law), the United States (on monetary compensation or redress), and Canada (on jurisdiction). She reported that the States are still in negotiations, but that no further progress has been reported to date.

During the 75th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2009), Dr. Ana Elizabeth Villalta reported that negotiations for CIDIP-VII's two topics – consumer protection and secured transactions – were progressing separately. Regarding consumer protection, she noted that there had been no progress with the proposals presented by Brazil, Canada, and the United States, nor was there a date set for the next CIDIP, and for those reasons she was submitting no report to this session.

In his capacity as co-rapporteur for the second CIDIP-VII topic, secured transactions, Dr. David Stewart reported that work had concluded with the formal approval of documents by the CAJP and the Permanent Council. He added that the CIDIP would take place in October 2009 in Washington, D.C., for the final approval of the work on secured transactions.

At the 76th Regular Session of the Inter-American Juridical Committee (Lima, Peru, March 2010) the rapporteur for the topic, Dr. Ana Elizabeth Villalta, presented document CJI/doc.347/10 "Seventh Inter-American Specialized Conference on Private International Law." She began by speaking about the role that the Juridical Committee has played in codifying private international law in the past and the current developments in the fields of consumer protection and secured transactions.

In her presentation, Dr. Villalta reported on the holding of the Seventh Conference at OAS headquarters in Washington, D.C., in October 2009, at which the "OAS Model Registry Regulations under the Model Inter-American Law on Secured Transactions" were adopted. CIDIP-VII was attended by Dr. Stewart representing the CJI and by Dr. Villalta as a representative of the Delegation of El Salvador.

On the topic "consumer protection," Dr. Villalta recalled the proposals presented by the United States, Canada, and Brazil, the latter under the title "Proposal of Buenos Aires."

Dr. Negro also pointed out that the process of teleconferences should conclude with a report from the Working Group for the General Assembly. He also reported that the three teleconferences held produced no concrete results. In his opinion, the three proposals were not mutually exclusive because they addressed different aspects of the same problems; however, the countries involved have serious reservations regarding the content provided by the others. Until this situation is overcome, it will be difficult to set the date for the conference on consumer protection.

Following an exchange of opinions on the topic, the meeting reaffirmed the Committee's presence at CIDIP-related meetings, to the extent allowed by budgetary considerations, and that Dr. Villalta should continue to follow the topic and report back to the Committee.

In June 2010, the OAS General Assembly failed to reach consensus on the proposals related to the "Seventh Inter-American Specialized Conference on Private International Law," and so the resolution from the previous year remained in effect.

At the 77th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2010), the topic was not discussed.

During the 78th regular session of the Inter-American Juridical Committee held in Rio de Janeiro in March 2011), Dr. Dante Negro explained that because of difficulties encountered at the General Assembly in Lima in June 2010 between the delegations of Brazil and the United States, the topic was sent back to the Committee on Juridical and Political Affairs via the Permanent Council.

Dr. Negro also used the opportunity to urge the Committee to present new topics or proposals that might be of interest for future contributions.

Dr. Villalta reported on the meeting of the ASADIP (American Association of Private International Law) to be held on Friday 25 March in Rio de Janeiro, and invited Professor Cláudia Lima Marques to make a presentation on the themes that this instance is working on. In addition, she proposed addressing as a new theme commercial arbitration in investments as a dispute settlement mechanism.

The Chairman proposed analyzing the Panama and New York Conventions. Dr. Luis Toro Utillano explained the recent signing of a cooperation Agreement between the OAS and the Permanent Court of Arbitration, an instrument that could serve as a reference, considering the interest and availability that the Court has shown to work with the Organization. The chairman described the multiple international bodies working on the theme, emphasizing in particular the role

of the Chambers of Commerce in Latin America, the *CCI* in Paris and the AAA in the United States of America.

Dr. Stewart agreed on the broad nature of arbitration and invited the Committee to make a selection of a practical topic. He expressed interest in following up on the theme of protection of data, also noting that there is a mandate from the General Assembly and that this is a field where there are no initiatives based in Latin America. He committed himself to drafting a document for the session in August.

The Chairman, after underscoring Dr. Stewart's observation on the importance of dispute settlement mechanisms, personally committed himself and asked Drs. Stewart and Villalta to contribute to the presentation of a list of six topics for the upcoming sessions of the Committee in order to help the Committee's reflections. Dr. Jean-Paul Hubert suggested using care in selecting the themes.

Dr. Dante Negro invited the Chairman and Dr. Stewart to a meeting with employees of the Permanent Court of Arbitration of The Hague, to be held at OAS headquarters at 9:30 am on Friday, April 8, to discuss forms of cooperation among the parties.

As to the follow-up on this topic, Dr. Stewart proposed keeping it on the agenda and working on certain considerations regarding the present CIDIP, as well as analyzing new themes for a future CIDIP (protection of data, simplified companies, international law in domestic courts). Dr. Herdocia supported Dr. Stewart's proposals. The Chairman also proposed including the subject of alternative methods of settling disputes, in particular as related to International Arbitration.

During the 79th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2011), Dr. Stewart reported on the lack of significant progress in the CIDIPs process, and expressed his interest in working on the topic of protection of personal data and corporations.

Dr. Negro requested members interested in presenting new topics to identify concrete projects accompanied by a statement of justification.

At the end of the discussion, the Chairman suggested that talks on this subject be taken up again later.

4. Protection of personal data

Document	
CJI/doc.382/11	Preliminary comments on a statement of principles for privacy and personal data protection in the Americas (presented by Dr. David P. Stewart)

During the forty-first regular session of the OAS General Assembly (El Salvador, June 2011), the Inter-American Juridical Committee was requested "to present, prior to the forty-second regular session, a document of principles for privacy and personal data protection in the Americas", AG/RES. 2661 (XLI-O-11).

At the 79th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2011), Dr. Stewart explained the General Assembly mandate and the documents available to the Committee to carry it out. He also noted the difficulties in presenting a final document by June 2012, in light of the large number of discussions taking place and the equally large volume of work done on the subject. In this regard, he suggested as a working method that an initial inventory be compiled on existing studies and developments in the Americas.

He then highlighted some of the key elements of his report, "Preliminary comments on a statement of principles for privacy and personal data protection in the Americas," document CJI/doc.382/11:

- Privacy is a basic human right that is endangered by countless sources of intrusion, with varying degrees of risk.
- Governments have a role to play and should act responsibly. Private institutions have responsibilities as well.
- There are elements linked to trade or business.
- It is important to maintain a balance between free circulation and its limiting factors.
- The rules in the European Union have a certain extraterritorial application.
- The rules in the United States are complex. There are many limitations on government action. Other rules apply in the corporate world.

Finally, he proposed to initiate a process of consultations with both governmental and nongovernmental experts in different countries, with the support of the Secretariat. He further requested suggestions from members on how to proceed.

Dr. Hyacinth asked for some explanations regarding the english version of the proposal.

Dr. Mauricio Herdocia supported the idea of compiling an inventory on the situation in Member States and on having the rapporteur present a document at the next session. He urged the rapporteur to include the right to privacy linked to judicial protection, a right established in the American Convention on Human Rights.

The Chairman and Dr. Baena Soares supported Dr. Stewart's approach to the topic, and thanked him for presenting his paper, which provided the initial guidelines on the topic. Finally, the Chair asked Dr. Stewart if he would agree to be the rapporteur on the subject, to which he assented.

The following paragraphs contain transcriptions of the report presented by the rapporteur David P. Stewart, document CJI/doc.382/11, "Preliminary comments on a statement of principles for privacy and personal data protection in the Americas**".**

CJI/doc.382/11

PRELIMINARY COMMENTS ON A STATEMENT OF PRINCIPLES FOR PRIVACY AND PERSONAL DATA PROTECTION IN THE AMERICAS

(presented by Dr. David P. Stewart)

At its recent 41st meeting in San Salvador, the OAS General Assembly directed the Inter-American Juridical Committee to "present, prior to the forty-second regular session, a document of principles for privacy and personal data protection in the Americas … with a view to exploring the possibility of a regional framework in the area." AG/RES. 2661 (XLI-O/11) (June 7, 2011). In preparing this document, the Juridical Committee is instructed to take into account (i) the Draft Preliminary Principles and Recommendations on the Protection of Personal Data which have been prepared by the Department of International Law (CP/CAJP-2921/10 rev. 1) and (ii) a comparative study of different existing legal regimes, policies and enforcement mechanisms for the protection of personal data which will be prepared by the Department of International Law.

The Inter-American Juridical Committee initially considered this topic as part of its work on "Access to and Protection of Information and Personal Data in Electronic Format," in response to the OAS General Assembly's directive in AG/RES. 2288 (XXXVII-O/07).[1] In adopting the Principles on the Right of Access to Information,[2] however, the Juridical Committee did not focus specifically on issues related the right to privacy and the need to protect personal data. It is now time for the Committee to turn its attention to these important issues.

No one disputes the importance of protecting personal data in a world of rapidly expanding information technology. The concept of privacy underpins the fundamental principles of human dignity as well as freedom of speech, opinion and association. These principles are clearly established in the American Declaration of the Rights and Duties of Man (1948)[3] as well as the American Convention on Human Rights ("Pact of San Jose").[4] Similar provisions are found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. At the same time, it is essential to protect the free flow of information across borders. That, in turn, protects and promotes freedom of trade and commerce, upon which economic progress and development depends.

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1 AG/RES. 2607 (XL-O/10) adopting the proposed Model Inter-American Law on Access to Public Information, June 8, 2010. See also AG/RES. 2514 (XXXIX-O/09), adopted June 4, 2009.

2 See "Principles on the Right of Access to Information," CJI/RES. 147 (LXXIII-O/08), adopted August 7, 2008.

3 The American Declaration of the Rights and Duties of Man provides in Art. IV that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever" and in Art. V that "[e]very person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life."

4 The American Convention on Human Rights states in Art. 11 that: 1. Everyone has the right to have his honor respected and his dignity recognized; 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation, and 3. Everyone has the right to the protection of the law against such interference or attacks. Article 13 of the American Convention on Human Rights guarantees: 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

However, as all members of the Committee recognize, global communications technologies and media practices pose increasingly serious challenges to those fundamental notions of privacy, data protection, and reputation, as well as to the critical need to protect and promote freedom of speech and the press and the free flow of information across borders. The growing sophistication of digital information technology enables private entities as well as governments to collect, analyze and disseminate much more personal information, more quickly, that ever before. In addition, new developments in medical research and care, telecommunications, advanced transportation systems and financial transfers have dramatically increased the level of information generated by each individual. Computers linked together by high speed networks with advanced processing systems can create comprehensive dossiers on any person anywhere, without the need for a single central computer system.

Applications involving these new technologies include identity cards, biometrics (e.g., digitized photographs, retina scans, hand geometry, voice recognition, DNA identification, communications surveillance, Internet and email interception, video surveillance (closed circuit television), and so forth. These technologies are increasingly available not only to governments but also to the private sector, including commercial companies, journalists and members of the media, and even non-commercial advocacy groups. Many applications are entirely legitimate and lawful. For example, commercial enterprises collect, store and disseminate personal information on customers and consumers; some routinely collect information from email and internet usage for marketing purposes. Unfortunately, it is not uncommon for them to be used for improper or even illegal purposes, such as to non-consensual monitoring of the communications, activities and locations of public and private persons, political opponents, human rights workers, journalists and labor organizers, and economic competitors.

Today, a majority of countries recognize a right of privacy explicitly in their Constitutions. At a minimum, these provisions include rights of inviolability of the home and confidentiality of communications. Many national constitutions (such as those in South Africa and Hungary) guarantee specific rights to access and control one's personal information. In many other countries where privacy is not explicitly recognized in the national constitution (such as the United States, Ireland and India), the courts have found that right in various provisions of law. In others, international agreements that recognize privacy rights have been adopted and implemented by legislation.

Throughout the world, a general movement is pressing for the adoption of more specific domestic privacy laws that set national legal frameworks for the protection of individual data. Within the OAS, the effort is starting to gather momentum. To date, a few states (including, for example, Mexico, Peru, Costa Rica, Canada and Brazil) have recently adopted or are actively working on new privacy legislation. However, no regional model or coordinated approach currently exists for addressing these issues at the national level. Neither the Inter-American Court of Human Rights nor the Inter-American Commission of Human Rights appears have given significant attention to the issues.[5]

The Committee thus has the opportunity to make a significant contribution to this field. In doing so, it should of course take into account efforts which have been undertaken in other regions as well as the extensive studies on data privacy which are taking place in the Organization for Economic Cooperation and Development, in Europe (in the Council of Europe as well as the European Union), in the Asia-Pacific Economic Forum, and elsewhere.

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[5] See the Commission's Report on Terrorism and Human Rights (paras. 280-95 discussing *habeas data*). See also the recent Report of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (Frank La Rue), UN doc. A/HRC/17/27 (May 16, 2011), at para. 59 ("there are insufficient or inadequate data protection laws in many States stipulating who is allowed to access personal data, what it can be used for, how it should be stored, and for how long.")

OECD. In 1980, the Organization for Economic Cooperation and Development adopted non-binding, technologically-neutral principles for possible use in establishing either a legal framework or an industry standard. The eight "Guidelines Governing the Protection of Privacy and Trans-border Data Flows of Personal Data" apply to both governmental and commercial uses of personal data. They call for (1) limiting the collection of personal data and ensuring that such information should only be obtained by lawful and fair means and, where appropriate, with the knowledge or consent of the data subject; (2) ensuring that the information collected should relevant to the purposes for which they are to be used, accurate, complete and up-to-date; (3) specifying the purposes for which personal data are collected; (4) not disclosing or using data for purposes other than those specified in advance; (5) protecting the data by reasonable security safeguards; (6) establishing a general policy of openness about developments, practices and policies with respect to personal data; (7) giving individuals the right to obtain personal data within a reasonable time and in a reasonable manner; and (8) holding data controllers accountable for complying with the requirements of these principles.

Europe. The approach of European countries to the issues of privacy and data protection has largely been based on a combination of national laws, the 1981 Council of Europe Convention for the Protection of Individuals with Regard for Automatic Processing of Personal Data (ETS No. 108), the 1950 European Convention on Human Rights and Fundamental Freedoms and the 2007 Charter of Fundamental Rights of the European Union, and a series of EU directives and regulations.

The EU itself first adopted a rule of data protection in 1995, requiring each EU member State to adopt conforming legislation.[6] At the time, the EU Data Directive could only govern the private sector because the EU's powers were limited (before the Lisbon Treaty). It has since been supplemented by an EU E-Privacy Directive.[7] Generally speaking, these directives require that data must be processed fairly and lawfully, collected for specific and legitimate purposes, be adequate and relevant for those purposes, accurate and kept up to date, and retained no longer than necessary. In addition, a Telecommunications Directive now establishes specific protections covering telephone, digital television, mobile networks and other telecommunications systems.[8] The Telecommunications Directive imposes wide scale obligations on carriers and service providers to ensure the privacy of users' communications. Access to billing data will be severely restricted, as will marketing activity. Caller ID technology must incorporate an option for per-line blocking of number transmission. Information collected in the delivery of a communication must be destroyed once the call is completed.

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6 Directive 95/46, Oct. 24, 1995) on the protection of Individuals with regard to the processing of personal data amended by Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and on the free movement of such data.

7 Directive 2002/58 (July 12, 2002), amended in 2006 and more recently by Directive 2009/136 (Nov. 25, 2009) and services. See also Directive 2002/58/EC, concerning the processing of personal data and the protection of privacy in the electronic communications sector, and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

8 Directive 2006/24 (March 15, 2006) on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks. Other relevant European instruments include the 1981 Council of Europe Convention for the Protection of Individuals with Regard for Automatic Processing of Personal Data (ETS No. 108).

Every EU country has a "privacy commissioner" or agency to enforce the rules,[9] and it is expected that foreign countries with which EU members do business will adopt a conforming level of oversight. In other words, the Directives aim to guarantee that the rights of European data subjects follow their data to other countries. Thus, the Directives prohibit data export to non-EU countries that lack an "adequate level" of data protection as determined by the European Commission. As a result, companies operating within the EU are not allowed to send personal data to countries outside the EU unless those countries can guarantee that the data will receive levels of protection equivalent to the EU requirements. This restriction pressures other countries to conform to European standards. Countries (and companies) refusing to adopt meaningful privacy laws may find themselves unable to conduct certain types of information flows with Europe, particularly if they involve sensitive data.

United States. In the United States, the federal Constitution has been interpreted to include a right of privacy,[10] and various federal privacy statutes address data protection and privacy issues in specific contexts or sectors of activity, such as credit reports (Federal Credit Reporting Act of 1970), health data (the Health Information Portability and Accountability Act of 1996), the federal government's collection of personal data (the Privacy Act of 1974, the e-Government Act of 2002, the Tax Confidentiality Act), etc. Other areas of commercial activity are actively regulated at the state (and sometimes local) levels. Not all private sector activity is necessarily subject to privacy regulation, and unlike the EU and its member states, there is no single omnibus or general purpose data protection law. However, new legislation is actively being considered at both the federal level (this spring, Senators Kerry and McCain introduced the Commercial Privacy Bill of Rights 2011) as well as in various states (including Vermont, Massachusetts, Illinois, and California).

The difference between the U.S. approach to commercial privacy and the 1995 EU Data Protection Directive was bridged by the so-called "Safe Harbor" framework adopted by the U.S, and the EU jointly in the late 1990s. The Safe Harbor framework is an innovative transnational arrangement designed to preserve free flow of information and trade. It allows certain U.S. companies to self-certify that they follow the Safe Harbor Privacy Principles, thus meeting the standards of EU privacy regulations. As a result, the EU will permit transfer of personal data to recipients who have adhered to the Safe Harbor principles and are subject to the enforcement authorities of either the U.S. Federal Trade Commission or the U.S. Department of Transportation.

The Safe Harbor principles require companies to provide seven particular guarantees: (1) notice - individuals must be informed that their data is being collected and about how it will be used; (2) choice - individuals must have the ability to opt out of the collection and forward transfer of the data to third parties; (3) "onward transfer" - transfers of data to third parties may only occur to other organizations that follow adequate data protection principles; (4) security - reasonable efforts must be made to prevent loss of collected information; (5) "data integrity" - data must be relevant and reliable for the purpose it was collected for; (6) access - Individuals must be able to access information held about them, and correct or delete it if it is inaccurate; and (7) enforcement - there must be effective means of enforcing these rules. Organizations adopting these principles must re-certify their compliance every 12 months, either through self-assessment or by a third-party. Appropriate employee training and dispute settlement mechanisms must be provided.

APEC. Still a different approach is being pursued by the Pacific Rim countries within the Asia-Pacific Economic Cooperation (APEC) forum, which, rather than pursuing harmonization of domestic privacy laws, has focused more specifically on the issue of trans-border transfers of

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[9] See, e.g., Regulation (EC) No. 1211/2009 of the European Parliament and of the Council of November 25, 2009, establishing the Body of European Regulators for Electronic Communications (BEREC).

[10] Among the relevant decisions are Olmstead v. United States, 277 U.S. 438 (1928) (Justice Brandeis, dissenting); Griswold v. Connecticut, 381 U.S. 479 (1965); and Loving v. Virginia, 388 U.S. 1 (1967).

personal data. For several years APEC has been working on a privacy initiative. A Framework with Privacy Principles was adopted in 2004, and an implementation program was added in 2005 to encourage domestic implementation of the Principles by individual member states. A Data Privacy Sub-group has been working to develop Cross Border Privacy Rules (CBPR) allowing businesses to be certified for transfer of personal information between participating APEC economies. A Cross Border Privacy Enforcement Cooperation Arrangement (CPEA) was established in 2010 to provide mutual recognition between participating APEC economies of each other's mechanisms for certification of a business's privacy rules. (The OECD has a similar enforcement network called GPEN.)

There is a certain measure of commonality in the principles adopted by these various groups. At a minimum, all require that personal information must be obtained fairly and lawfully; used in ways that are compatible with the original specified purpose; accurate, relevant and proportional with respect to purpose; accurate and up to date; limited in distribution to others; and destroyed after its purpose is completed. At the same, there are some significant differences in approach as well, including whether, when and how to apply the same principles to governmental entities, public service providers, private commercial enterprises, and even individuals; issues of criminal law enforcement and national security; as opposed to organizations,

The document prepared by the Department of International Law (CP/CAJP-2921/10 rev. 1) sets forth a series of fairly detailed draft principles entitled: Lawfulness and Fairness; Specific Purpose; Limited and Necessary; Transparency; Accountability; Conditions for Processing Disclosures to Data Processor; International Transfers; Individual's Right of Access; Individual's Right to Correct and Delete Personal Data; Right to Object to the Processing of Personal Data; Standing to Exercise Personal Data Processing Rights; Security Measures to Protect Personal Data; Duty of Confidentiality, and Monitoring, Compliance, and Liability.

The task of the Committee will be to review these proposals carefully, in light of the efforts of other groups and entities, and with an eye to the specific legal culture and needs of the OAS membership and region. Among the issues to be considered are the scope of application (private parties as well as government organs), the effect on national security and law enforcement interests, the requirement (rather than option) to have a central supervisory authority, the impact on existing (and developing) laws and practices at the national level), the relationship of restrictive principles on transborder flow of information and on free trade, and the need for exceptions or derogations as appropriate to the circumstances.

The threat to privacy is now greater than at any time in recent history. The power, capacity and speed of information technology are accelerating rapidly, and with it the extent of privacy invasion. Globalization has removed geographical limitations to the flow of data. There is a need for clear and effective principles to provide adequate protection of privacy without unduly hindering other important interests. That is the task in which the Committee has now been asked to participate.

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5. Strengthening the Inter-American Human Rights System

During the forty-first regular session of the OAS General Assembly (El Salvador, June 2011), the Inter-American Juridical Committee was requested "the Inter-American Juridical Committee to give priority to the preparation of a study on ways to strengthen the inter-American human rights system" AG/RES. 2675 (XLI-O/11).

At the 79th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2011), the Chairman explained the important past work done by the Inter-American Juridical Committee in creating the organs to promote and protect human rights. He noted certain concerns pertaining to the operation of the system, and believed that constructive advice on the part of the Committee would be useful and welcome. He further reported that he had asked Dr. Novak to serve as rapporteur for this topic, and he requested Dr. Baena Soares to participate as co-rapporteur on the topic; this was agreed by the plenary.

Dr. Dante Negro then explained that this resolution arose from a discussion among the foreign ministers in San Salvador, and that its purpose is "to reflect further on the functioning of the Inter-American Commission on Human Rights;" a working group of the Permanent Council has been set up to this end. The mandate of the Inter-American Juridical Committee consists in making recommendations on ways to strengthen the system. However, the working group is expecting the Committee to share the work it does on the subject with them. The working group is open to the participation of all members, and it has also considered the participation of civil society and other entities interested in the subject. The group is chaired by Ambassador Hugo de Zela, the Permanent Representative of Peru to the OAS.

The following are some of the topics for discussion by the working group:

- Appointment of the Executive Secretary of the Commission;
- The friendly settlement mechanism;
- Provisional measures;
- The Commission's functions to promote human rights and how they are balanced with its case management functions;
- Procedural measures;
- Financial strengthening of the system.

Finally, he presented a file of the papers prepared by the Department of International Law, which covered discussions and meetings of political organs since 1996.

Dr. Fabián Novak noted that the mandate of the Inter-American Juridical Committee is quite broad. From a thematic standpoint, it would include everything that would help strengthen the system. He also pointed out the priority nature of the mandate, pursuant to the text of the resolution itself, and the limitations that the working group of the Permanent Council itself imposed, since it intends to complete its work by December of this year. In this context, he requested members to use the Internet to exchange views on the subject, with the constant support of the Secretariat. In this latter case, he requested that the final table of proposals be updated, and that the rapporteur be kept informed of the progress made by the working group in Washington, D.C. Finally, he emphasized the concern and expectations that this mandate has raised amongst members of civil society, with regard to the work of both the working group and the Inter-American Juridical Committee. In this context, the Committee's report may be subject to criticism by the States and the NGOs themselves, but the important thing is that it sticks to legal matters.

Dr. Mauricio Herdocia urged the rapporteur to define certain essentially legal topics related to the activities of the system's institutions and national organs, such as access by victims to protective mechanisms.

Dr. Gómez Mont Urueta noted the complexity of the topic, and that it could have an impact on the internal equilibrium of countries. He proposed to the rapporteur that political processes be left to their own space, and that the Committee's contributions be confined to a legal point of view. He suggested that a comparative analysis with other organs in other national and international systems be undertaken. He further expressed interest in clarifying the field of competence of the Commission to avoid any conflicts of prerogatives.

Dr. Hubert supported Dr. Herdocia's views regarding the Committee's mandate on the subject. One option would be to limit it to promoting and ensuring compliance with decisions, but at the same time there is the possibility of strengthening the system. It considered that comparative studies are excellent, but the work should not be confined to that.

The rapporteur, Dr. Novak, proposed a document that would strengthen the system from a legal standpoint and serve as a kind of arbitration. He also considered it positive to involve the system broadly. As for comparing it with the European Union, he indicated a reluctance to do so, since the Union does not have an entity similar to the Commission, and many of its decisions may not be as advanced as those in the inter-American system.

Dr. Villalta noted the progress made by the inter-American system, and especially the work of the Court related to jurisdictional functions. She urged the rapporteur to use information at the disposal of the Committee related to the work done at the time the institutions to protect and promote human rights were created.

The Chairman shared his personal experience with the human rights system and presented possible contributions by the Committee in this area. He invited it to focus on aspects related to cooperation, above and beyond critical aspects. He further proposed clear admissibility criteria regarding the obligations applicable to States. The International Criminal Court offers an important example that takes into account both the interests of justice and victims' interests, which implies that there is a balance between justice and peace. With regard to precautionary or provisional measures, the International Court of Justice has clear criteria that could be taken up in the rapporteur's study. Another element to consider is the friendly settlement mechanism, which provides an opportunity to the parties to settle a dispute involving violation of a right. He noted that this mechanism had been weakened, and so he asked the rapporteur to consider this too. Finally, he agreed on the need to conduct a broad-based, legal study that would be both useful and enriching.

6. Sexual orientation, gender identity and expression

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 its 79th regular session, the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2011), began initial discussions of the Committee's mandate. On that occasion, it elected as rapporteurs the two members proposed by Dr. Mauricio Herdocia, Dr. Elizabeth Villalta, and Dr. Freddy Castillo.

Dr. Negro in turn invited the Committee to consult as a reference the document entitled "Human Rights, Sexual Orientation and Identity," (DDI/doc.06/11), prepared by the Department of International Law.

The rapporteurs prepared a report on the Committee's mandate. In this regard, Dr. Castillo expressed his concern over the date set for presentation of the report to the General Assembly. He noted that the subject falls within the scope of the protection and promotion of human rights related to sexual orientation and gender identity and expression. He also referred to the increasing recognition of same-sex marriage by some cities in different countries. He noted that there is a valid concern regarding terminology aspects in light of the variety of problems and cases in which biological, cultural, and legal considerations are involved. As far as the Committee is concerned, its study should focus on legal implications. He concluded by requesting the support of the Secretariat. Dr. Villalta agreed with what was said by Dr. Castillo, and attached importance to studying the legal instruments of other organizations applicable to these persons, such as the treaties in Europe and United Nations instruments.

Dr. Gómez Mont Urueta requested that the mandate be further defined and limited to international law so as to avoid manifestations of violence or discrimination. This proposal was supported by Dr. Hubert, who believed that the Committee's work should be based on respect for persons. Moreover, he lamented the change in the mandate on the "Draft American Convention against Racism and all Forms of Discrimination and Intolerance." In his opinion, these rights are covered by instruments for protection of human rights, and if the rights of certain groups are to be protected, it may be necessary to use protocols. Dr. Fabián Novak shared these views, and spoke in favor of the broadest possible approach. The key is to draft a document that guarantees respect for all types of rights of the referenced minorities, as well as their protection. As for the type of instrument to be drafted, he proposed recommendations with a legal foundation (supported in declarations) designed to protect rights, and including the possibility of proposing new types of protection. Finally, Dr. Mauricio Herdocia urged that the topic be broached from the standpoint of nondiscrimination and include the impact of other types of rights that may be affected for the same reasons.

The Chairman also agreed with the other members, confirmed the appointment of the new rapporteurs, and asked them to present a document at the session in March 2012.

7. International Humanitarian Law: model legislation on protection of cultural property in cases of armed conflict

In June 2007, the General Assembly adopted resolution AG/RES. 2293 (XXXVII-O/07), "Promotion and Respect for International Humanitarian Law", wherein it instructed the Inter-American Juridical Committee to prepare and propose model laws supporting efforts to implement treaty obligations concerning international humanitarian law, on the basis of priority topics identified in consultation with the Member States and the International Committee of the Red Cross, and to present a progress report on this matter prior to the thirty-eighth regular session of the General Assembly.

At the Inter-American Juridical Committee's 71st regular session (Rio de Janeiro, August 2007), Dr. Dante Negro, Director of the Office of International Law, noted that the mandate given to the Juridical Committee was basically to propose model laws, devoting particular attention to the operative part of the resolution which states that the model laws should be proposed "on the basis of priority topics identified in consultation with the Member States and the International Commission of the Red Cross."

During the 72nd regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2008), Dr. Jorge Palacios expressed his regret over the lack of responses of Member States to the questionnaire on international humanitarian law, which are important for compliance with the General Assembly's mandate. He said that perhaps at the time it would be more convenient for the Juridical Committee to deal with crimes against humanity and other crimes whose typification is not applicable in times of war, more than on war crimes themselves.

At that opportunity, the Inter-American Juridical Committee decided to adopt resolution CJI/RES. 141 (LXXII-O/08), "Implementation of International Humanitarian Law in OAS Member States", in which it reiterates the note sent to the OAS Member States requesting the priority topics on which to prepare and propose model laws in accordance with resolution AG/RES. 2293 (XXXVII-O/07), suggesting as possible sources of information, where available, the national inter-ministerial committees on humanitarian laws, and requesting the co-rapporteurs to submit a progress report in this matter when they have received responses from the Member States of the OAS.

In June 2008, the General Assembly issued resolutions AG/RES. 2414 (XXXVIII-O/08) and AG/RES. 2433 (XXXVIII-O/08), requesting the Inter-American Juridical Committee to continue drafting and proposing model laws in support of efforts undertaken to implement obligations derived from treaties on international humanitarian law, based on priorities defined in consultation with Member States and with the International Committee of the Red Cross. To this end, Member States were urged to submit a list of priority issues as soon as possible to the Inter-American Juridical Committee, so that it can fulfill its mandate.

At the 73rd regular session of the Inter-American Juridical Committee, Dr. Jorge Palacios, rapporteur on the subject, reported that he had prepared a preliminary document on this matter (document CJI/doc.304/08), entitled "Implementation of International Humanitarian Law in OAS Member States: Preliminary Document," in which he highlighted the items that required further attention.

In view of the different comments made by members, the Chairman of the Juridical Committee concluded that, in view of the fact that no responses have been received, it could request the rapporteur to draw up a general report, which should also answer the questions that have been raised, such as the issue of ranking or precedence, the criteria for harmonization, and the applicable rules or provisions, among others, and at the same time propose a guide on principles for interpretation and harmonization

of laws. If deemed relevant, the report could also suggest a meeting of government experts to provide more information to be considered in this process.

During the 74th regular session of the Inter-American Juridical Committee (Bogota, March 2009), the rapporteur on the subject, Dr. Jorge Palacios, presented his report on "Implementation of International Humanitarian Law in the OAS Member States," document CJI/doc.322/09.

Dr. Jorge Palacios concluded that the work of the Inter-American Juridical Committee is to help states to legislate. In the case in point, there is the ICRC's suggestion on war crimes in the document entitled "Repression of War Crimes in National Criminal Law in the Member States," which proposes 22 elements for each crime. As for the Statute, the elements were drafted by the states themselves, and they are required to be adopted in their domestic legislation pursuant to Article 9 of the Statute.

Finally, the Inter-American Juridical Committee decided to set up a working group to draft a new basic reference document.

In June 2009, the General Assembly resolutions AG/RES. 2515 (XXIX-O/09) and AG/RES. 2507 (XXIX-O/09) requested the Inter-American Juridical Committee to continue preparing model laws in support of efforts undertaken by Member States in implementing obligations derived from treaties in international humanitarian law, based on priorities defined in consultation with Member States and the International Committee of the Red Cross. To this end, it urged Member States to send to the Committee, by the end of November 2009 at the latest, a list containing these priorities, so that the Committee can fulfill this mandate and report on the advances made to the General Assembly at its 40th session.

During the 75th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2009), the rapporteur, Dr. Jorge Palacios, reminded the members of his two reports on this topic, particularly the reference made to internal armed conflicts and war crimes (CJI/doc.304/08 and CJI/doc.322/09). In summary, he said that internal armed conflicts were not covered by the concept of international humanitarian law, but by that of human rights. With reference to war crimes, he reminded the meeting that at the March 2009 session he had submitted a detailed explanation in document CJI/doc.322/09, "Implementation of International Humanitarian Law in the OAS Member States."

On that occasion he made reference to document CJI/doc.328/09, "War Crimes in International Humanitarian Law," in which he offered a number of clarifications regarding war crimes under international humanitarian law and also explained the conflict that existed between the four Geneva Conventions and their additional protocols and the terms of the Statute of the International Criminal Court.

As he saw it, the new resolution adopted by the OAS General Assembly contains a specific mandate that must be implemented in order to report on progress to the 40th regular session of the General Assembly.

Dr. Herdocia believed that the most recent General Assembly resolution gives the Juridical Committee a new mandate in connection with the International Criminal Court, by asking it to draft model legislation covering the crimes defined in the Rome Statute, including war crimes, a topic on which Dr. Palacios has already produced excellent work. He therefore proposed working in conjunction with Dr. Palacios, taking advantage of the fact that he was almost finished with the entry into force of the Rome Statute complementary legislation and the proposals made by the ICRC, to present model legislation on war crimes at the next session.

Dr. João Clemente Baena Soares remarked on the question of internal violence and other internal conflicts, in terms of the escalation of violence until it becomes a civil war; that topic represents an

evolution of the Committee's agenda and, consequently, there would be a new exercise dealing with the adoption of model legislation for war crimes, and for that reason he expressed his agreement with Dr. Herdocia's proposal.

At the 76th Regular Session of the Inter-American Juridical Committee (Lima, Peru, March 2010), Dr. Jorge Palacios, the rapporteur for the topic, explained the General Assembly's mandate and reported on the communications received from five countries: Bolivia, Ecuador, El Salvador, Mexico, and Suriname. He also noted that the General Assembly's deadline for submitting notifications expired in November 2009.

Regarding Bolivia's note, he asked the Department of International Law to thank the country for the information sent and to record the Committee's willingness to provide any advice deemed necessary in the future.

Regarding Ecuador's communication, asking that work be carried out on defining war crimes, he suggested forwarding a document from the International Committee of the Red Cross dealing with that issue.

In addition, he said that El Salvador proposed the topics of drafting model laws for the preservation of cultural property, determining sanctions for damage to the emblem, and the protection of those assets at times of natural disasters. In turn, the proposal presented by Mexico dealt with the protection of cultural property during times of armed conflict.

Since legislation on this matter already existed, he proposed sending those countries the International Committee of the Red Cross document "Practical Advice for the Protection of Cultural Property."

The information submitted by the Republic of Suriname was, he explained, focused on laws on cooperation with the International Criminal Court.

The rapporteur then presented a paper on "War Crimes in International Humanitarian Law," document CJI/doc.328/09 rev. 1, and another on "International Criminal Courts," document CJI/doc.349/10.

Dr. Dante Negro explained that the Committee's mandate is to prepare draft model laws based on the information on priority topics submitted by the Member States. He noted that the States had failed to comply with the mandate, either because their replies were not clear or because only a minimal number of countries had replied.

Dr. Jean-Paul Hubert expressed his disagreement with this mandate, which was repeated every year, and said it could be discontinued if there was no interest in the topic.

Dr. Jorge Palacios interpreted the absence of requests from the States as indicating that they did not need the Committee's support. As he saw it, the work was finished. Drs. João Clemente Baena Soares and Miguel Pichardo supported the rapporteur for the topic. At the end of the discussion, the rapporteur agreed to submit a list of the priority topics that the Member States had requested.

On April 14, 2010, the Department of International Law received a communication from the Permanent Mission of Paraguay to the OAS, dated April 12, stating that it was placing priority on the bill to amend the Military Civil Code in line with the obligations entered into by the Paraguayan State.

At the fortieth regular session of the OAS General Assembly (Lima, June 2010), the Committee was asked, on the basis of the proposals on priority topics submitted by the Member States, to continue preparing and proposing model laws to support the efforts undertaken by the Member States in implementing their obligations under international humanitarian law treaties; see resolutions AG/RES. 2575 (XL-O/10) and AG/RES. 2611 (XL-O/10).

On July 7, 2010, Dr. Elizabeth Villalta presented a report – document CJI/doc.357/10, "International Humanitarian Law" – dealing with the Committee's participation at the International Conference of Latin American and Caribbean National International Humanitarian Law Commissions.

At the 77th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2010), the rapporteur, Dr. Jorge Palacios, was not in attendance. However, Dr. Elizabeth Villalta presented report CJI/doc.357/10 on the topic, noting that although she was not the rapporteur, she had attended, as a member of the Juridical Committee, the International Conference of Latin American and Caribbean National International Humanitarian Law Commissions, held in Mexico City the previous June, and at which she had made a statement on the "Ratification and implementation of international humanitarian law treaties," thus furthering the Juridical Committee's outreach work on the issue.

During the 78th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2011), the Chairman explained that the mandate consisted in "preparing and proposing model laws to support the efforts undertaken by member states to implement obligations arising from treaties in the area of international humanitarian law." In this regard, the Committee requested Member States to draw up a list of priority topics. The following six countries have responded: Bolivia, Ecuador, El Salvador, Mexico, Suriname, and Paraguay.

As regards the follow-up on this mandate, some members proposed that it be considered as concluded. At the same time, there were members who requested that the General Assembly be informed about the absence of responses by Member States and the lack of interest in continuing this topic. In addition, the Chairman was requested to pay a courtesy visit to the Permanent Representative of Mexico to the OAS while he was present at headquarters in April 2011, for information on the mandate that said mission would be presenting to the General Assembly.

Since Dr. Jorge Palacios was the rapporteur for this topic. Dr. Negro suggested that a rapporteur be appointed for the continuation of the mandate. Dr. Elizabeth Villalta expressed an interest in serving as rapporteur for this topic.

After discussion, it was decided that the item would remain on the agenda and a decision on dealing with this topic would be made at the August session, in light of the new mandate to be granted by the General Assembly.

During the forty-first regular session of the OAS General Assembly (El Salvador, June 2011), the Inter-American Juridical Committee was requested to "propose model laws to support the efforts made by Member States to fulfill obligations under international humanitarian law treaties, with an emphasis on protection of cultural property in the event of armed conflict, and to report on the progress made to the General Assembly at its forty-second and forty-third regular sessions, respectively" (AG/RES.2650 (XLI-O/11).

During the 79th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2011), Dr. Dante Negro encouraged the Committee to appoint a rapporteur to replace Dr. Jorge Palacios, and presented a document prepared by the Department that could serve as a basis for initial research ("Protection of Cultural Property in Armed Conflict: Considerations for the National Implementation of IHL Rules," document DDI/doc.10 of July 26, 2011). In response to Dr. Hubert's question regarding the history of model laws in the Committee, Dr. Negro referred to the work done on the subject of Transnational Bribery and Illicit Enrichment, in addition to the cases where the Committee prepared guidelines.

The Chairman requested Dr. Freddy Castillo to draft an explanatory report on the mandate, with the support of the Secretariat, to clarify and specify the work of the Committee on the subject. He

agreed, and noted the highly advanced work of UNESCO. Dr. Freddy Castillo confirmed the relevance of studying this topic given the current situation. He indicated that he had found legal instruments that protect both the cultural and natural patrimony and property in times of armed conflict. He cited the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflicts that appeared as a response to the destruction of two world wars. He also referred to adoption of Protocol II to the Convention, which updates the instrument. He mentioned a fund of financial resources to protect said cultural property in the event of armed conflict. At the same time, he voiced his concern regarding countries that do not have property declared as the patrimony of humanity and that appear to be unprotected. Finally, he recommended that the work of preparing the model laws is meaningful to other areas of law. In response to a question by Dr. Hubert on the status of preservation of cultural property in the case of internal clashes that are not part of cross-border conflicts, the Committee agreed to work on mechanisms to implement and develop in cases of internal conflicts.

Dr. Villalta referred to the interest of the ICRC in protection of property in the event of both international and internal armed conflicts. In addition, she explained her position on the need to deal separately with the topics of cultural diversity and international humanitarian law.

Dr. Mauricio Herdocia made two suggestions to the rapporteur on this subject: first, to incorporate the work done by the ICRC with the national committees on international humanitarian law; and, second, to include developments related to appropriation of cultural property in cases of both international and internal armed conflicts, and to cover matters related to war crimes in this context.

Dr. Gómez Mont Urueta requested that a relationship be established between cultural events as an value added by man and the natural environment.

At the end of the discussion on the General Assembly mandate, the Chairman asked Dr. Castillo to serve as rapporteur on this topic to which he assented.

8. Guide on regulation of the use of force and protection for persons in situations of internal violence that do not qualify as an armed conflict

During the 79th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2011), Dr. Novak reported on a request presented by the ICRC representative in his country at a meeting in Lima with Dr. Negro. It would involve preparation of a study on situations of violence or conflict in the context of public protests against a specific regime or political situation. To follow up on this request, and should the Committee agree, Dr. Novak proposed that Dr. Gómez Mont Urueta serve as rapporteur for this topic. On this point, Dr. Elizabeth Villalta explained that she had participated in a meeting in Toluca, Mexico that referred to this phenomenon and to the role played by private police. As regards the situation of private police, Dr. Gómez noted the importance of giving operators and institutions relevant instruments so that they are aware of the systems and rules that apply and can confront criminal organizations. He regarded it as a highly positive exercise to illustrate the legal framework that should be in place. Dr. Baena Soares asked the members to define precisely the work to be done and the desired objective. The exercise should make it possible to strengthen the democratic state in the face of threats in its major cities and in rural areas. Dr. Mauricio Herdocia agreed on the importance of this topic and the need to reflect on closer cooperation that would take into account existing needs. There are certain acts by organized groups that cannot be considered as common crimes, since they use indiscriminate, systematic methods and cross-border resources, to which the state continues to respond in a traditional way. This underlines the importance of work the Committee could do on security. Dr. Novak agreed with the members regarding the decisive role the Committee should play in developing this topic. From a methodological standpoint, he proposed preparation of a guide on regulation of the use of force and protection for persons in situations that do not qualify as armed conflict. Dr. Stewart requested more details on the proposal presented. The Chairman shared concern over identification of the mandate and development of the topic. He suggested that they exercise caution to prevent the use of these materials by entities with criminal interests or to ensure that they do not have the effect of limiting the state's power to preserve public order and punish criminal conduct. He also pointed to challenges that arose in his country regarding the distinction between laws that are international in scope and their enforcement internally. The situation in Central America is very similar to the one in his country 20 years ago. There are current sociological and cultural problems that call for caution. Dr. Gómez shared these concerns regarding the need to approach this issue with caution, but he noted the importance of giving the system clear rules for institutional operators, that would make it possible to combat and mitigate irregularities. He emphasized the need for security and certainty for countries suffering from the abuses of criminal organizations. Dr. Novak explained that it was not a matter of regulating internal armed conflicts, but rather of regulating situations that doctrine qualified as "internal tensions and hostilities," ambiguous situations that are not qualified as non-international armed conflicts. He further clarified that despite the fact that this was an initiative of the ICRC, the CJI had considerable freedom to establish the criteria or standards that should be used and that its final opinion should be consensual. Finally, the intention is not to focus solely on crime, but rather to include mass demonstrations where law enforcement does not know how to react due to the absence of rules. In this context, the proposal would be to identify the space in which the police or security forces could act. Dr. Stewart agreed with the proposal to work on a document that respects the right of democratic governments to defend themselves and the limits of the use of force, a major challenge.

On concluding the discussion, the Chairman requested Drs. Novak and Gómez Mont Urueta to present a written proposal on the topic.

9. Simplified joint stock companies

Document

CJI/doc.380/11 Recommendations on the proposed model act on the simplified stock corporation
(presented by Dr. David P. Stewart)

During the 78th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2011), the Chairman presented the topic of simplified joint stock companies. On that occasion, he asked Dr. Stewart to review the proposed model law of Colombia and compare it to legislation in other countries. Dr. Stewart accepted the request and pledged to present an analysis at the August session. In response to Dr. Hubert, the Chairman explained that one of the possible results of Dr. Stewart's work would be adoption of a model law on the subject by the Committee, considered as an initiative that could have a major impact, and he suggested that the topic be included on the agenda once Dr. Stewart presents his opinion in August. It was so agreed.

During the 79th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2011), Dr. Stewart gave a brief summary of the model law adopted in Colombia, and referred to his report on "Recommendations on the proposed model act on the simplified stock corporation," document CJI/doc.380/11. He explained that he had consulted with professors from his university working on the subject, and the initiative was supported unanimously. He then proposed that this topic be included on the agenda, and that the Committee draft a model law for OAS Member States. The purpose of this instrument would be to facilitate the creation of new companies and to protect the parties involved.

The Chairman then turned to Professor Francisco Reyes Villamar to explain the Law of Simplified Joint Stock Companies adopted in Colombia. Professor Reyes was one of the authors of the Colombian law and has had a brilliant public career in his country as a professor and an attorney.

Professor Reyes expressed thanks for the invitation and the excellent summary prepared by Dr. Stewart. His *power point* presentation focused on the following points:

- Justification of reform of Latin American Corporate Law in the light of the efficiencies of Latin American corporate law
- What are simplified joint stock companies?
  - They are part of a modernization process
  - Law adopted on December 5, 2008
  - The five characteristics of their operations are: limited liability; flexible management structure; easy establishment and minimal formalities; favorable tax regime; and, ample contractual freedom
  - Based on limited liability partnerships, limited liability companies, *societies par actions simplifiées*
  - Countries that have adopted them: Civil law countries in Europe, and in China, Japan, India, and Singapore
  - There has been an exponential growth since the law was adopted, equivalent to 92% by July of this year, for a total of 90,000 companies, as compared to 8% for other types of companies in Colombia. The number of companies created between 2009 and 2010 increased by 25%.
- Doctrinal reactions
  - He cited European professors, the United Nations (doing business), specialized periodicals in Colombia

- Objective of a model law
  - A model law drafted by CJI is expected to guide legislative reform processes in Latin America
- Characteristics of simplified joint stock companies
  - The possibility of redefining essential elements
  - Simplified establishment procedures
  - Prevent dichotomy
  - Limited liability
  - Contractual autonomy
  - Flexible capitalization structure
  - Misuse of law, rejection of legal personality
  - Conflict settlement
  - Flexible purpose
  - Freedom regarding internal organic structure
  - Updating of rules on assembly
  - Very free rules governing stock trading
  - Sophisticated operations
  - Rules on dissolution and liquidation

In his final comments, the professor called for a harmonization of Latin American legal systems, and invited the OAS to contribute by establishing guidelines for coordination of laws in Latin American countries.

In response to questions from Dr. Gómez Mont Urueta, who expressed appreciation for the presentation and noted that preparation of simple rules is a very positive contribution, Professor Reyes explained that the name of the company is protected by a sophisticated registration that avoids problems related to homonyms, but does not in itself cover intellectual property considerations which are exercised by other means. The prototype does not prohibit supervisory agencies. He also explained that there are no statistics regarding the impact of these companies in the case of conflicts, but as he understands it, the contractual flexibility of this type of company should help it keep conflicts to a minimum.

In response to the questions of Dr. Novak, Professor Reyes explained that the economic impact in his country had to do with the channeling of foreign investment, in addition to increased tax revenue. On the topic of security, and especially with regard to money laundering, he noted that these are issues that escape this discipline, although it would be viable to include an article to establish a register. Finally, he noted that the weaknesses of simplified joint stock companies could be seen in their practical application, which could be illustrated in effective compliance with the rules that rely on arbitration centers. The Chairman explained that the problem of money laundering is highly controlled in his country by the banking system. Professor Reyes indicated in conclusion that the stock is registered, i.e., it must be entered in a register.

Dr. Stewart, referring to the attachments to his report, asked about the origin of the model law proposed by Professor Reyes, and asked the members for their opinion regarding the possibility of endorsing the idea of having the Committee propose a model law on the subject, something that would be highly productive for States. Professor Reyes explained that two model laws are involved, one on substantive issues and the other on procedural matters. It is a comparative law project that took many years, and was part of a Dr.al thesis and based on academic experience accumulated over 20 years. The model proposed is taken almost verbatim from the Colombian law, which has demonstrated its usefulness, and reflects advances in this area in the past 20 years, and is adapted to the countries of the

region, with the exception of the United States. He considered it to be extremely useful in civil systems, and noted that this model law does not claim to be a complete corporate regime, or to derogate or replace existing statutes.

In view of the successful results in Colombia and the dynamic nature of its economy at present, Dr. Baena Soares supported the idea of presenting a model law to member countries.

In response to a question from Dr. Hubert on the threats of these laws with respect to tax revenue, Professor Reyes explained that there were no incentives in the law with regard to this issue. Tax problems are not the fault of the type of company, but are linked to adequate control and supervision. There are tax planning mechanisms, but simplified joint stock companies were not created to avoid taxes; in fact there is a public register that shows the companies.

Dr. Hyacinth explained Jamaica's interest in this subject, and thanked him for the presentation which will be useful in her work to prepare a draft law on this topic.

In response to Dr. Villalta who asked about the work done in Colombia with notaries, Professor Reyes explained that they did not participate in the creation and establishment of the model, but that they have become incorporated into it over time. Notary procedures are not eliminated, but they are voluntary, and in actual practice only 5% are using them.

The Chairman thanked Professor Reyes, and noted the value of legislation on the subject and the possibility of making an extraordinary contribution to the inter-American system by drafting a model law. Dr. Gómez Mont Urueta proposed that a mandate be adopted at the next session of the Committee to approve a model law. Dr. Novak supported preparation of a model law that would be very simple in light of the advantages apparent in Colombia. He proposed that Dr. Stewart serve as rapporteur, and that a model law be approved at the March session in Mexico. Dr. Stewart accepted the task of preparing a model law, but he asked the other members of the Committee to carefully review his report and comment on it at the next session when a resolution to accompany the model law may be adopted. The Chairman proposed that the topic be included on the agenda, and designated Dr. Stewart as the rapporteur on the topic, and he placed on record the positive reception given to this topic.

The following paragraphs contain transcriptions of the document presented by the rapporteur Dr. David P. Stewart, CJI/doc.380/11 "Recommendations on the proposed model act on the simplified stock corporation".

CJI/doc.380/11

RECOMMENDATIONS ON THE PROPOSED MODEL ACT ON THE SIMPLIFIED STOCK CORPORATION
(presented by Dr. David P. Stewart)

> At our March 2011 regular session, the Chair proposed that the Committee should consider the topic of a "simplified stock corporation," with particular reference to the new law adopted by the Congress of the Republic of Colombia in December 2008. In the interim, I have had an opportunity to review the draft of a new book by Professor Francisco Reyes entitled "A New Policy Agenda for Latin American Company Law: Reshaping the Closely-Held Entity Landscape." This volume discusses in detail the background of Colombia Law 1258 and argues in favor of the adoption of similar legislation by other countries in Latin America. For that purpose, it proposes a "model act" for a Simplified Stock Corporation (as well as another for the resolution of conflicts arising from such corporations). It is my understanding that Professor Reyes will make a presentation on this subject to the Committee at its forthcoming meeting.
>
> I believe that Professor Reyes' proposal, and in particular the Model Act, is worthy of the Committee's endorsement. Professor Reyes makes a very credible case in favor of legislative

reforms to permit such innovative business forms and argues convincingly that these reforms would promote economic growth.

As contemplated by the Model Act, the simplified stock corporation (or "SAS") is a hybrid business entity. It blends features of two business forms: partnerships and corporations. It is related to what are known in some legal systems as "closely held" corporations, limited liability partnerships, and sociétés par actions simplifiée. In the United States, various forms have been successfully adopted in Delaware, Wyoming and Texas; variations have also been adopted in the United Kingdom, France, Japan, Singapore, China, India and Canada. In Latin America, however, it is my understanding that besides Colombia, only Chile has enacted a similar law but it has encountered difficulty in implementation.

Under the Colombian approach, the SAS can be formed by one or more shareholders and can be incorporated by a relatively simple private or electronic document (as opposed to an expensive notarial deed of incorporation). The cost is minimal. The act of incorporation provides limited liability to its shareholders (except when the corporate veil is used to perpetrate a fraud or abuse the corporate form). It also provides protection to third party victims of the abusive or fraudulent use of the *ultra vires* doctrine by corporate officials. It enables the founders to choose an unlimited duration for the incorporation, and replaces the costly and ineffective formality of mandatory internal comptrollers (comisarios) with a more effective and less expensive supervision of external but fully qualified auditors. It also provides flexibility to corporate capital, greater contractual freedom, and increased access to capital.

The benefits of simplified business associations to economic development are supported by strong evidence. A recent study by Dr. Boris Kozolchyk and Dr. Cristina Castaneda of the National Law Center for Inter American Free Trade indicates that in our hemisphere, both big and small economies depend upon informally-created micro and small companies ("MiPymes") for much of their employment. In El Salvador, MiPymes accounted for 99.6% of all of businesses in 2005, and 90.52% of these were microenterprises located in urban areas and especially in the capital city of San Salvador. Most Salvadoran micro-businesses are conducted by a single individual or with the assistance of one or two additional employees. In Brazil, according to a report from the Serviço Brasileiro de Apoio às Micro e Pequenas Empresas (Brazilian Service for the Support of Micro and Small Businesses), the number of microenterprises grew 9.1% from 1997 to 2003, from 9,477,973 to 10,335,962, employing over 13 million people. In Mexico, 99% of all Mexican businesses fall under the rubric of "micro," "small" or "medium-sized" enterprises, employing approximately 60% of the population, and MiPymes are responsible for more than 20% of Mexico's gross domestic product.

The lack of a progressive legislative framework permitting simpler and more modern business associations is often described as a major impediment to economic development within our hemisphere. Under many national legal codes, only certain types of business associations are permitted, such as (i) regular general partnerships (sociedades en nombre colectivo), (ii) limited partnerships (sociedades en comandita), (iii) joint stock companies or corporations (sociedades anónimas), whether of a fixed or variable capital, and (iv) limited liability companies (sociedades de responsabilidad limitada), which are often used as substitutes for family or closely-held corporations. These business forms have roots in European legal codes of the last century and often require businessmen to follow elaborate and costly notarial and administrative processes ("trámites"). These trámites supply missing formalities including the execution of verbose notarial Escrituras Públicas (public deeds) and numerous licenses often in the form of central or municipal taxes. These formalities cannot be ignored, since failure to comply might lead courts or administrators to declare a micro or small business "relatively null", "absolutely null" or even a "non-existent" legal entity devoid of its "legal personality" (personalidad jurídica).

The Colombian Law of Simplified corporations (SAS) enacted in 2008 is the first and most successful Latin American statutory effort to correct this situation by requiring only formalities that have a functional and salutary effect upon the marketplace. It was authored by Professor Reyes, who

is a highly regarded scholar and practitioner and who served as Colombia's Superintendent of Companies. Professor Reyes' book makes a strong case for the benefits that would result from a new system. He begins by presenting evidence that the formalistic structure of traditional corporate law in Latin America remains a hindrance to the development of the economy of the region. Sections 2.7 through 2.12 show the continued adherence to outdated corporate law rules developed in a prior era and in other legal cultures. Tables 1 and 2 are particularly powerful in illustrating how much longer it takes to form a business and to enforce contracts in Latin American economies as compared to elsewhere in the world. The reforms in Colombia are discussed in Part 6, where Table 8 shows a notable reduction in the procedures, time and cost of enforcement of contracts.

Professor Reyes points out ways in which the financial, economic and legal structure of corporate business is different in Latin America than in source countries for traditional corporate law (particularly in the more concentrated and family-controlled nature of many entities, as compared to the more market-centric economies of the United States and the United Kingdom). An even more important difference is the difference between the needs of publicly held corporations from those which are "closely held." Professor Reyes correctly wants to move the focus of legal reform to this part of the corporate landscape.

The Model Act proposed by Professor Reyes (Annex A to the book) suggests focuses on two of the key relationships in a closely held corporation — (i) the relationship of participants to outsiders and (ii) the relationship between the participants themselves. As to the first, the key concept is limited liability, which results from the simple act of incorporation. At the same time, protection of the interests of outsiders—creditors, employees, tort victims, etc.—is provided through the "piercing the corporate veil" concept in section 42. As to the second relationship, the Model Act recognizes and enhances freedom of private contracting while at the same time protecting the interests of participants through the possibility of judicial relief through section 43 on Abuse of Rights.

The SAS would have "legal personality" and could be organized as its shareholders might wish. It could issue various classes or series of shares, those shares and any other securities it issues could not be registered on any stock exchange nor traded in any market. The Model Law provides relatively simple rules regarding dissolution and "winding up." Annex B to Prof. Reyes' book proposes a separate Model Act on Procedural Rules for that process. Copies of Annexes A and B are attached for information.

Annex A

Model Act on the Simplified Stock Corporation

Chapter I

General Provisions

Section 2. Nature.- The simplified stock corporation is a for profit legal entity by shares, the nature of which will always be commercial irrespective of the activities set forth in its purpose clause.

Section 3. Limited Liability.- The simplified stock corporation may be formed by one or more persons or legal entities.

Shareholders will only be responsible for providing the capital contributions promised to the simplified stock corporation.

Except as set forth in Section 41 of this Act, shareholders will not be held liable for any obligations incurred by the simplified stock corporation, including, but not limited to, labor and tax obligations.

There shall be no labor relationship between a simplified stock corporation and its shareholders, unless an explicit has been executed to that effect.

Section 4. Legal Personality.- Upon the filing of the formation document before the Mercantile Registry [include the name of corresponding company registrar's office], the simplified stock corporation will form a legal entity separate and distinct from its shareholders.

Section 5. Inability to Become a Listed Entity- the shares of stock and other securities issued by a simplified stock corporation shall be registered within a stock exchange, nor traded in any securities market.

Chapter II

Formation and Proof of Existence

Section 6. Contents of the Formation Document.- A simplified stock corporation will be formed by contract or by the individual will of a single shareholder, provided that a written document is granted. The formation document shall be registered before the Mercantile Registry [include the name of corresponding company registrar's office], and set forth:

(1) Name and address of each shareholder;

(2) The name of the corporation followed by the words "simplified stock corporation" or the abbreviation "S.A.S.";

(3) The corporation's domicile;

(4) If the simplified stock corporation is to have a specific date of dissolution, the date in which the corporation is to dissolve;

(5) A clear and complete description of the main business activities to be included within the purpose clause, unless it is stated that the corporation may engage in any lawful business;

(6) The authorized, subscribed and paid-in capital, along with the number of shares to be issued, the different classes of shares, their par value, and the terms and conditions in which the payment will be made;

(7) Any provisions for the management of the business and for the conduct of the affairs of the corporation, along with the names and powers of each manager. A simplified stock corporation shall have at least one legal representative in charge of managing the affairs of the corporation in relation with third parties.

No additional formalities of any nature shall be required for the formation of the simplified stock corporation.

Section 7. Attestation.- The Mercantile Registrar [include the name of corresponding company registrar's office] shall attest to the legality of the provisions set forth in the formation document and any amendments thereof.

The Registrar shall only deny registration where the requirements provided under Section 5 have not been met. The decision rendered by the Registrar shall be issued within three days after the relevant filing has been made. Any decision denying registration will only be subject to a rehearing conducted by the Registrar.

Upon the approval of a formation document by the Mercantile Registrar, challenges will not be heard against the existence of the simplified stock corporation and the contents of the formation document will constitute the simplified stock corporation's by-laws.

Section 8. Assimilation to Partnership.- Where a formation document has not been duly approved by the Mercantile Registrar [include the name of corresponding company registrar's office], the purported corporation will be assimilated to a partnership. Accordingly, partners will be jointly and severally liable for all obligations in which the partnership is engaged. If the partnership has only one member, such member will be held liable for all obligations in which the partnership is engaged.

Section 9. Proof of Existence. The certificate issued by the Mercantile Registrar [include the name of corresponding company registrar's office] is conclusive evidence as regards the existence of the simplified stock corporation and the provisions set forth in the formation document.

Chapter III

Special Rules Regarding Subscribed, Paid-in Capital and Shares of Stock

Section 10. Capital Subscription and Payment.- Capital subscription and payment may be carried out under terms and conditions different to those set forth under the Commercial Code or corporate statute [include the name of the relevant Code, Decree, Law or Statute]. In any event, payment of subscribed capital shall be made within a period of two years to be counted from the date in which the shares were subscribed. The rules for subscription and payment may be freely set forth in the by-laws.

Section 11. Classes of Shares.- The simplified stock corporation may issue different classes or series of shares, including preferred shares with or without vote. Shares may be issued for any consideration whatsoever, including in-kind contributions or in exchange for labor, pursuant to the terms and conditions contained in the by-laws.

Any special rights granted to the holders of any class or series of shares shall be described or affixed upon the back of the stock certificates.

Section 12. Voting Rights.- The by-laws shall depict in full detail the voting rights corresponding to each class of shares. Such document shall also determine whether each share will grant its holder single or multiple voting rights.

Section 13. Share Transfers to a Trust.- Any shares issued by a simplified stock corporation may be transferred to a trust provided that an annotation is made in the corporate ledger concerning the trustee company, the beneficial owners and the percentage of beneficial rights.

Section 14. Limitation on the Transferability of Shares.- The by-laws may contain a provision whereby the shares may not be transferred for a period not to exceed ten years, to be counted from the moment in which the shares were issued. Such term can only be extended by consent of all the holders of outstanding shares.

Any such limitation on share transferability shall be described or affixed upon the back of the stock certificate.

Section 15. Authorization for the Transfer of Shares.- The by-laws may contain provisions whereby any transfer of shares or of any given class of shares will be subject to the previous authorization of the shareholders' assembly, which shall be granted by majority vote or by any supermajority included in the by-laws.

Section 16. Breach of Restrictions on Negotiation of Shares.- Any transfer of shares carried out in a manner inconsistent with the rules set forth in the by-laws shall be null and void.

Section 17. Change of Control in a Corporate Shareholder.- The by-laws may impose upon an incorporated shareholder the duty to notify the simplified stock corporation's legal representative about any transaction that may cause a change in control regarding such shareholder.

Where a change in control has taken place, the shareholders' assembly, by majority decision, shall be entitled to exclude the corresponding incorporated shareholder.

Aside from the possibility of being excluded, any breach of the duty to inform changes in control may subject the concerned shareholder to a penalty consisting of a 20% reduction of the fair market value of the shares, upon reimbursement.

In the event set forth in this article, all decisions concerning the exclusion of shareholders, as well as the determination of any penalties, shall require an approval rendered by the shareholders' assembly by majority vote. The votes of the concerned shareholder shall not be taken into account for the adoption of these decisions.

Chapter IV

Organization of the Simplified Stock Corporation

Section 18. Organization.- Shareholders may freely organize the structure and operation of a simplified stock corporation in the by-laws. In the absence of specific provisions to this effect, the shareholders' assembly or the sole shareholder, as the case may be, will be entitled to exercise all powers legally granted to the shareholders' assemblies of stock corporations, whilst the management and representation of the simplified stock corporation shall be granted to the legal representative.

Where the number of shareholders has been reduced to one, the subsisting shareholder shall be entitled to exercise the powers afforded to all existing corporate organs.

Section 19. Meetings.- Meetings of shareholders may be held at any place designated by the shareholders, whether it is the corporate domicile or not. For these meetings, the regular quorum provided in the by-laws will suffice, pursuant to Section 22 hereof.

Section 20. Meetings by Technological Devices or by Written Consent.- Meetings of shareholders may be held through any available technological device, or by written consent. The minutes of such meetings shall be drafted and included within the corporate records no later than 30 days after the meeting has taken place. These minutes shall be signed by the legal representative or, in her absence, by any shareholder that participated in the meeting.

Section 21. Notice of Meeting.- In the absence of stipulation to the contrary, the legal representative shall convene the shareholders' assembly by written notice addressed to each shareholder. Such notice shall be made at least five days in advance to the meeting. The agenda shall in all cases be included within any notice of meeting.

Whenever the shareholders' assembly is called upon to approve financial statements, the conversion of the corporation into another business form, or mergers or split-off proceedings, shareholders will be entitled to exercise information rights concerning any documents relevant to the proposed transaction. Information rights may be exercised during the five days prior to the meeting, unless a longer term has been provided for in the by-laws.

Any notice of meeting may determine the date in which the Second Call Meeting will take place, in case the quorum is insufficient to hold the first meeting. The date for the second meeting may not be held prior to ten days following the first meeting, nor after thirty days from that same moment.

Section 22. Waiver of Notice.- Shareholders may, at any moment, submit written waivers of notice whereby they forego their right to be convened to a meeting of the shareholders' assembly. Shareholders may also waive, in writing, any information rights granted under Section 20.

In any given shareholders assembly and even in the absence of a notice of meeting, the attendees will be deemed to have waived their right of being summoned, unless such shareholders make a statement to the contrary before the meeting takes place.

Section 23. Quorum and Majorities.- Unless otherwise specified in the by-laws, quorum to a shareholders' meeting will be constituted by a majority of shares, whether present in person or represented by proxy.

Decisions of the assembly shall be taken by the affirmative vote of the majority of shares present (in person or represented by proxy), unless the by-laws contain supermajority provisions.

The sole shareholder of a simplified stock corporation may adopt any and all decisions within the powers granted to the shareholders' assembly. The sole shareholder will keep a record of such decisions in the corporate books.

Section 24. Vote Splitting.- Shareholders may split their votes during cumulative voting proceedings for the election of directors or the members of any other corporate organ.

Section 25. Shareholders' Agreements.- Agreements entered into between shareholders concerning the acquisition or sale of shares, preemptive rights or rights of first refusal, the exercise of voting rights, voting by proxy, or any other valid matter, shall be binding upon the simplified stock corporation, provided that such agreements have been filed with the corporation's legal representative. Shareholders' agreements shall be valid for any period of time determined in the agreement, not exceeding 10 years, upon the terms and conditions stated therein. Such 10 year term may only be extended by unanimous consent.

Shareholders that have executed an agreement shall appoint a person who will represent them for the purposes of receiving information and providing it whenever it is requested. The simplified stock corporation legal representative may request, in writing, to such representative, clarification as regards any provision set forth in the agreement. The response shall be provided also in writing within the five days following the request.

Subsection 1.- The President of the shareholders' assembly, or of the concerned corporate organs, shall exclude any votes cast in a manner inconsistent with the terms set forth under a duly filed shareholders' agreement.

Subsection 2.- Pursuant to the conditions set forth in the agreement, any shareholder shall be entitled to demand, before a court with jurisdiction over the corporation, the specific performance of any obligation arising under such agreement..

Section 26. Board of Directors.- The simplified stock corporation is not required to have a board of directors, unless such board is mandated in the by-laws. In the absence of a provision requiring the operation of a board of directors, the legal representative appointed by the shareholders' assembly shall be entitled to exercise any and all powers concerning the management and legal representation of the simplified stock corporation.

If a board of directors has been included in the formation document, such board will be created with one or more directors, for each of whom an alternate director may also be appointed. All directors may be appointed either by majority vote, cumulative voting, or by any other mechanism set forth in the by-laws. The rules regarding the operation of the board of directors may be freely established in the by-laws. In the absence of a specific provision on the by-laws, the board will be governed under the relevant statutory provisions.

Section 27. Legal Representation.- The legal representation of the simplified stock corporation will be carried out by an individual or legal entity appointed in the manner provided in the by-laws. The legal representative may undertake and execute any and all acts and contracts included within the purpose clause, as well as those which are directly related to the operation and existence of the corporation.

The legal representative shall not be required to remain at the place where the business has its main domicile.

Section 28. Liability of Directors and Managers.- All Commercial Code [include the name of the relevant Code, Decree, Law or Statute] provisions relating to the liability of directors and managers may also be applicable to the legal representative, the board of directors, and the managers and officers of the simplified stock corporation, unless such provision is opted-out in the by-laws.

Subsection 1.- Any individual or legal entity who is not a manager or director of a simplified stock corporation that engages in any trade or activity related to the management, direction or operation of such corporation shall be subject to the same liabilities applicable to directors and officers of the corporation.

Subsection 2.- Whenever a simplified stock corporation or any of its managers or directors grants apparent authority to an individual or legal entity to the extent that it may be reasonably believed that such individual or legal entity has sufficient powers to represent the corporation, the company will be legally bound by any transaction entered into with third parties acting in good faith.

Section 29. Auditing Organs.- A simplified stock corporation shall not, in any case, be legally mandated to establish or provide for internal auditing organs [include the name of corresponding auditing entity, e.g., fiscal auditor, auditing committee, etc.].

Chapter V

By-Law Amendments and Corporate Restructurings

Section 30. By-law Amendments.- Amendments to the corporate by-laws shall be approved by majority vote. Decisions to this effect will be recorded in a private document to be filed with the Mercantile Registry [include the name of corresponding company registrar's office].

Section 31. Corporate Restructurings.- The statutory provisions governing conversion into another form, mergers and split-off proceedings for business associations will be applicable to the simplified stock corporation. Dissenters' rights and appraisal remedies shall also be applicable.

For the purpose of exercising dissenters' rights and appraisal remedies, a corporate restructuring will be considered detrimental to the economic interests of a shareholder, *inter alia*, whenever:

(1) The dissenting shareholder's percentage in the subscribed paid-in capital of the simplified stock corporation has been reduced;

(2) The corporation's equity value has been diminished, or

(3) The free transferability of shares has been constrained.

Section 32. Conversion into Another Business Form.- Any existing business entity may be converted into a simplified stock corporation by unanimous decision rendered by the holders of all issued rights or shares in such business form. The decision to convert into a simplified stock corporation shall be registered before the Mercantile Registry [include the name of corresponding company registrar's office].

A simplified stock corporation may be converted into any other business form governed under the Commercial Code [include the name of the relevant Code, Decree, Law or Statute] provided that unanimous decision is rendered by the holders of all issued and outstanding shares in the corporation.

Section 33. Substantial Sale of Assets.- Whenever a simplified stock corporation purports to sell or convey assets and liabilities amounting to 60% or more of its equity value, such sale or conveyance will be considered to be a substantial sale of assets.

Substantial sales of assets shall require majority shareholder approval.

Whenever a substantial sale of assets is detrimental to the interests of one or more shareholders, it shall give rise to the application of dissenters' rights and appraisal remedies.

Section 34. Short-form Merger.- In any case in which at least 90% of the outstanding shares of a simplified stock corporation is owned by another legal entity, such entity may absorb the simplified stock corporation by the sole decision of the boards of directors or legal representatives of all entities directly involved in the merger.

Short-form mergers may be executed by private document duly registered before the Mercantile Registry [include the name of corresponding company registrar's office].

Chapter VI

Dissolution and Winding Up

Section 35. Dissolution and Winding Up.- The simplified stock corporation shall be dissolved and wound up whenever:

(1) An expiration date has been included in the formation document and such term has elapsed, provided that a determination to extend it has not been approved by the shareholders, before or after such expiration has taken place;

(2) For legal or other reasons, the corporation is absolutely unable to carry out the business activities provided under the purpose clause;

(3) Compulsory liquidation proceedings have been initiated;

(4) An event of dissolution set forth in the by-laws has taken place;

(5) A majority shareholder decision has been rendered or such decision has been made by the will of the sole shareholder, and

(6) A decision to that effect has been rendered by any authority with jurisdiction over the corporation.

Whenever the duration term has elapsed, the corporation shall be dissolved automatically. In all other cases, the decision to dissolve the simplified stock corporation shall be filed before the Mercantile Registry [include the name of corresponding company registrar's office].

Section 36. Curing Events of Dissolution.- Events of dissolution may be cured by adopting any and all measures available to that effect, provided that such measures are adopted within one year, following the date in which the shareholders' assembly acknowledged the event of dissolution.

Events of dissolution consisting on the reduction of the minimum number of shareholders, partners or members in any business form governed under the Commercial Code [include the name of the relevant Code, Decree, Law or Statute] may be cured by conversion into a simplified stock corporation, provided that unanimous decision is rendered by the holders of all issued shares or rights, or by the will of the subsisting shareholder, partner or member.

Section 37. Winding Up.- The simplified stock corporation shall be wound up in accordance with the rules that govern such proceeding for stock corporations. The legal representative shall act as liquidator, unless shareholders appoint any other person to wind up the company.

Chapter VII

Miscellaneous Provisions

Section 38. Financial Statements.- The legal representative shall submit financial statements and annual accounts to the shareholders' assembly for approval.

In the event that there is a single shareholder in a simplified stock corporation, such person shall approve all financial statements and annual accounts and will record such approvals in minutes within the corporate books.

Section 39. Shareholder Exclusion.- The by-laws may contain causes by virtue of which shareholders may be excluded from the simplified stock corporation. Excluded shareholders shall be entitled to receive a fair market value for their shares of stock.

Shareholder exclusion shall require majority shareholder approval, unless a different procedure has been laid down in the by-laws.

Section 40. Conflict Resolution.- Any conflict of any nature whatsoever, excluding criminal matters that arises between shareholders, managers or the corporation may be subject to arbitration proceedings or to any other alternative dispute resolution procedure. In the absence of arbitration, the same disputes will be resolved by (include specialized judicial or quasi-judicial tribunal).

The decisions rendered by the tribunal are final and shall not be subject to appeals before any court.

Section 41. Special Provisions.- The legal mechanisms set forth under Sections 13, 14, 38 and 39 may only be included, amended or suppressed from the by-laws by unanimous decision rendered by the holders of all issued and outstanding shares.

Section 42. Piercing the Corporate Veil.- The corporate veil may be pierced whenever the simplified stock corporation is used for the purpose of committing fraud. Accordingly, joint and several liability may be imposed upon shareholders, directors and managers in case of fraud or any other wrongful act perpetrated in the name of the corporation.

Section 43. Abuse of Rights.- Shareholders shall exercise their voting rights in the interest of the simplified stock corporation. Votes cast with the purpose of inflicting harm or damages upon other shareholders or the corporation, or with the intent of unduly extracting private gains for personal benefit or for the benefit of a third party shall constitute an abuse of rights. Any shareholder who acts abusively may be held liable for all damages caused, irrespective of the judge's ability to set aside the decision rendered by the shareholders' assembly. A suit for damages and nullification may be brought in case of:

(1) Abuse of majority;

(2) Abuse of minority; and

(3) Abusive deadlock caused by one faction under equal division of shares between two factions.

Section 44. Cross-References.- The simplified stock corporation shall be governed:

(1) By this Law;

(2) By the formation document, as amended from time to time; or

(3) By statutory provisions contained in the Commercial Code [include the name of the relevant Code, Decree, Law or Statute] governing stock corporations.

Section 45. Promulgation.- This Act shall be effective as of the date of its promulgation and it repeals any and all statutes, acts, codes, decrees, or provisions of any nature that are inconsistent with this Act.

* * *

Annex B

Model Act on Procedural Rules for the Resolution of Conflicts in Simplified Stock Corporations

Chapter I

General Provisions

Section 1. Purpose. The purpose of this Act is to provide the procedural rules that shall apply to the resolution of conflicts arising within a simplified stock corporation, as provided in Law [include name or number of the Act that regulates the simplified stock corporation].

All conflicts that arise between shareholders, or between them and the corporation, its managers, officers, auditors or third parties, including those related to the abuse of rights, piercing the corporate veil, liability of shadow directors and officers, shareholders' agreements, and decisions rendered by the shareholders' assembly or the board of directors, shall be subject to the special proceedings regulated in this Act.

Section 2. Principles. The following principles shall prevail in the special proceedings regulated herein: concentration, celerity, and brevity.

The principle of concentration requires that each step in a proceeding consolidate as many procedural acts as possible. A deferral of a proceeding may take place only under exceptional circumstances.

The principle of celerity requires that all procedures take place in the shortest amount of time. All decisions, measures, agreements, and, in general, any action that reduces the time frame of a proceeding, shall be preferred.

The principle of brevity requires that in a proceeding, the act that requires the least amount of procedures shall be preferred.

Section 3. Jurisdiction. The [include name of the administrative authority or specialized court in charge of proceeding] (hereinafter, referred to as "the authority") will have judicial powers with regard to any proceeding concerning the simplified stock corporation.

The [include name of the administrative authority or specialized court in charge of proceeding] shall have exclusive jurisdiction over such proceedings.

Section 4. Legal Standing. Legal standing shall be presumed with regard to shareholders and officers in any proceeding involving a simplified stock corporation, as well as with regard to the corporation itself. Third parties may provide summary evidence as proof of their legal standing.

Chapter II

Procedures

Section 5. Petition. The special proceeding for simplified stock corporations shall be deemed to have commenced with the filing of a complaint or petition. Such petition must contain: the name of the parties, the claims and pleadings, a brief description of the facts, a listing of the probative materials to be used as evidence, the legal foundations for each claim, the plaintiff's address and e-mail address for notification purposes, and the assumed defendant's address and e-mail for the same purpose.

A single petition may include all the pleadings involving one or more simplified stock corporations.

The anticipated evidence and documents that are in possession of the plaintiff are, under no circumstance, required to be attached to the petition as an exhibit. The mere listing of such evidence will suffice for all legal purposes.

Section 6. Filing of the Petition. The petition that complies with the above-mentioned requirements may be filed in writing or through a data message sent to the Electronic System for Conflict Resolution of Simplified Stock Corporations that will be created by [include name of the administrative authority or specialized court in charge of proceeding].

If the petition is filed in writing, the authenticity of such document shall be presumed, provided that it has been executed by the plaintiff or her legal representative. If the petition is filed as a data message, the rules contained in [include name or number of the act or rule that regulates e-commerce and data messages] shall apply.

Section 7. Preliminary Study of the Petition. Within three days following the date in which the petition has been filed, the [include name of the administrative authority or specialized court in charge of proceeding] will determine if it complies with all legal requirements and will decide on its admissibility or inadmissibility.

If such authority finds that the petition complies with all legal requirements, it will be admitted. If the petition does not comply with the requirements provided for in this law, the aforementioned authority shall declare its inadmissibility and order the plaintiff to make the necessary corrections. The appropriate corrections will have to be undertaken within the next five days following the date in which the request was made.

An action may be dismissed only when the plaintiff has not made the necessary corrections within the aforementioned period, or when the authority has determined that it has no jurisdiction over the issues brought before it under this Act.

Section 8. Preliminary Measures. In proceedings regarding the specific performance of obligations contained in a shareholders' agreement, the authority will be entitled to issue preliminary injunctions immediately after determining the admissibility of the complaint. In all other proceedings, the authority will only be allowed to issue such injunctions after service of process has been made.

Section 9. Anticipated Judgment. If during the preliminary analysis of the petition the authority finds that the pleadings and facts brought forward by the plaintiff are fundamentally similar to the pleadings and facts that have been the matter of a previous dismissal by such authority, the authority shall dispense service of process to the defendant and render immediately a final decision or judgment on the merits of the case by resolving the matter in the same terms in which it was done in the previous case.

Should the plaintiff bring a motion to set aside the judgment, the authority shall decide, in no more than five days, if the decision will be revoked. In this case the proceedings will continue pursuant to the provisions of this Act. If the authority rejects the motion, the judgment shall be definitive, unless the special appeal contained in Section 28 shall be applicable.

Section 10. Service of Process. The petition shall be admitted by an order rendered by the authority. Service of process to the defendant or defendants shall take place in accordance with section 29 of this Act. Along with the service of process, notification of the petition shall also take place.

Section 11. Notice to the Corporation and Joint Litigation. Notice concerning the commencement of proceedings shall be sent to the corporation or corporations involved in the complaint. It will be the corporation's legal representative duty to inform all shareholders, officers, directors, and auditors of the action that has been initiated before the authority. Any persons who may have an interest in the matter will be entitled to become a party to the process by filing a written statement in support of the plaintiff's pleadings, or bringing an opposition to them. Such statements must be filed within the five days following the notice given to the corporation.

The notice to the corporation shall also be published in the Electronic System for Conflict Resolution of Simplified Stock Corporations on the same date that it is sent to the corporation.

Section 12. Response to Complaint. After the expiration of the five-day term referred to in Section 11 above, the defendant or defendants shall have five additional days to provide a written response to the petition. Such answer may also be presented through a data message. The response shall include a response to all pleadings and claims included in the petition, as well as the defendant's counterclaims and legal defenses, a listing of the evidence, and the correct address and e-mail address for notifications (in the event that those presented by the plaintiff are incorrect).

Grounds for dismissal related to formal requirements shall only be heard in the preliminary hearing.

Section 13. Preliminary Hearing. Within the following five days after the expiration of the term referred to in Section 12 above, the authority shall summon the parties to a preliminary hearing in order to conduct mediation proceedings, curing any defects that may exist in the process, and make all determinations concerning the requests for evidence. The parties shall attend the hearing in person, or through their legal representative.

The preliminary hearing will be subject to the following rules:

1. Opening: The hearing will commence at the time provided in the summons. If any of the parties is unable to attend the hearing due to force majeure, such event shall have to be argued in advance to the commencement of the hearing. The hearing may be postponed only once. In this case, the new hearing shall take place within the five days following the initial date.

2. Mediation. Once the hearing has started, the parties will be asked if an agreement to resolve the issues has been reached or, in the alternative, if they have agreed on a method to solve the matter. In case the parties have reached an agreement, the authority shall verify its validity and approve it (if the case may be). If the parties have agreed on a method to solve the dispute, such procedure shall be validated by the authority.

If after the mediation has been conducted the parties fail to reach an agreement, the hearing will continue.

3. Curing Defects in the Process. The authority shall interrogate the parties on the defects that are deemed to affect the process. Immediately afterwards, the authority shall adopt the necessary measures to cure the defects in order to prevent nullities within the proceedings.

4. Pleadings. Subsequently, the parties will be entitled to present their pleadings and defenses before the authority.

5. Requests for Discovery and Production of Evidence. In the following stage of the preliminary hearing, the parties shall produce the evidence in their possession. The first to disclose the evidence will be the plaintiff, followed by the defendant.

After the production of evidence, the parties will have the opportunity to present the evidentiary stipulations governed under section 23 of this Act.

Subsequently, the authority will solve all requests for production of evidence that have been made by the parties.

Afterwards, the parties will be ordered to produce evidence, which will be ascertained by the authority taking into account its relevance and conduciveness to the purposes claimed by each party.

The hearing referred to in this section shall take place in one single day. It may, however, be deferred once or several times, provided that such deferral does not exceed three hours.

As soon as the hearing is concluded, the authority shall summon the parties to a new hearing for the taking of evidence, the presentation of closing arguments, and the rendering of the final decision.

Section 14. Hearing for the Taking of Evidence. After the commencement of the hearing, the taking of evidence shall take place in the following manner:

1. The deposition of expert witnesses designated by the parties shall be taken first. The authority may interrogate them on the issues that are not clear. The parties shall also be entitled to interrogate or refute them.

2. All records concerning evidence taken by *in situ* inspection of books and records conducted by the parties or their legal representatives shall be shown during the hearing.

After the evidence has been taken, each of the parties will provide the closing arguments by means of an oral presentation not to exceed 30 minutes. Subsequently, the authority will render the final decision orally.

After rendering the decision, the authority shall hear any requests for the special appeal contained in section 28 of this Act.

The hearing referred to in this section shall take place in one single day. It may, however, be deferred once or several times, provided that such deferral does not exceed three hours.

Section 15. Summary Decision. If at any juncture during the process the authority finds that there is sufficient evidence from which a definitive and unequivocal decision can be made, it may omit any subsequent procedural stages and render a final decision or judgment on the merits of the case.

Chapter III

Special Provisions Concerning Evidence

Section 16. Procedural Moment for the Request of Evidence. All evidence that the parties may wish to present during the proceeding shall be either listed or requested in the petition or its response. A request for the production of evidence cannot be made in any other stage of the proceedings.

Section 17. Prohibitions. The authority shall only admit or authorize the production of evidence that is pertinent, useful and conducive to the pleadings and defenses of the parties. A request for the production of evidence that has only an indirect or relation with the case shall be dismissed.

The authority shall not hear more than three witnesses for each of the parties.

The production of evidence by physical examination of exhibits shall only be ordered under exceptional circumstances. It shall be permitted only in the event that the alleged fact cannot be proven by any other means.

Section 18. Reading of Documents. Under no circumstances shall the actual reading of documentary evidence be required in any hearing. Access to such documents shall be permitted through the exhibits included in the docket.

Section 19. Presumption of Authenticity of Originals and Copies. All documents produced as originals or copies that contain the signature of the plaintiff, the defendant, their attorneys, the legal representative or any officer or manager of the corporation, shall be presumed to be authentic.

Section 20. Electronic Documents. Data messages shall be considered probative material under the terms of law [include name or number of the Act that regulates e-commerce and data messages].

Section 21. Deposition of Expert Witnesses. The deposition of all witnesses shall be taken orally. Rebuttals can only take place in the hearing regulated under section 14 of this Act.

In the case of expert witnesses, summary proof of the technical or scientific ability, skill or knowledge on the subject upon which the witness has been called to testify, will suffice. Such proof concerning the expert witness' qualifications must be presented during the interrogation of the expert witness conducted by the authority.

Section 22. Evidence through *in situ* inspection of books and records. Once the authority has ordered the production of evidence by an inspection carried out in a specifically designated place pursuant to section 14-2 of this Act, the party who requested it shall be responsible for carrying out the corresponding inspection, recording or filming the examination in an appropriate medium and assuming all costs that such procedure may demand.

The authority shall not be required to attend the inspection, as the recording will suffice. The other party will be entitled to attend the examination, for which it must previously and timely be informed as to the date and time in which the inspection will take place.

Section 23. Stipulations Concerning Evidence. During the hearing for the taking of evidence, the parties may agree on the facts and circumstances that are to be considered proven in the case. For these facts and circumstances, the production of evidence will not be necessary.

The stipulations shall be duly recorded in writing, and must contain the signature of all plaintiffs and defendants or their legal representatives. Once the document has been executed, the stipulations will be informed to the authority for it to decide on their validity. If the stipulations are deemed to be valid, they will be taken into consideration by the authority when ordering the production of evidence.

Stipulations that are contrary to facts that are evident in the proceeding shall be deemed to be invalid by the authority.

Section 24. Burden of Proof. Each of the parties will be bound to prove the existence of the facts that support their claims and defenses. Nevertheless, when one of the parties is in a difficult position to produce evidence regarding a specific fact, whilst another party is in a better position to produce it, the authority may shift the burden of proof to the party with the ability to provide such evidence.

The shift in the burden of proof must be duly informed in the hearing for the taking of evidence.

Chapter IV

Time Limits and Deadlines

Section 25. Waiver of Time Limits. The parties may, in all cases, renounce, expressly or implicitly, to the time limits and deadlines of a proceeding.

An implicit waiver of a time limit takes place when it can be inferred from the conduct of the parties that they do not wish to exhaust the time period that the law provides as when writings are filed by the parties before the time limit has elapsed.

Section 26. Observation of Time Limits. Time limits and deadlines shall be strictly observed and complied with by the parties and the authority.

Chapter V

Appeals

Section 27. Motion to Set Aside Decisions of Authority and other Appeals. Orders or resolutions and decisions rendered by the authority regarding procedural aspect are not subject to appeal.

All other decisions rendered by the authority will only be subject to a motion to have them set aside by the same officer. Such motions shall have to be presented within three days after the challenged decision has been rendered or notified, as the case may be. The authority will have a five-day term to decide on these motions. Nevertheless, If the challenged decision is rendered in the course of a hearing, the motion to have it set aside will have to be presented and resolved during the same hearing.

Section 28. Special Appeal before a Superior. Under special circumstances provided for in this act, the final decision may be appealed before [include name of the highest administrative or specialized judicial authority with jurisdiction over the issues].

The appeal shall have to be presented orally in the hearing where the final decision is rendered. In that same hearing, the authority shall decide if the recourse is to be granted. The appeal will only proceed if the amount at stake exceeds [include amount in local currency].

Once the appeal has been granted, the party filing the recourse will have to file the appeal in writing within the following five days. Immediately afterwards, the authority will remand the entire docket to [include name of the highest administrative authority or specialized court with jurisdiction over the issues] in order to be resolved.

The final decision resolving the special appeal may only be rendered on the grounds of the written appeal filed by the objecting party, and the proceedings that have already taken place. New evidence will not be admitted at this stage.

Chapter VI

Service of Process

Section 29. Service of Process Types. Service of process may take place under any of the following means: through personal notification, by publication, by the parties' tacit behavior, service during a hearing, and service by e-mail or any other data message.

Service through personal notification and service by publication shall be made as provided by [include name or number of procedural act or rules that regulate service of process]. In any event, service by publication will always be included in the authority's website.

Service by e- mail shall be made by sending the respective order or decision through an e-mail address that is certified by the authority as the official address for the purposes of service of process.

Section 30. Service Concerning Resolution that Admits the Complaint. The resolution whereby the petition for the initiation of a proceeding is admitted shall be served simultaneously to all the involved parties through any of the service of process mechanisms described in the preceding section.

Section 31. Service of Other Resolutions or Decisions. Orders or decisions different from the resolution whereby the petition for the initiation of the proceeding is admitted shall be served by publication or by e-mail. However any decisions or order rendered during a hearing, including the final decision, shall be understood to have been served in the same hearing.

Section 32. Service through the Parties' Tacit Behavior. In any event in which a party behaves in a manner that could allow the authority to infer that such party has knowledge of the decision that was to be served, such party will be considered to have been tacitly served.

Section 33. Waiver of Defects Regarding Service of Process. In any case in which a defect in the service of process has been detected, the affected party will be entitled to send a written statement to the authority waiving any such defect that may have occurred.

Chapter VII

Miscellaneous Provisions

Section 34. Abuse of Rights. Whenever the authority finds that the parties have behaved in an abusive manner during the process, will be entitled to impose fines to the party responsible for such abuse of rights.

Section 35. Alternative Procedural Provisions. The parties to any case governed under this law may propose to the authority procedural alternatives regarding the manner in which the process will take place, even if such proposals modify the order that has been provided in Chapter II of this Act.

If the authority considers that such proposals are relevant, that they will have a positive impact in expending the process, it will approve the suggested changes and proceed to undertake any required modifications in order for the process to continue as proposed by the parties.

Section 36. Stay of Proceedings. Any act performed by the parties with the objective of staying or delaying the process shall be considered as a serious indication of noncompliance and will be used against such party. If the authority becomes aware of such acts, it will adopt the necessary measures to counteract them in order for the proceeding to continue in the most expedited fashion.

Section 37. Recording of Hearings. All hearings must be recorded by any accepted technological which are considered appropriate according to the circumstances.

Minutes for each hearing must be drafted in which at least the following aspects must be included: time and date, type of hearing, the name of the persons who participated in the hearing, any adjournments that could have taken place, a description of proceedings, decisions, recourses and appeals that might have been presented by the parties.

Section 38. Decisions Made by the Authority. Decisions made by the authority shall be included in resolutions or orders that may have a substantive or procedural nature. The decision by which the case is resolved is referred to as the final decision or judgment.

Section 39. Prohibitions. Preliminary exceptions and amendments to the pleadings, defenses, or petitions shall not be permitted in this proceeding.

Section 40. Statute of Limitations. The statute of limitations applicable to any action regarding the special proceeding for the simplified stock corporations will elapse in a term of five years.

The time prescribed herein shall be counted in accordance with the following rules:

1. If the cause of action, claim or issue is related to the piercing of the corporate veil, abuse of rights, or liability of SAS officers, directors and shadow directors, the term prescribed herein shall initiate from the moment in which the abusive or fraudulent act occurred.

2. If the cause of action, claim or issue involves the challenging of a decision of the shareholders' assembly or board of directors, the term prescribed herein shall initiate from the moment in which such decision was rendered.

3. If the cause of action, claim or issue involves the performance of obligations contained in a shareholders' agreement, the term prescribed shall initiate from the moment in which such obligation was to be performed.

Section 41. Application of additional Rules. Any issue that is not specifically regulated in this law will be governed under the [include name or number of act or rules of civil procedure].

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II. THEMES PENDING

During the 79th ordinary session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2011), two themes were excluded from the agenda despite not have been declared culminated: International Criminal Court and migrants.

1. International Criminal Court

Document	
CJI/doc.374/11	Complementary progress report on the activities to promote the International Criminal Court and preliminary guide of model texts for crimes included in the Rome Statute (presented by Dr. Mauricio Herdocia Sacasa)

During its 67th regular session (Rio de Janeiro, August 2005), the Inter-American Juridical Committee adopted the inclusion of the topic "International Criminal Court" on its agenda, by mandate of the OAS General Assembly, which, by resolution AG/RES. 2072 (XXXV-O/05), requested the Juridical Committee to draw up a questionnaire to be presented to the OAS Member States, on how their laws allow for cooperation with the International Criminal Court and, on the basis of the findings of the questionnaire, to present a report to the Permanent Council, which, in turn, will transmit it to the thirty-sixth regular session of the General Assembly.

In the course of the regular session, the Inter-American Juridical Committee examined document CJI/doc.198/05, "Questionnaire on the International Criminal Court", presented by Drs. Mauricio Herdocia Sacasa, Luis Herrera Marcano, Antonio Fidel Pérez, Stephen C. Vasciannie and Ana Elizabeth Villalta Vizcarra.

The Inter-American Juridical Committee also adopted resolution CJI/RES. 98 (LXVII-O/05), "Promoting the International Criminal Court", by which document CJI/doc.198/05 rev.1 is approved, containing the "Questionnaire on the International Criminal Court", in compliance with the mandate assigned by the General Assembly. The questionnaire was sent to the Member States by the Office of International Law in September 2005.

During its 68th regular session (Washington, D.C., March 2006), the Inter-American Juridical Committee examined document CJI/doc.211/06, "International Criminal Court", presented by Dr. Mauricio Herdocia, pursuant to operative paragraph 6 of General Assembly resolution AG/RES. 2072 (XXXV-O/05).

The Inter-American Juridical Committee adopted resolution CJI/RES. 105 (LXVIII-O/06), "Promotion of the International Criminal Court", which approves document CJI/doc.211/06.

On July 2006, at its thirty-sixth regular session (Santo Domingo, Dominican Republic, June 2006), the OAS General Assembly adopted resolutions AG/RES. 2218 (XXXVI-O/06) and AG/RES. 2176 (XXXVI-O/06), in which it asked the Inter-American Juridical Committee to continue addressing the topic. Furthermore, it asked the Committee to prepare a set of recommendations to the OAS Member States, based on the findings of the report submitted (CP/doc. 4111/06), regarding ways to strengthen cooperation with the International Criminal Court, as well as any progress made in this regard, and to submit them to the Permanent Council to be forwarded to the General Assembly at its 37th regular session.

At its 69th regular session (Rio de Janeiro, August 2006) and in compliance with the General Assembly resolutions AG/RES. 2218 (XXXVI-O/06) and AG/RES. 2176 (XXXVI-O/06), the Inter-American Juridical Committee discussed this topic.

At the 70th regular session of the Inter-American Juridical Committee (San Salvador, February-March 2007), Dr. Herdocia Sacasa presented report CJI/doc.256/07 rev.1, "Promotion of the International Criminal Court", which updates his previous report. He offered a detailed view of the structure and the contents of the chapters of his report.

The Inter-American Juridical Committee adopted resolution CJI/RES. 125 (LXX-O/07), "Promotion of the International Criminal Court", which highlights the preliminary recommendations put forward in the report.

On July 2007, at its XXXVII regular session (Panama, June 2007), the OAS General Assembly adopted resolution AG/RES. 2279 (XXXVII-O/07), "Promotion of the International Criminal Court", wherein it requested the Inter-American Juridical Committee, on the basis of the information received from and updated by the Member States, as well as the recommendations contained in report CP/doc.4194/07 and existing cooperation laws, to prepare a model law on cooperation between States and the International Criminal Court, taking into account the hemisphere's different legal systems, and to submit it to the General Assembly at its thirty-eighth regular session.

During the Inter-American Juridical Committee's 71st regular session (Rio de Janeiro, August 2007), the General Secretariat was asked to compile the existing laws in the hemisphere, so that the Committee might present a draft model law that is responsive to civil law and common law countries.

During the 72nd regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2008), Dr. Dante Negro reported that, in response to a request made within the Committee on Juridical and Political Affairs, the Department had again circulated the Questionnaire on the topic prepared by the Juridical Committee.

Dr. Herdocia also presented documents CJI/doc.290/08 rev.1, "Report on Perspectives for a Model Law on State Cooperation with the International Criminal Court", and CJI/doc.293/08 rev.1, "Guide to the General Principles and Agendas for the Cooperation of States with the International Criminal Court".

The Juridical Committee decided to adopt resolution CJI/RES. 140 (LXXII-O/08), "Promotion of the International Criminal Court", which accepts two reports submitted by the rapporteur stressing the importance of having the States bear in mind its considerations, principles, and guidelines towards the strengthening of the cooperation with the International Criminal Court.

On July 2008, during the thirty-eighth regular session of the OAS General Assembly (Medellín, June 2008), by resolution AG/RES. 2364 (XXXVIII-O/08), it requested the Inter-American Juridical Committee, based on its proposal to draft a model legislation on States' cooperation with the International Criminal Court, given its available means, and with the support of civil society, to promote the adoption of this model legislation by the States that do not yet have a law on the subject. It further requested the Juridical Committee, with the cooperation of the General Secretariat and the Secretariat for Legal Affairs, to support and promote training of administrative, judicial, and academic officials in Member States to this end, and to report to the 40th regular session of the General Assembly on progress made in this regard.

At the 73rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2008), the rapporteur on the subject, Dr. Mauricio Herdocia, proposed that the discussions on the subject be reflected *verbatim* in the minutes.

During the 74th regular session of the Inter-American Juridical Committee (Bogota, March 2009), the rapporteur on the subject, Dr. Mauricio Herdocia, referred to the history of the subject and gave a brief recount of the reports drafted by the Inter-American Juridical Committee in compliance with General Assembly mandates. Finally, the Inter-American Juridical Committee adopted resolution

CJI/RES. 157 (LXXIV-O/09), "International Criminal Court," in which the Chairman of the Inter-American Juridical Committee is requested to contact States parties to the Rome Statute that have not yet adopted legislation on cooperation with the International Criminal Court, to make available to them the Inter-American Juridical Committee's work on the subject and technical assistance that the Secretariat, or, if appropriate, the rapporteur and other members of the Committee, might offer.

On July 2009, during the XXXIX regular session of the OAS General Assembly (San Pedro Sula, June 2009), by resolution AG/RES. 2505 (XXIX-O/09), the Inter-American Juridical Committee was requested to use as a basis the OAS Guide on Principles pertaining to cooperation with the International Criminal Court to promote national legislation on the subject, to the extent possible and with the support of civil society, in states that have not yet adopted such legislation. It further requested that, in cooperation with the General Secretariat and the Secretariat for Legal Affairs, it continue supporting and promoting the training of administrative, judicial, and academic officials to this end in Member States, and that it report to the states parties on progress in this area at the next working meeting on the International Criminal Court and to the General Assembly at its 40th regular meeting. It also requested the Inter-American Juridical Committee to draft model legislation on implementation of the Rome Statute, especially with regard to the definition of the crimes under the jurisdiction of the International Criminal Court, and that it present a report on progress achieved.

During the 75th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2009), Dr. Mauricio Herdocia spoke of the mandates from the General Assembly set out in item 11 of resolution AG/RES. 2505 (XXIX-O/09). In connection with them, he proposed presenting the Committee with a draft model law covering the three relevant crimes set out in the Rome Statute, namely: genocide, crimes against humanity, and war crimes.

At the 76th Regular Session of the Inter-American Juridical Committee (Lima, Peru, March 2010), the rapporteur, Dr. Mauricio Herdocia, spoke of document CJI/doc.352/10, which contains three points of the mandate in General Assembly resolution AG/RES. 2505 (XXXIX-O/09): 1) implementation of measures toward encouraging the adoption of national law on the subject; 2) support and promotion for the training of state officials in collaboration with the OAS General Secretariat, and 3) submission of a progress report for the fortieth regular session of the General Assembly.

Regarding the first mandate, the rapporteur spoke of the origin and development of the CJI's work, the replies received to the Questionnaire prepared by the Committee and sent to the states that are parties to the Rome Statute as well as to those that are not; the Guide of General Principles, and, finally, the Guidelines for State Cooperation with the International Criminal Court. He also spoke of the note sent by the Chairman of the Committee to the Rome Statute States Parties that had not yet enacted legislation on cooperation with the ICC, in order to offer such technical assistance as it can provide.

Regarding the second mandate, the rapporteur described his participation at the Fourth Special Working Meeting on the International Criminal Court within the framework of the CAJP, held on January 27, 2010, in Washington, D.C.

Regarding the third aspect of the Juridical Committee's work in drafting model legislation on war crimes, crimes against humanity, and genocide, the rapporteur has proposed developing criminal definitions that embrace the Rome Statute and the terms of the Geneva Conventions and its additional protocols, an idea that has earned currency in Latin America. He also indicated the need to build on the efforts undertaken by the International Committee of the Red Cross. His report therefore gathers together the 22 criminal offenses that the ICRC proposed to the States, and it also considers solutions

reached by various national laws that offer a reference point for the adoption of the Rome Statute and of the supporting legislation.

At the fortieth regular session of the OAS General Assembly (Lima, June 2010), resolution AG/RES. 2611 (XL-O/10) urged the Committee to continue working on three specific issues: promoting the adoption of national laws on the topic; providing training for administrative and judicial civil servants and academics; and preparing a model law for the implementation of the Rome Statute, particularly as regards the criminalization of those offenses over which the International Criminal Court has jurisdiction.

At the 77th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, June 2010), the rapporteur for the topic, Dr. Mauricio Herdocia, placed before the Juridical Committee's consideration the document CJI/doc.360/10 "Report on the Activities on Promotion of the International Criminal Court and Preliminary Draft of Model Texts for Crimes Contemplated in the Rome Statute", pursuant to the mandate set out in resolution AG/RES. 2577 (XL-O/10).

In terms of that progress, he pointed out that there had been no change in the number of states of the Americas that had ratified the Rome Statute, nor with their ratification of the Agreement on Privileges and Immunities of the Court (APIC).

He also reported that three meetings on the topic of the International Criminal Court had been held since the March period of sessions. The first was the Review Conference of the Rome Statute in Kampala, the results of which are set out in detail in the report prepared by the Department of International Law (DDI/doc.03/10), attached as an annex to his report. However, he made particular mention of the resolutions dealing with the complementarity between the Rome Statute and national laws and jurisdiction, the topic of the impact of the Rome Statute system on victims and affected communities, compliance with Article 124, the amendments to Article 8 of the Rome Statute, and the crime of aggression. Under Article 124, a State may withdraw from the jurisdiction of the International Criminal Court for a period of 7 years, until the review is concluded. The Court had resolved to maintain that situation with respect to Article 124, so that States would continue to maintain their status on the margin of the Court.

He also spoke of the Kampala meeting's adoption of an amendment to Article 8 of the Rome Statute regarding the use of chemical substances, biological weapons, and other kinds of weapons that cause unnecessary harm to victims. It should be recalled that as noted by this rapporteurship in its previous reports, war crimes occur in both international and domestic armed conflicts, and that is also the case with the use of the weapons referred to above, which undeniably do cause the same harm to human lives even when not the result of international conflicts. Finally, he spoke of the achievement of defining the crime of aggression, which embraces the thrust of Resolution 3314 of the 29th United Nations General Assembly and transforms acts of aggression into crimes of aggression, depending on their seriousness and the means used to commit them, a notion that has now been incorporated into the Rome Statute.

The second meeting took place in Mexico during the International Conference of Latin American and Caribbean National International Humanitarian Law Commissions, organized by Mexico's Secretariat of Foreign Affairs and the International Committee of the Red Cross, at which the rapporteur gave a presentation on the Juridical Committee's work.

In pursuit of the mandate of publicizing the Committee's work in this area, he added that he had attended the meeting of the Convention of Lawyers of El Salvador; that event, intended to raise awareness about the International Criminal Court, was also attended by Dr. Ana Elizabeth Villalta Vizcarra.

The rapporteur then presented a set of model texts for war crimes; while still only in preliminary form, they did take into account the work of both the Red Cross and the Committee itself, which had been fully recognized in light of the Kampala meeting results. He proposed distributing them at the next working session of the CAJP and to receive the opinions of the states, in order to further progress and fine-tune the study of the topic. In his document, the rapporteur proposes that crimes of genocide be incorporated into the Rome Statute, the text of which already bans the defense of such crimes. Finally, he addressed the topic of model legislation covering crimes against humanity taking place during systematic attacks on the civilian population.

Dr. João Clemente Baena Soares congratulated the rapporteur for his efforts and for the cutting-edge proposals he had made. He noted that in recent years, the international community had made great progress in areas that previously were not even matters of governmental concern.

Dr. Freddy Castillo said that emphasis should be placed on the CJI's contribution to doctrine through the rapporteur's reports. The example relating to Kampala that he had given was of particular relevance for the dissemination of the Juridical Committee's work, which sets out opinions, principles, and precepts adopted by the international community with specific reference to the Rome Statute. This motion received the support of the other members of the Committee.

Dr. Luis Toro noted that the next working session of the CAJP was scheduled for no later than June 2012, although an exact date had not yet been set.

Dr. David Stewart said that notwithstanding the excellent quality of the rapporteur's report, he thought certain points should be explored in greater detail if it was to be presented to the next General Assembly. Regarding item 2.2.1.1, dealing with crimes of aggression, he asked whether the Committee was going to recommend its incorporation into domestic law. Regarding item 2.2.1.2, he was unclear whether the language was the rapporteur's proposal or whether it was the text adopted in Kampala. In addition, he said that he would like to explore certain points in the model texts. For example, he supported the use of the term "armed conflict" without specifying whether it was an international conflict or not. He thought that the text of Article 1 was too broad and could cover other kinds of armed conflict not necessarily related to war. In discussing genocide, the rapporteur's proposal went further than the definition in the Genocide Convention; he was not opposed to that, but he suggested that a note be included in the report when the proposed texts went further than the applicable conventions.

Dr. Mauricio Herdocia said that this report should be considered a preliminary text, since he was looking forward to hearing the opinions of the Member States at the special meeting. In any event, it would be placed before the General Assembly, in compliance with the mandate, but noting its preliminary status. After that, the rapporteur would gather the comments made at this meeting, those offered by the Member States, and any from other future meetings, in order to amend the text for analysis at future sessions.

Regarding Dr. Stewart's comments, he explained that the amendment to Article 8 reflected the proposal of the Juridical Committee and that it was not a text from the rapporteur but was basically what was adopted by the Review Conference. Regarding the expression "during an armed conflict" (Article 1 – p. 6), he explained that this was in reference to the two categories of armed conflict: that is, the intentional killing of a person protected by international humanitarian law in accordance with the Geneva Conventions and their additional protocols.

If the Juridical Committee was proposing preparing legislation on crimes, that would require that at some point, reference also be made to the crime of aggression.

Regarding the topic of defending genocide, the idea contained in some legislations was that although reference was made to the crime of defending it, that was not included in the definition in Article 6 and had been included in the report as a reflection of progress with the issue.

Dr. João Clemente Baena Soares summarized the opinions of all the members and suggested that the rapporteur's report be conveyed to the General Assembly in compliance with the mandate, but emphasizing its preliminary status and that it will be subject to ongoing analysis as the topic progresses.

During the 78th regular session of the Inter-American Juridical Committee held in Rio de Janeiro in March 2011, the rapporteur of the theme, Dr. Mauricio Herdocia, asked the Committee to consider document CJI/doc.374/11, entitled "Complementary progress report on the activities to promote the International Criminal Court and preliminary guide of model texts for crimes included in the Rome Statute".

First of all he referred to his participation in the Third Universal Meeting of National Committees on Application of Humanitarian International Law held at the International Conference Center in Geneva on 27-29 October 2010. This event enabled the rapporteur to exchange opinions and practices with national authorities of the guest countries.

He also referred to his presentation at the Working Session organized by the Committee on Juridical and Political Affairs on 10 March 2011, the main theme of which was a reflection on the results of the Review Conference of the Rome Statute held in Kampala. He explained that his report on the Guide of Principles was well appreciated, and indicated that he had received proposals to include references to the crime of aggression. The rapporteur also informed the meeting of the setting up of an informal network of cooperation with the entities engaged in this matter, such as the International Criminal Court, the Attorney General's Office, the Presidency of the Conference of Party States, the International Committee of the Red Cross, the Organization of Parliamentarians for Global Action and the Coalition for the International Criminal Court. The meeting with the members of the network took place on the morning of the same day, 10 March. In this respect, Dr. Luis Toro Utillano added that the members of this informal network would remain in contact throughout the year and would try to diffuse the promotional activities to facilitate the presence and participation in regional training and skill-building seminars, depending on the financial situation of each institution.

Finally, the rapporteur recalled the mandates distributed by the General Assembly: 1) to continue to drive ahead adoption of national legislations on this matter; 2) to promote training of administrative, judicial and academic staff; and 3) to continue to draw up a model legislation. As regards training, he explained that although both he himself and other members of the Committee had participated in several training activities, it had never been possible to obtain financial support for the project created by the Department of International Law on "Strengthening Cooperation of the States with the International Criminal Court on legislation matters", which relies on an external fund approved by the OAS's Project Evaluation Committee in December 2009. The aim here is to seek financing to carry out the training and diffusion activities required by the General Assembly. As far as the guide of general principles is concerned, he referred to the importance of complementarity on the part of each national legislation in order to avoid any inconsistency.

The President thanked the rapporteur for presenting the theme. As for adopting the principles relating to the Crime of Aggression adopted in Kampala, he made consultations on the conditions for adoption. In this respect, Dr Herdocia explained that a majority vote is required among 30 Party States that have accepted the amendment and a decision of two thirds of the States in order to activate the jurisdiction of the Court.

Drs. Jean-Paul Hubert, João Baena Soares, David Stewart, Elizabeth Villalta and Miguel Pichardo Olivier expressed their thanks to the rapporteur on his work. Dr. Baena Soares asked for an explanation of the Committee's criterion on the use of fragmentation bombs ("racism ammunition"). The rapporteur explained that the Committee makes no distinction between conflicts of an international or national nature. The important thing is to promote a better standard in the case of divergences between the Rome Statute and the Conventions of Humanitarian International Law and common-law Humanitarian International Law.

Dr. Stewart requested and consulted on the status of the Model Law adopted in August 2010 and the principles of cooperation for the purpose of adopting a resolution to bring the Committee's work on the matter to a close. Likewise, Dr. Villalta requested information on how the theme was to be followed up.

The rapporteur explained that the Committee has already fulfilled the mandates. A guide or suggestion was presented for the use of the States; there has been participation in training despite the lack of funds; and national legislation has been driven forward. He therefore proposed to consider the mandate terminated but to hold the theme on the agenda, since this is an important theme which the OAS should follow up each year through the CAJP working sessions. He closed his presentation with a request for the President to include in his report some reference to the financial difficulties faced in skill-developing projects.

Dr. Pichardo asked whether the Committee has dealt with this theme in the Course in International Law. In this respect, the rapporteur answered affirmatively and pointed out both the efforts made as exponent and the invitations extended to scholars in the area of Humanitarian International Law.

The President explained that the follow-up on this theme will be specifically included in the annual report to be presented before the Committee for Juridical and Political Affairs; the mandate will be considered terminated, but the theme will remain on the agenda.

During the 41st regular session of the General Assembly of the OAS held in El Salvador in June 2011, a request was made for the Inter-American Juridical Committee "to continue, with the collaboration of the General Secretariat for Juridical Affairs, to support and promote in the Member States skill-building for their administrative, judicial and academic employees to cooperate with the International Criminal Court, as well as adopting national legislation on the matter". AG/RES. 2659 (XLI-O/11).

During the 79th regular session of the Inter-American Juridical Committee held in Rio de Janeiro, Brazil in August 2011, the rapporteur of the theme, Dr. Mauricio Herdocia, explained that there is a project for cooperation to raise funds and the measures taken by the General Secretariat to provide support for skill-building employees, but there is no financing available. He added that 26 of the 35 member States of the OAS have ratified the Statute of Rome.

Dr. Dante Negro explained the procedures within the General Secretariat to obtain funds from outside and the efforts made by the Department of International Law with the entities that make up the network of cooperation that works in this area. To date, no funds have been made available, only support for sending experts to the activities organized in this field, both on the part of the employees of the International Criminal Court and the NGOs involved with this question. In turn, Dr Luis Toro Utillano informed the meeting about the signing of the Cooperation Agreement between the International Criminal Court and the General Secretariat of the OAS which could serve as a reference element when requesting financing for the Committee's tasks. Furthermore, the Department of

International Law appears as the core entity in the relations with the Court within the General Secretariat.

Dr. Baena Soares remarked that this mandate is concluded and should be considered as such.

The Chairman proposed declaring the topic closed and removing it from the agenda until such time as funds are obtained to continue the mandate of the General Assembly. This was approved.

Following this, the report of the rapporteur, Dr. Mauricio Herdocia, document CJI/doc.374/11, was transcribed, "Complementary progress report on the activities to promote the International Criminal Court and preliminary guide of model texts for crimes included in the Rome Statute"

CJI/doc.374/11

COMPLEMENTARY PROGRESS REPORT ON THE ACTIVITIES TO PROMOTE THE INTERNATIONAL CRIMINAL COURT AND PRELIMINARY GUIDE OF MODEL TEXTS FOR CRIMES INCLUDED IN THE ROME STATUTE

(presented by Dr. Mauricio Herdocia Sacasa)

I. MANDATE AND REPORT

In its resolution AG/RES. 2577 (XL-O/10), the General Assembly of the OAS decided:

> 11. To request the Inter-American Juridical Committee, based on the OAS Guide of Principles concerning cooperation with the International Criminal Court, to continue to encourage adopting national legislation on the matter, as far as possible and with the support of civil society, among those States that lack such legislation; as well as to collaborate with the General Office and the Department of Legal Affairs in supporting and promoting among the Member States skill-building programs for administrative, legal and academic employees for that purpose; and to inform the Member States of the progress made as regards the next Working Session on the International Criminal Court and the General Assembly at its 41st regular session.
>
> 12. To request further that the Inter-American Juridical Committee continue its work drawing up model legislation on implementing the Rome Statute, particularly as regards typifying the crimes that fall under the jurisdiction of the International Criminal Court, and present a report on the progress made during the next Working Session on the International Criminal Court.

On 4 August 2010 the Rapporteur presented his document CJI/doc.360/10 rev.1 "Progress report on the activities to promote the International Criminal Court and Preliminary Guide of Model Texts for Crimes included in the Rome Statute".

II. UPDATE

2.1 Status of the Instruments

Since the presentation of his last report at the 77th regular session of the Inter-American Juridical Committee held in Rio de Janeiro, Brazil, the number of the countries that have ratified the Rome Statute has risen with the depositing of Saint Lucia's ratification.

The 26 countries of the Inter-American System that have already ratified the Rome Statute are:

Antigua and Barbuda (18 June 2001), Argentina (8 February 2001), Barbados (10 December 2002), Belize (5 April 2000), Bolivia (27 June 2002), Brazil (14 June 2002), Canada (7 July 2002), Colombia (5 August 2002), Costa Rica (7 June 2001), Dominica (12 February 2001), the Dominican Republic (12 May 2005), Ecuador (5 February 2002), Guyana (24 September 2004),

Honduras (1 July 2002), Mexico (28 October 2005), Panama (21 March 2002), Paraguay (14 May 2001), Peru (10 November 2001), Saint Kitts and Nevis (22 August 2006) Saint Vincent and the Grenadines (3 December 2002), Trinidad and Tobago (6 April 1999), Uruguay (28 June 2002) Venezuela (7 June 2000), Suriname (15 July 2008), Chile (29 June 2009) and Saint Lucia (18 August 2010).

The 9 countries of the Inter-Americas System that have not ratified the Rome Statute are: the Bahamas, Cuba, Haiti, Jamaica, United States, Grenada, Guatemala, Nicaragua and El Salvador.

Ratifications of the APIC

The Agreement on Privileges and Immunities of the ICC has been ratified by 14 countries of the Inter-American System. These are: Argentina (1 February 2007), Belize (14 September 2005), Bolivia (20 January 2006), Canada (22 June 2004), Ecuador (19 April 2006), Guyana (16 November 2005), Panama (16 August 2004), Paraguay (19 July 2005), Trinidad and Tobago (6 February 2003), Uruguay (1 November 2006), Mexico (27 September 2007), Honduras (1 April 2008), Colombia (15 April 2009) and the Dominican Republic (10 September 2009).

2.2 Meetings

After the regular session of the Inter-American Juridical Committee held in Rio de Janeiro, three meetings on the theme of the International Criminal Court deserve special mention:

2.2.1 The Third World Meeting of National Committees of Humanitarian International Law

At this meeting, held in Geneva, Switzerland on 28 October 2010, the Rapporteur presented a report on "The work of the Inter-American Juridical Committee on the International Criminal Court: Towards a New Synthesis of HIL".

2.2.2 Working Session on the International Criminal Court

This meeting was held in the headquarters of the OAS in Washington on 10 March 2011 in accordance with the mandate of resolution AG/RES. 2577 (XL-O/10), which requested the holding of a working session to include some high-level dialogue among the Permanent Representatives of all the Member States to discuss, among other matters, the results of the Review Conference held in Kampala. On this occasion the Rapporteur presented a report on the work of the Inter-American Juridical Committee on the last mandate received from the General Assembly. The meeting was presided by Ambassador Hugo De Zela, Permanent Representative of Peru at the OAS and President of the Committee on Legal and Political Affairs (CAJP), and participants included Dr. Felipe Michelini, National Representative of Uruguay in the organization "Parliamentarians for Global Action", Christian Wenaweser, President of the Assembly of Member States of the Rome Statute of the International Criminal Court, Miriam Spittler, Advisor on International Legal Cooperation of the District Attorney's Office of the ICC, Patrick Zahnd, Legal Advisor of the CICR for Latin America and the Caribbean, Karen Mosoti, Head of the Liaison Office of the Court before the United Nations, Luis Toro, of the Department of International Law of the OAS, and the Rapporteur.

During this meeting the countries referred in general to the progress made in their respective internal frameworks concerning cooperation with the ICP and typifying the crimes included in the Rome Statute. During the proceedings, acknowledgement was made of the work undertaken by the Inter-American Juridical Committee. During Mr. Michelini's presentation, he expressed his appreciation for the work, in particular that done on the Preliminary Guide of model texts for typifying crimes included in the Rome Statute, and stressed the importance of including the theme of aggression and the framework of the principles governing its application.

2.2.3 Informal Meeting of Organizations in favor of the International Criminal Court

On 10 March 2011 a meeting was held in Washington of the organizations and bodies that promote the International Criminal Court on a regional and international level for the purpose of strengthening communication and interchange of experiences, as well as coordination and reciprocal support in the work they develop. This was the second meeting held, and it was attended by representatives of the Department of International Law of the OAS, the District Attorney's Office of

the International Criminal Court, the Presidency of the Member States of the Rome Statute of the International Criminal Court, the Liaison Office of the Court before the United Nations, Parliamentarians for Global Action, the Coalition for the International Criminal Court and the Rapporteur of the Inter-American Juridical Committee. The CICR is part of this informal meeting.

2.3 Cooperation Project

As the Rapporteur mentioned in previous reports, the document "Strengthening Cooperation between the States and the International Criminal Court on Matters of Legislation", was approved by the Committee for Evaluating Projects (CEP) on 17 December 2009. The Department of International Law of the Legal Office of the OAS informed the Inter-American Juridical Committee that there is no progress to report regarding the financing of the project, which makes it necessary to continue to intensify efforts to seek funds to allow the phases of the project to be completed (seminars or courses).

III. FRAMEWORK OF PRINCIPLES OF THE PRELIMINARY GUIDE OF MODEL TEXTS

With regard to the Preliminary Guide of model texts for crimes included in the Rome Statute – with the exception of the crime of aggression, which shall be considered at a immediate later stage, depending on the mandates of the General Assembly - the Rapporteur considers it necessary to underline the importance of bearing in mind, in addition to the proposed text, the so-called Guide of General Principles and Guidelines on Cooperation of the States with the International Criminal Court, contained in document OEA/Ser.Q CJI/doc.293/08 rev.1 dated 7 March 2008.

In effect, application of the typified crimes is indissolubly linked to complying with the contents of point 3.4 of the Guide of General Principles and Guidelines on Cooperation, which states that:

> *Adapting criminal types must be done by including those rules and principles relating, for example, to the Res Judicata (art. 20); Applicable Law (art. 21); the restrictive interpretation of crimes (art. 22.2); irretroactivity Ratione Personae (art. 24. 2); Individual Criminal Responsibility (art. 25); exclusion of those under the age of 18 from the jurisdiction of the Court (art. 26); the inadmissibility of the Official post (art. 27); the Responsibility of the Heads and other Superiors (art. 28); imprescriptibility (art. 29) and the Circumstances that Exempt one from Criminal Responsibility (art. 31), in order to avoid inconsistency between the criminal norm and how it is applied.*

In this complementary report, the Rapporteur wishes to make it clear that he considers that such rules and principles must be understood as an indivisible part of the application of the body of model norms of crimes proposed in the 2010 Preliminary Guide of Model Texts.

Likewise, as indicated in the Guide of General Principles and Guidelines on Cooperation, crimes against the administration of justice should be applied as established in article 70 of the Rome Statute (3.2 of the Guide), and the universal obligation of meting out justice (4.2 of the Guide) should also be borne in mind.

* * *

2. Migratory topics

	Document
CJI/doc.386/11	Migratory topics (presented by Dr. Ana Elizabeth Villalta Vizcarra)

At the 70th regular session of the Inter-American Juridical Committee (San Salvador, El Salvador, February-March 2007), Dr. Jorge Palacios proposed to add this topic to the agenda. After a presentation by Dr. Dante Negro, Director of the OAS Office of International Law, on the evolution of this topic within the OAS system, the Inter-American Juridical Committee passed resolution CJI/RES. 127 (LXX-O/07), "The Legal Situation of Migrant Workers and their Families in the International Law", by which the topic is to be placed on the IAJC agenda and Drs. Jorge Palacios, Ana Elizabeth Villalta, Ricardo Seitenfus and Galo Leoro appointed co-rapporteurs.

During the Inter-American Juridical Committee's 71st regular session (Rio de Janeiro, Brazil, August 2007), Dr. Dante Negro gave a presentation on the topic, pointing out that three years earlier, the OAS General Assembly had approved the "Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, Including Migrant Workers and Their Families".

Dr. Jorge Palacios Treviño presented his preliminary report, titled "The Legal Status of Migrant Workers and Their Families in International Law" (CJI/doc.266/07).

The co-rapporteuse for the topic, Dr. Ana Elizabeth Villalta Vizcarra, then presented the report titled "The legal status of migrant workers and their families in international law" (CJI/doc.269/07), and pointed out that the document had taken into account the "Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, Including Migrant Workers and Their Families", two resolutions adopted by the General Assembly, and the "Advisory Opinions of the Inter-American Court of Human Rights".

Based on all these discussions, the Inter-American Juridical Committee approved resolution CJI/RES. 131 (LXXI-O/07), "The Legal Status of Migrant Workers and Their Families in International Law", wherein it takes note of the reports presented by the rapporteurs and requests that they present a combined report prior to the next regular session, which they are to send to the General Secretariat.

During the 72nd regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2008), the Chair of the Inter-American Juridical Committee made reference to developments in the Committee regarding the topic, based on the Annotated Agenda. He also noted the reports presented during the current regular session by Dr. Jorge Palacios, "The Legal Status of Migrant Workers and Their Families in International Law" (CJI/doc.266/07 rev. 1) and "Manual of the Human Rights of All Migrant Workers and their Families" (CJI/doc.287/08), and, by Dr. Ana Elizabeth Villalta, "Primer or Manual on the Rights of Migrant Workers and their Families, (CJI/doc.289/08 corr.1). The rapporteurs presented their respective reports and after exchanging views with the other members, decided they could unite the documents in a single text and submit it to the Committee's consideration.

The Inter-American Juridical Committee passed resolution CJI/RES. 139 (LXXII-O/08), "The legal status of migrant workers and their families in international law," in which it thanks the rapporteurs for the consolidated document CJI/doc.292/08, "Primer or Manual on the Rights of Migrant Workers and Their Families," approves the document and forwards it to the Permanent Council for its information and, through it, to the Member States of the OAS so that they may

disseminate it as they consider appropriate in their respective countries, as a way of furthering respect for and promotion of the rights of migrant workers and their families.

During the 73rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2008), the working group made up of Drs. Ricardo Seitenfus, Mauricio Herdocia Sacasa and Ana Elizabeth Villalta Vizcarra presented the draft resolution entitled "Opinion of the Inter-American Juridical Committee on the Directive on Return approved by the Parliament of the European Union", document CJI/doc.311/08, which was unanimously adopted as resolution CJI/RES. 150 (LXXIII-O/08).

During the 74th regular session of the Inter-American Juridical Committee (Bogota, March 2009), the Chairman, Dr. Jaime Aparicio, recalled that the decision was made in this session to group under migratory issues the evaluation and follow-up on the Committee's opinions, regarding both the European Directive and the primer or manual on the human rights of migrant workers.

During the 75th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2009), Dr. Ana Elizabeth Villalta Vizcarra said that the Bogotá meeting had resolved to follow-up on the Committee's opinions but had not reached consensus on the best way to disseminate them: whether the Committee's work would be published solely on the web page or at academic forums, whether the rapporteurs can attend meetings of the Organization's political bodies – ultimately, the use that is to be made of the juridical opinions issued by the Committee. She stressed the deadline for submitting reports, since on past occasions, opinions had been presented to agencies when they no longer needed them. At this session, Dr. Villalta presented document CJI/doc.329/09, "Migration Topics: Follow-up on the opinions of the Inter-American Juridical Committee."

Regarding the dissemination of the Primer, Dr. Palacios reported that the Ibero-American University had not only published it in its yearbook, but also as an independent document to be used by Jesuits working in countries' borderlands.

The Chairman summarized the comments made by the members and asked whether it would be appropriate to combine the topic of refugees with migrant-related issues; this proposal was not adopted and the topics remained separate, since the question of refugees arose from a specific General Assembly mandate and both of them deserved their own treatment. Finally, he urged the members to carry out appropriate follow-up.

At the 76th Regular Session of the Inter-American Juridical Committee (Lima, Peru, March 2010), the joint rapporteur, Dr. Elizabeth Villalta, proposed changing the title from "Migratory Topics: Follow-up on the opinions of the Inter-American Juridical Committee," to "Migratory Topics," since there was no pending follow-up.

Dr. Stewart pondered on the possibilities open to the Committee, either through conducting a study of the migrant phenomenon at the individual level (their rights) or something of a more general nature (the migration phenomenon). He also reported that a symposium was to be held the following month, at Georgetown University law school, on the individual rights of migrants.

Dr. Hubert noted that the previous period of sessions in Rio de Janeiro had agreed to keep the topics of refugees separate from that of migration; he also acknowledged the lack of information regarding the request in the General Assembly's resolution.

Dr. Herdocia backed the initiative and emphasized the enormous potential of the topic in a juridical sense. He thus suggested focusing the study on "migration and human rights." Dr. Hubert asked that consideration be given to the situation in the Council of Europe and the European Union.

Dr. Novak noted the importance of the topic by speaking of the enormous migratory flow of nationals from various countries of the Hemisphere. He proposed that Drs. Stewart and Villalta meet with the office of the International Organization for Migration (IOM) in Lima. Dr. Palacios asked to join the group and stated his view that the topic should remain on the agenda.

The Chairman asked Dr. Stewart for a summary of the event in Washington, D.C., while the rapporteurs would meet with people from the IOM in Lima in the following days. The topic would remain on the agenda for the August period of sessions.

At the 77th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2010), the joint rapporteur for the topic, Dr. Elizabeth Villalta, noted that the Inter-American Juridical Committee did not have a specific mandate from the General Assembly for the topic, even though the members had deemed it an important matter and, as a result, they had been working on it in conjunction with Dr. Jorge Palacios Treviño. She recalled the work carried out on migration issues, such as the booklet on the rights of migrant workers and their families, the CJI's Opinion on the Return Directive of the European Union and, more recently, the press release. All of that was done bearing in mind the causes behind mass migrations – such as economic and social inequalities, political, religious, or other forms of persecution, wars, natural disasters, organized crime, and trafficking in persons – which made it necessary to ensure that States uphold the rights of migrants, basic guarantees, and human rights, including due legal process in cases in which migrants are arrested by reason of their status alone.

The rapporteur's document offers an analysis of different forms of migration and the positive and negative consequences of human displacement for both countries of origin and destination countries.

She also emphasized the role played in this area by various international agencies, particularly the program developed within the framework of the OAS's "Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, including Migrant Workers and Their Families" and Advisory Opinion OC-16/99, "The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law," issued by the Inter-American Court of Human Rights on October 10, 1999.

Dr. Elizabeth Villalta also noted the regulations that stand in opposition to those principles, such as the aforesaid Return Directive, the Italian Security and Immigration Law, and the U.S. State of Arizona's recent SB1070 legislation, which contain severe measures against irregular and undocumented migrants.

Finally, Dr. Elizabeth Villalta called on the Juridical Committee to give a statement on those two laws, which could worsen the racial discrimination problem faced by migrants.

The Chairman took the floor to congratulate the rapporteur on the conceptual clarity, educational approach, and currency with which she had dealt with such a complex topic that, for reasons already well known, affects the people of Latin America.

Dr. João Clemente Baena Soares congratulated Dr. Villalta and ratified his interest in keeping the topic on the agenda, in light of the growing xenophobia found in the world, which further underscored the need to improve the existing instruments. As he saw it, the Committee should reaffirm its humanistic interest, whereby people are the main purpose of its discussions and, in the specific case of migrants, they cannot be treated as if they were all potential criminals.

Dr. Mauricio Herdocia supported the idea of a resolution on the Arizona Law, which had already provoked negative reactions from the Secretary General, the Permanent Council, and the President of the United States. In its role as the legal conscience of the Americas, the Juridical Committee must

make its opinion known, as it has done in earlier situations involving violations of migrants' human rights.

Dr. David Stewart said that in legal terms, a number of issues involving migrant workers that had already been discussed had to be taken separately. He noted that all countries have regulations prohibiting migration which, in most states, is considered a civil offense, and as a crime in others, which leads to the deportation of illegal migrants. He suggested collecting information on how the Hemisphere's countries deal with the topic of illegal migrants and also on the structures existing in those countries to protect migrants' rights, particularly those of illegal or irregular migrants. He stressed the complications of forced migration, which is the type that causes greatest problems for destination countries. In his opinion, the Juridical Committee's approach should be limited to the lack of legal protection for the human rights of migrants.

He added that he had coordinated a seminar, attended by several international agencies, and that a group of students from Georgetown University had proposed drafting a set of legal principles on migrants' rights from an international viewpoint. He said he would report the results of that seminar to the Committee, as complementary information, and, at the same time, he invited the Committee to give its opinion on that project.

Regarding the Arizona Law, he thought there was insufficient information about it, since the Federal Court had suspended its enforcement eight days ago, which would lead to the filing of remedies by both sides. He therefore thought it was premature for the Juridical Committee to give its opinion on a law that had not yet come into force and had been temporarily suspended, with the final decision still in the balance.

He continued by pointing out that the legal power of the Arizona Law was that it empowers the local or state police to determine the migratory status of any person who is legally stopped by such an authority, be that person a citizen or not. The wording "legally stopped" has posed numerous doubts regarding its interpretation. Under the Arizona Law, if a person is asked for his papers and he is unable to produce them, that is what constitutes the misdemeanor and not the person's illegal presence in the country. The measure to be adopted at the state level is to refer undocumented people to the federal authorities. That includes all persons, even citizens not carrying their papers when required to present them. He agreed that the law did have a great potential for discriminatory actions, although its use for the purposes of discrimination was expressly prohibited. At the same time, the regulation of immigration matters is within the jurisdiction of the federal government and the Arizona Law has given rise to an unconstitutionality suit. For that reason, he insisted on proceeding with caution in connection with this situation that had not yet been resolved by the courts.

Dr. Freddy Castillo proposed the creation of a working group composed of Drs. Villalta, Stewart, and Herdocia, in order to draft a text for future study by the Committee.

Dr. Jean Paul Hubert also congratulated the rapporteur for the excellent quality of her report. Regarding the topic, he was also in favor of keeping it on the agenda, because of both its complexity and its currency. He noted that all countries have the sovereign right to enact migration laws for their territories, but that they must also ensure the fundamental rights of the people involved. He supported Dr. Stewart's proposal but thought it was important for the Committee, in some way, to note its concern regarding the problems that could arise from the Arizona Law.

Dr. Mauricio Herdocia agreed with the opinions regarding caution, but he added that in light of the statements made by the highest political levels of the OAS, it was relevant for the Committee to state a general position regarding the legislation.

The Chairman suggested that the Working Group draft a text for consideration by the Committee, and he asked Dr. Elizabeth Villalta to keep the Committee informed of developments with the Arizona Law.

The Working Group presented the draft resolution "Arizona Immigration Bill – Law SB 1070," (CJI/doc.363/10 rev. 1). Dr. Mauricio Herdocia noted that it was a general proposal setting out the Committee's position as regards the protection of human rights, which should be observed by all the Member States. Thus, the aim was not to set precedents regarding the Committee's potential interference in matters of a State's exclusive and sovereign competence. The other members agreed with Dr. Stewart regarding the caution the Committee should observe in dealing with the topic. However, since it was an extremely delicate issue that could have a serious impact on the rights of migrants, it was necessary for the Committee to give a statement on it. Dr. João Clemente Baena Soares said that the draft resolution did not attempt to analyze the law; he therefore proposed a change of title for the document, to "Protection of the Rights of Migrants." With the suggested modification, the draft was adopted by means of CJI/RES. 170 (LXXVII-O/10).

During the 78th regular session of the Inter-American Juridical Committee held in Rio de Janeiro in March 2011, Dr. Elizabeth Villalta, rapporteur of the theme, presented a report on migratory topics (CJI/doc.370/11) that explains the problem and urges that it be analyzed from the perspective of human rights, considering the degree of vulnerability of migrant populations and the various ways in which their rights are violated (property, access to justice, deportment to their country of origin, etc.). She also proposed a study aimed at designing public policies with the participation of States of origin, those that whose territories are crossed, and those that receive illegal migrants. Finally, she recommended developing a global perspective of the multidimensional phenomenon of migration that would facilitate addressing similar matters, such as security and the growth of organized crime. In conclusion, the rapporteur suggested updating the international instruments on the issue in order to guarantee migrants' human rights and count on integral migratory policies in the light of the chief instruments, such as the International Convention on the Protection of all Migrant Workers and their Families, the United Nations Convention against Transnational Organized Crime and its Additional Protocols, the 1963 Vienna Convention on Consular Relations and the consultative opinions OC-16 and OC -18.

Dr. Baena Soares confirmed the seriousness of the phenomenon and the urgency of continuing the work carried out by the rapporteur.

Dr. Herdocia expressed his thanks for the presentation of the document. He also presented the document "Primer or Manual on the Rights of Migrant Workers and their Families" which was edited by the OAS's Department of Social Development and Employment. In this regard, Dr. Luis Toro Utillano explained that the project carried out by this Department, attached to the OAS Secretariat for Integral Development, consists of reproducing the Primer of the Committee adapted to segments of the population that are not necessarily literate, so it contains drawings and will be distributed throughout the countries of the hemisphere. The request was presented to the President of the Committee and now those responsible for the editing the final document have sent a letter to the President asking the Committee to revise the final version. Dr. Toro Utillano further informed the meeting of the concern of the Department of International Law to acknowledge the authorship and intellectual integrity of the Committee, whose logo shall be reproduced on the Primer. Finally, Dr. Herdocia asked the rapporteurs for the topic, Dr Villalta and Dr Stewart to proceed with the revision of the document.

Dr. David Stewart in turn thanked Dr. Villalta and presented the document drafted by the students of the Law School at Georgetown University and which corresponds to a Draft Law of the Rights of Transnational Migrants, a factual document that contributes to an analysis of the theme. He

invited the members of the Committee to make comments and urged Dr. Villalta to use the document in her research.

The President asked the rapporteurs to revise this new version of the Primer. He thanked Dr. Villalta for presenting her report and Dr. Stewart for sharing the Draft Law on Transnational Migrants prepared by Georgetown University. He also announced that this topic would remain on the Committee's agenda.

During the 79th regular session of the Inter-American Juridical Committee held in Rio de Janeiro, Brazil in August 2011), the rapporteur of the theme, Dr. Elizabeth, presented a new report on the subject, document CJI/doc.386/11. The rapporteur describes the antecedents of the theme and points out the lectures she attended last year and the review of "Primer Informe sobre Migración Internacional en las Américas", a joint effort between the Organization of the American States (OAS), the Organization for Economic Cooperation and Development (OECD) and the Economic Commission for Latin America and the Caribbean (ECLAC). She also mentions draft laws in several States of the United States that contain elements very similar to the law of Arizona (SB 1070), as well as some initiatives that impose restrictions on immigrants in the European Union, all of which may be sources of violation of human rights. On closing her presentation, she urges countries to take up integral migration policies that contain human-rights instruments.

Dr. Stewart in turn expressed the concern of the legal community both in his country and abroad, before asking about the pertinence of the issue on the agenda.

On other matters, and in reference to Dr Herdocia's consultation about the Primer published on the subject, the Secretariat explained their availability to follow up on any request made by the Committee to diffuse and promote the publication.

The Chairman considered that this theme should not be kept on the agenda for the time being unless some important development appears that allows the Committee to issue a statement.

The rapporteur's document CJI/doc.386/11, "Migratory topics", is transcribed below:

CJI/doc.386/11

MIGRATORY TOPICS

(presented by Dr. Ana Elizabeth Villalta Vizcarra)

The Inter-American Juridical Committee (IAJC) has been dealing with this theme since its 70th Regular session held in San Salvador, El Salvador, in February and March 2007, under the title "The Legal Situation of Migrant Workers and their Families in International Law". At the 73rd Regular Session held in Rio de Janeiro, Brazil, in August 2008, the IAJC approved resolution CJI/RES. 150 (LXXIII-O/08) entitled "Opinion of the Inter-American Juridical Committee on the Directive on Return adopted by the Parliament of the European Union".

At the 74th Regular Session held in Bogotá, Colombia in March 2009, the Committee decided to rename the theme "Migratory Topics", and it has been addressed as such since the 75th Regular Session, held in Rio de Janeiro, Brazil, in August 2009 until the present. At the 78th Regular Session held in Rio de Janeiro, Brazil, from 21 to 28 March 2011, a report was submitted detailing that the topic ought to be analyzed also from the perspective of human rights, in view of the high degree of vulnerability of migrant populations and the various forms in which their rights are infringed; a global perspective on the multidimensional phenomenon should also be developed on the issue involving migration, in addition to updating the international instruments on the topic so as to guarantee the human rights of migrants and set up comprehensive policies in the light of the main international instruments.

As the Inter-American Juridical Committee decided to continue discussing the topic, at this Regular Session we are presenting a report on the main conferences and meetings that have addressed the topic in the current year, as well as the new legislation on migration approved in the United States of America and the latest matters concerning migratory policy in Europe. In this regard, we are submitting the report that follows.

A) Conferences and meetings

On 8 and 9 June, 2011, the "XVI Regional Migration Conference (RMC) called "Migration and Work: Shared Responsibility among States" was attended by delegates from Belize, Canada, Costa Rica, El Salvador, United States of America, Guatemala, Honduras, Mexico, Nicaragua, Panama and the Dominican Republic.

In this Conference the relevance of regional cooperation involving origin, transit and destination countries was highlighted, as a means to curb the illicit traffic of migrant and persons. The delegates also agreed to continue working towards the effective implementation of the United Nations Protocols to Prevent, Suppress and Penalize the Traffic of Persons as well as the Illicit Traffic of Migrants by Surface, Sea and Air.

Similarly, they also decided to support the initiatives launched since the 41st General Assembly of the Organization of American States (OAS) held in San Salvador, El Salvador on 5-7 June 2011, focusing on implementation of a hemispheric strategy on citizen safety and seeking spaces of participation to ensure addressing the migratory topic as part of that strategy.

In addition, they highlighted the relevance of promoting strategic partnerships between Member States for the development of programs for part-time workers that might ensure respect for their human and labor rights.

On July 11, 2011, the Organization of American States (OAS), the Organization for Economic Cooperation and Development (OECD) and the Latin America and Caribbean Economic Commission (CEPAL) presented in Washington, DC the First Report on International Migration in the Americas, a joint effort of the three organizations seeking to make available to the International Community updated information on the migratory phenomenon in the Americas. In the First Report the migratory situation in nine countries of the Continent through the Continuous Reporting System on Labor Migration on the Americas (SICREMI), namely Argentina, Belize, Canada, Chile, Colombia, Ecuador, El Salvador, Mexico and Uruguay. Later on, Barbados, Brazil, Bolivia, Guatemala, Costa Rica, Paraguay, Panama, Peru and the Dominican Republic also joined the System.

It was seen that in Latin America and the Caribbean the trend to migrate still persists and that there have been no significant movements of return to the countries of origin, notwithstanding the difficult economic situation in destination countries and the programs and incentives launched by governments of the countries of origin with the aim of encouraging the return of their nationals from abroad.

B) Migratory legislation

A series of migratory norms have been enacted and promulgated in several United States units that impact on the rights of migrants. For example, in the State of Georgia Migration Law HB87 was enacted, based on Arizona's Law SB1070, which is considered to be one of the toughest pieces of legislation against migrant populations, because similar to the Arizona Law it penalizes the undocumented stay of migrants, which in other States is considered a civil rather than a criminal situation.

Some provisions in this Law have been temporarily frozen by a Federal Court, on the grounds that the State of Georgia is applying migratory legislation, a capacity that corresponds to the Federal Government. However, some of the provisions that were approved in this law are as follows: a penalty of up to 15 years imprisonment and fines of up to US$ 250,000 for those using fraudulent identification documents to get jobs in that State; employers with over four employees are forced to check the migratory situation of the people they hire on the E-Verify databank; on the

other hand, those presenting fraudulent documentation or providing job requests deliberately and fraudulently will incur a serious felony; it authorizes the police force to check the migratory situation of suspicious individuals and to arrest them when they are illegal migrants in the country; it will also penalize those who provide transport or shelter to undocumented migrants; it also establishes a Revision Committee in charge of investigating claims from Government officials that fail to comply with the legislation of the state in the area of illicit migration.

On June 25, 2011, the Governor of the State of South Carolina approved Migration Law No. SB20, which is similar to Arizona's Law No. SB1070. Among its relevant provisions we find: the obligation of police agents to contact migration authorities in order to get acquainted with the legal status of individuals arrested on the grounds of any crime or under investigation, including minor traffic offences; it also requires all employers to revise their working contracts through the federal E-Verify program; it also establishes that employers contracting undocumented migrants will be penalized by having their operating licenses removed; it enables citizens to sue the counties and municipalities that are not complying with the law; it levies penalties of up to fifty thousand dollars on businesses that have repeatedly failed to comply with renewing the migration documents of their new employees and also continue to contract undocumented workers; it sanctions adults (foreigners, residents and American citizens) who do not carry on them their identity or migration documents, such as their driving license and green card; setting up a new police unit inside the Public Safety Department designed for the purpose of applying and enforcing Migration Law SB20; it would make granting false documentation to undocumented workers a felony. It differs from the Arizona Law in that people cannot be arrested on the suspicion that they are without papers, and reasonable suspicion of a person's illegality cannot be based on race, nationality of color of their skin.

In 2011 another migration law came into effect, the Migration Law of New Mexico, which contains provisions very similar to Law SB1070 of Arizona, among them the following: it obliges State policemen to ask for the migration status of all detained people when a crime has been committed; it suspends emission of driving licenses to undocumented migrants; despite the strictness of the law, State policemen cannot question the victims or witnesses of a crime on their migration status, nor that of people who ask the police for help; it cancels the policy established in 2005 that forbade local agents to ask a person's migration status solely for the purpose of diagnosing if they were breaking federal migration laws.

Also in 2011 was enacted the Migration Law of the State of Utah, known as Law HB497 of Utah, but like the Migration Law of Georgia, many of its provisions have been temporarily suspended by a Federal Court.

The following provisions appear among those contemplated by this Law: it enables the local police to check the migration status of anyone detained for a felony or serious infringement; regardless of the preceding factor, this law contains favorable provisions for undocumented persons, such as counting on a guest-worker program that includes a clause to contract workers on a temporary basis, which would allow them to stay in the State with their families as guest workers; it offers the chance of granting temporary permits to undocumented workers; it permits Utah companies to contract on a temporary basis workers from the neighboring Mexican State of Nuevo León; it authorizes the government of Utah to emit permits to undocumented residents who undergo a review of their police file, pay a fine of US$ 2,500 and also pledge to learn english, such permits to be granted for two years to allow undocumented migrants to reside and work legally; it also obliges the government of the State of Utah to enact by 2013 an exemption from the federal law that establishes deliberately contracting undocumented persons as a crime

In June 2011 the Senate of the State of Texas approved a draft migration law to grant more power to the police of that State against migrants, permitting police agents to detain people and ask them for their papers to check their migration status. This draft law is to be sent to the House of Representatives to be sanctioned.

Also in June 2011 was enacted the Migration Law of Alabama, which authorizes detention of a person suspected to be an undocumented immigrant; it makes transporting undocumented

immigrants a crime; it obliges Alabama companies to declare the residence of their new employees; the employers will have to use the federal E-verify system to determine the migration status of their new workers; public schools are obliged to determine the migration situation of their students. This law is expected to come into effect in September of this year.

There have been many reactions against the passing of these laws, for example *Amnesty International* claims that they will give rise to violations of human rights and racial discrimination, since they detain persons because of their appearance, origin or nationality. In this sense, some international non-governmental organizations have declared that any regulation focused on criminalizing the migration phenomenon opens the door to intolerance, hatred, discrimination and abuse in application of the laws. Likewise, there have been protests and demonstrations of migrants and social groups that support them in several States of the United States, for instance in the State of Georgia a protest strike was held in which all the Latin-owned businesses closed down.

In other States residents were urged not to consume products or services of companies with head offices in the State of Arizona. The labor sector has also been impacted, since much of the work done by immigrants in construction, cleaning, domestic service and agriculture is short of labor in many States.

C) European migratory policies

At the Brussels Summit on December 14, 2007, the Heads of State and Government of the Member States of the European Union expressed their views supporting the need to reduce the number of immigrants allowed, taking into consideration that the receiving capacity of the European societies is not unlimited; it was also stressed that the role of the European agency of border control should be fostered and also to promote cooperation with countries of origin and transit of migrants. The Summit also proposed to urge the European Parliament to increase penalties against companies or persons employing aliens without regular residence papers, proposing also the adoption of a common policy for migrant return, with the aim of unifying legislation of Member States as regards the return of unlawful migrants and nationals of third countries.

In June 2008 the European Parliament approved the "Return Directive" which has already been analyzed in other reports of our Committee, which adopted a Resolution on that Directive.

On April 26, 2011, a France-Italy Bilateral Summit was held in which both Heads of State proposed to amend the Schengen Agreement which eliminates the borders between the European Union member countries and allows free transit of citizens, as a consequence of the current migratory crisis which the South-Mediterranean European countries have to face due to the flow of undocumented migrants from the North of Africa.

The Heads of State also expressed that the free transit of people through Borderless Europe may be temporarily interrupted in the case of a "serious threat against public order or interior security", and they drafted a Charter asking for "more solidarity" from other Union members in order to face the migration crisis.

In this regard, they expressed that they were not ignoring the Schengen agreement, but that under exceptional circumstances the agreement might need to be modified through the joint effort of all the Member States. That is to say, in order to survive, Schengen needs to be amended.

We should then wait to see the reaction of the other member countries of the European Union vis-à-vis the Agreement reached by the Heads of State from Italy and France during their Summit.

In order to face the legislation and migration policies of destination countries, it is also advisable for the countries of origin of migrants to have a comprehensive migration policy, both coherent and orderly, that would unify the measures in force and based on the recognition of nations abroad, as a vital part of the State and in which all the governmental players related to the migration process should be involved. These policies are needed because migrants are a particularly vulnerable population which requires the protection of their own State, wherever they may be.

Such a policy should also promote the enforcement, defense and protection of the human rights of migrants, because migrants are also vested with rights and obligations both in the domestic and in the international arenas. These policies should include strategies, guidelines and working programs to be drafted by all the players involved in migration processes for the good of the migrant populations. These strategies should also take into consideration updating the domestic legislation on migration and the international instruments on the issue in which, in addition to ruling on the situation of migrants, more emphasis needs to be placed on the protection of the human rights of migrants, as well as reporting on new threats in this area, such as international organized crime, drug trafficking, arms smuggling, the corruption of public authorities and employees, among other matters.

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III. CONCLUDED TOPICS

Topics concluded at the March 2011 session

During its 78th regular session (Rio de Janeiro, March 21-28, 2011), the Committee decided to conclude the treatment of two topics: "considerations on an Inter-American jurisdiction of justice" and "refugees."

1. Considerations on an Inter-American Jurisdiction of Justice

At the Inter-American Juridical Committee's 71st session (Rio de Janeiro, August 2007), the Chairman, Dr. Jean-Paul Hubert, recalled how this topic was introduced in the IAJC: at Dr. Eduardo Vio Grossi's suggestion, it had been included under the item on the challenges facing the Committee as it celebrated its centennial. Dr. Vio had presented a preliminary document at the previous session, which the Committee was unable to examine at that time: CJI/doc.241/07, "Inter-American Court of Justice (IACJ): some comments on the challenges of the Inter-American Juridical Committee on the occasion of its centenary".

At the same session, Dr. Eduardo Vio Grossi presented a new report, CJI/doc.267/07, "Inter-American Court of Justice (IACJ)", wherein he again made the point that his goal was that the Inter-American Juridical Committee's work should more closely parallel the issues that the Organization was pursuing. He pointed to the vacuum within the inter-American system: the OAS did not have an inter-American court, whereas the United Nations system had the International Court of Justice. Dr. Vio Grossi was of the view that the Inter-American Juridical Committee should revisit the idea of creating an inter-American court of justice. It would figure in the OAS Charter as an autonomous body whose purpose would be to settle disputes and issue advisory opinions. In the opinion of Dr. Vio Grossi, the Inter-American Juridical Committee could take on the role of a court serving both functions. The Committee's advisory opinions would be its legal interpretation of the questions put to it, which would have greater force than the reports or studies the Committee prepares. Dr. Vio Grossi acknowledged that the issue of the inter-American court's jurisdictional role was more problematic, as evidenced by the reluctance to accept the compulsory jurisdiction of the Inter-American Court of Human Rights or even the terms of the Pact of Bogotá, which refers disputes between American States to the International Court of Justice for adjudication. Dr. Vio's opinion was that, to perform this function, no amendment to the Charter would be needed. Instead, the Inter-American Juridical Committee would only need to be empowered to serve as a court in disputes between Member States of the OAS. He also said that the time was right, since legal certainty and juridical security was one of the major concerns in relations among the countries of the Americas. Mechanisms, he said, were needed to settle differences. The rapporteur went on to say that this was a function that the Juridical Committee ought not to back away from; taking on this role would keep the Juridical Committee in step with the times and give it a modern dimension and a practical sense of the Hemisphere.

Based on these discussions, the Inter-American Juridical Committee adopted resolution CJI/RES. 134 (LXXI-O/07), "Inter-American Court of Justice (IACJ)", wherein it takes note of the report prepared by Dr. Eduardo Vio Grossi and decides to continue to study this topic, taking into account the reasoning developed in the documents already presented. Moreover, the rapporteur was requested, to present another report prior to December 31, 2007, if he so deemed advisable and without prejudice of any other reports that the co-rapporteurs might choose to present. Dr. Eduardo Vio Grossi submitted an explanation of his vote (CJI/doc.283/07) on this resolution.

During the 72nd regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2008), Dr. Mauricio Herdocia Sacasa proposed that the initial idea regarding this topic, i.e., that

the Juridical Committee assume jurisdictional functions, be reformulated, since it seemed to him to be excessively complex, given that, within the inter-American system, article 31 of the Pact of Bogotá assigns the settlement of disputes to the International Court of Justice. He recalled that the proposal of having an international court had been taken up by the Secretary General and therefore in Dr. Herdocia's opinion it was worthwhile to study the creation of a court, but without necessarily linking it to the Juridical Committee.

After exchanging views, the members decided to keep the topic on the agenda, changing its title to "Considerations on an inter-American jurisdiction of justice", submitting it under a new proposal separate from the initial one made by Dr. Vio Grossi. Drs. Freddy Castillo Castellanos and Guillermo Fernández de Soto were designated as rapporteurs.

During the 73rd regular session of the Inter-American Juridical Committee, (Rio de Janeiro, August 2008), the rapporteur on the subject, Dr. Guillermo Fernández de Soto, initiated a discussion of the subject with an oral presentation. He recalled the direct and indirect antecedents on the subject, and referred to Dr. Eduardo Vio's report, the 1923 initiative of the Pan-American Union and the August 2007 report. He noted that the most recent political initiative was the Secretary General's report on the subject.

After an intensive debate, Dr. Jean-Paul Hubert proposed that the members of the Committee continue to discuss the issue to give it time to mature.

During the 74th regular session of the Inter-American Juridical Committee (Bogota, Colombia, March 2009), Dr. Guillermo Fernández de Soto, rapporteur on the subject, presented document CJI/doc.323/09, "Reflections on an Inter-American Jurisdiction for Justice," referring to the concept initially put forward by former member Dr. Eduardo Vio Grossi and to the OAS Secretary General's comments at the General Assembly on the possibility of creating an exclusive regional jurisdiction within the inter-American system. An intense exchange of opinions on the topic then took place, and it was decided to continue analyzing it at the next meeting of the Juridical Committee.

During the 75th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2009), Dr. Guillermo Fernández de Soto summarized the debate, the current parameters regarding the development of the topic, and received additional comments and thoughts, with a view to presenting a report at the March 2010 session.

At the 76th Regular Session of the Inter-American Juridical Committee (Lima, Peru, March 2010), it was resolved to postpone the study of the topic.

During the 78th regular session of the Inter-American Juridical Committee held in Rio de Janeiro, Brazil, in March 2011, the Committee declared that the theme of Inter-American jurisdiction of justice had been brought to a close. Nevertheless, some concepts would be addressed by Dr. Mauricio Herdocia in his report on Peace, Security and Cooperation with regard to the use of dispute-settlement mechanisms in the Inter-American system. In this respect, Dr. Arrighi proposed that the Committee should reflect on using the Permanent Council as a forum previous to the International Court of Justice in the light of the American Treaty on Peaceful Settlement (the Pact of Bogota). This proposal was accepted by the Chairman and Dr. Herdocia.

2. Refugees/Asylum

Documents

CJI/doc.368/11	Refugee/Asylum (presented by Dr. Ana Elizabeth Villalta Vizcarra)
CJI/RES. 175 (LXXVIII)	Opinion of the Inter-American Juridical Committee on the relationship between asylum and refuge

During the 75th regular session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2009), Dr. Dante Negro explained that his topic arose from a proposal made by Venezuela, which was taken up by the General Assembly and is included in the submitted document containing the General Assembly mandates. In dealing with this mandate, the Committee should take into account the work carried out by the CAJP. For information purposes, he added that the Department of International Law has been organizing annual courses on the topic of refugees, with the cooperation of the UNHCR. The first course was held in February of this year, and the next one is scheduled to take place in February 2010.

The Committee elected Dr. Ana Elizabeth Villalta Vizcarra to serve as rapporteur for this new topic.

Dr. Jean-Paul Hubert brought up a question regarding the term “refuge” versus that of asylum, as indicated in the English translation of the mandate, which appeared unclear to him. This remark was seconded by Dr. Baena Soares, who asked whether the Committee should deal with refuge (*stricto sensu*) or asylum (*lato sensu*).

Dr. David P. Stewart noted that under common law, the difference between asylum and refuge was not clear cut. Refuge is defined in the 1951 Geneva Convention and its Protocol, while asylum, as a form of temporary protection, is geared more toward diplomatic protection. He therefore lodged a consultation regarding the relationship between this proposal and the topic of migration already on the Committee’s agenda.

Dr. Jorge Palacios Treviño explained that refugee matters were governed by the 1951 Geneva Convention, an instrument adopted after the Second World War when there were enormous numbers of stateless persons. In contrast, asylum deals with political situations; it is a matter of political law and is governed by three international conventions: Havana (1928), Uruguay (1933), and Caracas (1954).

Dr. Villalta spoke of the conceptual differences between asylum and refuge in the civil and common law systems, and she said that the Committee’s challenge was to bring those differences into line with each other. She noted that refuge came into play as a result of different forms of persecution, among which migration is currently included, whereas asylum was essentially political in nature.

At the 76th Regular Session of the Inter-American Juridical Committee (Lima, Peru, March 2010), the rapporteur, Dr. Ana Elizabeth Villalta Vizcarra, presented a report, document CJI/doc.346/10, titled “Refugees.” The document contained background information on the topic, the problem of refugees in the Americas, and the notions of asylum, refuge, internally displaced persons, and statelessness as a first approach to the issue.

The rapporteur noted the semantic differences between the various concepts in the nations of the Americas. Asylum is essentially political, in that it is granted to people who have committed political crimes or for political reasons, and can be diplomatic or territorial in nature. Refuge, in contrast, is humanitarian in nature and is granted to people for reasons of their politics, race, social condition, etc. Unlike the situation in Latin America, U.S. law assures asylum to people who meet the requirements

for refuge but who are physically present in the United States. Refuge is offered to people in a similar situation but who are not on U.S. territory.

The rapporteur also spoke of the various international instruments that protect asylum, including the Treaties of Montevideo, the Universal Declaration of Human Rights, and the American Declaration of the Rights and Duties of Man. Refuge is provided for universally through such instruments as the Convention Relating to the Status of Refugees and its protocol, which were intended to protect people displaced during the Second World War. Within the inter-American system, she spoke of the Cartagena Declaration on Refugees and the creation of the International Conference on Central American Refugees (CIREFCA), which arose in response to the various internal conflicts in the Central American region, followed by other legal instruments that establish specific measures for assisting refugees. He also noted the series of problems that involve displaced and stateless people.

He reported on the work carried out under the aegis of the OAS, noting several resolutions adopted by the General Assembly and the Course on International Refugee Law, jointly organized by the Department of International Law and the UNHCR, intended for staff members of permanent missions to the OAS, the General Secretariat, and other interested parties.

In addition, she spoke about her attendance, as a member of the CJI, at the "Regional Conference on the Protection of Refugees and International Migration in the Americas – Protection Considerations in the Context of Mixed Migration." That conference also dealt with the topic of trafficking in human lives. She emphasized the importance of the Juridical Committee's presence at that event, and said that she had been able to participate actively in the debates as a representative of the Committee.

She concluded by saying that the General Assembly's mandate to the Committee did not appear clear; it reads: "To [prepare] a study on the issue of asylum in the Americas taking into account the importance of the matter and the work being conducted by the Committee on Juridical and Political Affairs and UNHCR." She recalled that the Committee had dealt with the topic of refugees in conjunction with that of migrants and displaced persons, but that at the previous period of sessions, the topics had been separated. In addition, the UNHCR has been studying the issue of economically driven migrations within the framework of refuge. With those comments, the Committee asked her to give some pointers in order to continue with the study of the topic.

Dr. Hubert agreed that the topic had been extensively debated in several forums. The figure of the economic refugee, however, had not been addressed. Canada has no problems with extending refuge for reasons of religion, race, or health, but there is some resistance toward protecting economic refugees, and he was unaware of the existence of a legal response to the problem.

Dr. Pichardo remarked that in Latin America there was a clear distinction between refuge and asylum, while in Europe no such distinction was made. Recently, there has been a clear intent to unify the two concepts at the regional level, but he restated his opinion in favor of maintaining the Latin American tradition of defining asylum in terms of its two dimensions: territorial and diplomatic. In connection with the debate on economic considerations, he said that a solution must be reached bearing in mind the two positions: that of the country of origin of the economic migrants and that of the State that receives them.

Dr. Stewart noted that the U.S. system provides for temporary protection in the event of environmental disasters and armed conflicts, which should perhaps also be studied in the next report because they represent an important aspect of the topic.

Dr. Herdocia added that the most recent inter-American instruments had removed the possibility of asylum when crimes such as corruption and terrorism are in play, pursuant to the Inter-American Convention against Terrorism and the Inter-American Convention against Corruption. He suggested

that the Committee's report could include figures on what is really taking place in the Americas, according to the studies carried out by the UNHCR.

Dr. Negro suggested that use be made of the opportunity offered by the Course of International Law to invite the representative of the UNHCR to visit the Committee in order to provide additional details on progress in this area.

Dr. Novak said that the UNHCR had a wealth of information on each of the countries and that, in his view, the Committee should wait until the meeting with the UNHCR representative before presenting its report to the next General Assembly in 2011. He suggested that the rapporteur meet with the refuge office at the Peruvian foreign ministry to learn about the problem in Peru and in the wider Andean region.

Dr. Villalta replied to the comments and noted that the report was not yet ready for submission to the General Assembly. She remarked that "economic refuge" was unknown in Latin America. She also expressed concern about the situation of people seeking refugee status in Central America but who do not intend to remain in the region, but instead to continue north. Another problem is that not all the applicants are from the Americas: some are from other regions of the world.

The Chairman asked the rapporteur, in consideration of the discussions that had taken place, to emphasize one or two key aspects of the General Assembly mandate in order to focus the topic.

At the fortieth regular session of the OAS General Assembly (Lima, June 2010), the Committee was asked to report on its progress with preparing a study on the situation of asylum in the Americas AG/RES. 2611 (XL-O/10), "Observations and Recommendations on the Annual Report of the Inter-American Juridical Committee".

At the 77th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2010), Dr. Elizabeth Villalta presented a new report, document CJI/doc.356/10, "Refugees." She recalled the background information on the topic and the mandates handed down by the General Assembly through its resolutions in the two previous years: AG/RES. 2515 (XXXIX-O/09) and AG/RES. 2611 (XL-O/10). In her presentation, Dr. Villalta gave an analysis of the mechanisms of refuge and asylum in the inter-American system, saying that they were closely related but with different emphases in different countries. She suggested unifying the generic concept covering both mechanisms – refuge and asylum – either by adopting the refugee regime in accordance with the inter-American instruments or by embracing the refugee regime contained in universal instruments, taking into account those international instruments that deal with human rights, international humanitarian law, and international criminal law. In her view, a formula should be sought to prevent confusion and to support states in enforcing the corresponding principles, and effective protection must be extended to the victims of persecution.

Dr. Fabián Novak suggested expanding the focus and investigating the problems facing the region's countries. For example, a list could be made of the shortcomings in assessment boards, the authorities' lack of preparation for responding to people applying for refuge, the economic burden on the receiving country, the discrepancies between the universal and regional instruments, the topic of statelessness, and the issue of trafficking in persons, which is reported by some countries receiving large numbers of refugees. Then, on the basis of that list, the Committee could make its recommendations. He said that the creation of a generic approach covering refuge and asylum seemed very difficult to him, in light of the existing international instruments.

Dr. Mauricio Herdocia recalled the attempts to define the concepts of diplomatic asylum and territorial asylum within the United Nations. Diplomatic asylum was not accepted by a significant number of States, while the Convention dealing with territorial asylum was adopted unanimously.

Another element to be taken into consideration was the draft Inter-American Convention prepared by the Juridical Committee in 1966, which was not adopted. He also spoke of other more modern conventions on terrorism and corruption that contain provisions denying the granting of asylum or refuge to individuals who have committed such crimes. Finally, he suggested that the next report cover the practical application of those concepts by the States.

Dr. João Clemente Baena Soares said that the generic concept would be the best solution, but that it was necessary to further develop or rethink the obstacles it faced; he also supported Dr. Novak's motion to continue to make progress with the topic.

Dr. David Stewart reminded the meeting that the notions of refuge and asylum date back to the aftermath of the Second World War. The Hemisphere is currently facing many problems, to which traditional concepts no longer offer a full response. He noted that the United States use the same definition of refugees for both mechanisms, refuge and asylum, although the legal figure of diplomatic asylum does not exist in U.S. law. He also enquired about the approach that should be followed in the next report, in addition to the definitions of asylum or refuge and the conditions for granting them.

Dr. Miguel Pichardo suggested that the members assist the rapporteur by providing data from their home countries. At the same time, it could enquire whether the existence of diplomatic asylum – found in all the American states, with the exception of the common law countries – was justified, when efforts were underway to reduce diplomatic immunity. At the same time, in light of the breadth now enjoyed by territorial asylum, diplomatic asylum could well be eliminated.

Dr. Freddy Castillo agreed with the analysis of the problems described and proposed adopting an instrumental document – either regulations, a declaration, or a guide – for practical use by the agencies involved in granting refuge. He also said he supported Dr. Villalta's recommendation to propose a generic definition, but one that could serve as a guide for dealing with the different cases of asylum-seekers and refugees, similar to the U.S. doctrine that makes no distinction between the mechanisms.

Finally, it was agreed that the rapporteur would compile the comments in order to present a new report on the issue at the next period of sessions.

The following paragraphs set out the documents prepared by Dr. Ana Elizabeth Villalta Vizcarra.

During the 78th regular session of the Inter-American Juridical Committee held in Rio de Janeiro, Brazil in March 2011), Dr. Elizabeth Villalta presented a study on the question for the Committee to review, document CJI/doc.368/11, "Refugees/Asylum", which served as a basis for the paper that the rapporteur has prepared with Drs Herdocia and Stewart on the problem of refuge in the Americas, under the title "Draft opinion on the relationship between asylum and refuge" (CJI/doc.375/11). Dr. Villalta explained the distinction between *Asylum* and *Refuge*, and the intention of including both references in the paper in the light of the request made by the General Assembly. In answer to the concern of several members with regard to the inclusion of a reference to diplomatic asylum, it was decided to include the text of article 14 of the Universal Declaration of Human Rights in the considerations section of the draft report. Dr. Herdocia Sacasa explained the complementary character of each one of the institutions mentioned and the importance of respecting the advances made on the question of international law. He further proposed the inclusion of a final paragraph to avoid neglecting the specificities of each regime concerning their procedures of application. Dr. Castillo Castellanos and Pichardo asked that the document to be adopted include their names, despite their being unable to attend the session. Finally, on 28 March 2011 the report CJI/doc.375/11 rev.3, "Draft opinion of the Inter-American Juridical Committee on the relationship between asylum and refuge"

was adopted, now becoming resolution CJI/RES. 175 (LXXVIII-O/11). It should be noted that it was decided at this session to bring the theme to a close.

The following paragraphs transcribe the cited documents: first, document CJI/doc.368/11 presented by the rapporteur, Dr. Ana Elizabeth Villalta Vizcarra, "Refugees," followed by the resolution adopted by the Committee, CJI/RES. 175 (LXXVIII-O/11), "Opinion of the Inter-American Juridical Committee on the relationship between asylum and refuge."

CJI/doc.368/11

REFUGEES /ASYLUM

(presented by Dr. Ana Elizabeth Villalta Vizcarra)

This report is presented pursuant to the provisions of resolution AG/RES. 2515 (XXXIX-O/09) under the title "Observations and Recommendations to the Annual Report of the Inter-American Juridical Committee", approved during the Thirty-Nineth Regular Session of the General Assembly of the Organization of American States (OAS), held on June 4, 2009 in San Pedro Sula, Honduras. This Resolution requested the Inter-American Juridical Committee (IAJC) to prepare a study on the problem involving refugees in the Americas, taking into consideration the relevance of the topic in light of the current work of the Committee on Legal and Political Affairs (CJPA) and the United Nations High Commissioner for Refugees (UNHCR).

In conformity with this mandate, the undersigned was appointed rapporteur of the theme during the 75th Regular Session of the IAJC, held in Rio de Janeiro, Brazil in August 2009. In compliance with these mandates, the first report on the issue was presented during the 76th Regular Session of the IAJC, held in the city of Lima, Peru in March 2010, for the purpose of complementing it with the remarks of the IAJC members during the 77th ordinary session.

In this regard, in compliance with the mandates and with resolution AG/RES. 2611 (XL-O/10) under the title "Observations and Recommendations to the Annual Report of the Inter-American Juridical Committee", which was approved on June 8, 2010 during the 40th Regular Session of the General Assembly of the Organization of American States (OAS), held in the city of Lima, Peru. Clause N. 7 of this resolution states: "Request the IAJC to report on the progress in relation to the preparation of a study on the problem of refugees in the Americas, taking into consideration the relevance of the issue and at the light of the current work of the CJPA and the United Nations High Commissioner for Refugees (UNHCR), pursuant to its respective mandates".

In compliance of the mandates conveyed by both resolutions of the respective OAS General Assemblies the undersigned presented a supplementary report on the problem posed by Refuge in the Americas during the 77th Regular Session of the Inter-American Juridical Committee (IAJC), which was held in Rio de Janeiro, Brazil in August 2010.

During that ordinary session, the Members of the Inter-American Juridical Committee requested the undersigned to broaden the report in certain items, especially as regards the terminological definition of Asylum and Refuge, and analyzing it from the viewpoint of humanitarian protection. Taking these remarks into considerations, the report below is hereby presented to the current 78th Regular Session.

In the American continent, regulations on the Right of Asylum started to appear in the late 19th century, and since then the regional practice of granting protection to persecuted persons has progressively contributed not only to the development of the right of asylum as such, but also to the international legislation on refugees. Therefore, the topic of protection to refugees is nothing new to the Inter-American System, given the long and generous regional practice of granting protection to those persecuted, a practice that forms part of the juridical heritage, as demonstrated in the previous reports of this Rapporteur on the existence of American treaties on the issue. The right to "seek and be granted asylum" is included in Article XXVII of the 1948 American Declaration on the Rights and Duties of Man, as well as in Article 22.7 of the 1969 American Convention on Human Rights (the Pact of San Jose).

There has been a deep-rooted practice in the American continent regarding the use of the term Asylum to mean "Latin-American asylum", in both aspects, i.e. diplomatic and territorial, and the use of Refuge to refer to the "condition of a refugee", and so this has been embodied in some legislations of the continent. This terminological confusion may be overcome if "asylum" is understood as an institution for the protection of the persecuted in a universal sense, granted through the Inter-American treaties or conventions referring to Asylum and the 1951 Convention on the Statute of Refugees and its 1967 Protocol, in the context of the United Nations.

This conceptual question between asylum and refuge results from the Latin-American tradition of considering asylum as a phenomenon peculiar to the continent, as well from the indistinct terminological use of asylum and refuge in the regional norms on diplomatic asylum and territorial asylum. Therefore, in view of the regional legal evolution of this right of asylum, it has subsequently become necessary to relate it to the progressive development of the international law on refugees.

The inclusion of the right of asylum in the list of human rights, both in the Universal Declaration of Human Rights and in the American Declaration of the Rights and Duties of Man, has granted it the nature of a fundamental right, turning it into a right of the people, with a component binding the States; for that reason the use of the term asylum must be understood in a general fashion.

That is how it has been used by the Inter-American Commission of Human Rights (ICHR), when it declared its jurisdiction to address a demand for violation of the right of asylum, which is included in Article XXVII of the American Declaration of the Right and Duties of Man, in a case referring to hampering the claim of the condition of refugee in the Bahamas (Report N. 06/02 admissibility, Request N. 12071 Bahamas, 03.04.02), when the ICHR reported that it was competent to interpret the aforementioned provision on the grounds of the 1951 Convention on the Statute of Refugees and the 1967 Protocol of the United Nations.

In the Precautionary Measures for Colombian Refugees in Venezuela, March 12, 2001, the Inter-American Commission of Human Rights (ICHR) requested the United Nations High Commissioner for Refugees (UNHCR) to emit an opinion on the distinction between "asylum" and "refuge". The High Commissioner stated that: "No agreement has been reached regarding the distinction between asylum and refuge, according to the opinion of the UNHCR, in the International Law of Refugees. In fact, just recently, at a regional meeting of Experts in San José, Costa Rica, it was stated that: "There is a terminological confusion in Latin America that bears practical consequences for the

protection of those requesting refuge and asylum, considering that there is a crystal-clear difference between refuge and asylum, as the first of them refers exclusively to the right of refugees as devised by the United Nations, and the second refers exclusively to Latin-American asylum. The analysis of the opinion of authors demonstrates that there is no such distinction, because asylum is an institution for protection in itself and that as such does not belong exclusively to a system".

In this regard, the regional instruments in terms of human rights enshrine the right to request and receive asylum, as established in Article XXVII of the American Declaration of the Rights and Duties of Man, in relation to Article 22.7 of the American Convention on Human Rights (or the Pact of San Jose), which in turn presupposes the reference to the 1951 Convention on the Statute of Refugees and its 1967 Protocol. This has been established also in several reports of the Inter-American Commission of Human Rights.

The normative development in the area of asylum in the 50´s passed the leadership to Latin America in terms of protection of the persecuted and preceded the endeavors of the international community. However, in the sixties the Inter-American conventions on asylum were not enough to cope with the massive flows of people in the region due to political circumstances in many countries.

As a result of this situation, the Inter-American Commission on Human Rights (IACHR), through a report issued in 1965, states that the most pressing problems affecting the rights of refugees in the region are: "1) The lack of domestic legislation recognizing and defining properly the situation of the political refugee regarding his/her condition; 2) the inexistence of an inter-American convention addressing and governing the situation of political refugees; 3) the lack of an organization within the inter-American system qualified to carry out assistance work for political refugees; 4) travelling problems faced by refugees; 5) economic problems, aggravated by the prohibition to work or the lack of employment opportunities, thereby transforming refugees in an economic and social burden for the receiving country".

This led the Organization of American States (OAS) to convene in 1965 an Inter-American Conference in which it recommended the approval of a Regional Convention on Refugees. This mandate was entrusted to the Inter-American Juridical Committee (IAJC), which in 1966 issued a Draft Regional Convention on Refugees, governing their legal standing, including a definition of "refugee"; their duties and rights; their personal condition; their labor situation; travel documents for refugees; and the assistance and protection to be granted to refugees. The Draft was not addressed again by the political organs and so the Convention failed to be approved.

During the 70´s the situation of refugees worsened in the American continent in view of the political situation in the Southern Cone, which prompted the need to seek protection in the universal system of protection for refugees, since the inter-American conventions were inadequate to solve these problems.

This situation prompted the UNHCR to convene the "First Seminar on International Protection in Latin America", held in Mexico in 1979, which issued a recommendation to organize a "Colloquium on Asylum and Protection of Refugees in Latin America", which in turn was held in Tlatelolco, Mexico; a comparative study was made as a result of this Colloquium, which analyzed the legal situation of the people under asylum and refugees in the American continent. This led to the consideration that

matters referring to asylum and refugee should be dealt with from a broader political and juridical perspective.

At present, and as a result of forced displacement, more cases on asylum and refugee have appeared in the American continent, therefore obliging the Inter-American System of Protection of Human Rights to deliver decisions on some specific cases. The Inter-American Commission on Human Rights (IACHR) has reviewed cases such as: the obligation of the State to protect refugees in its jurisdiction; the arrest of people requesting asylum and the lack of local procedures to determine the situation of the refugee; the right of asylum included in Article XXVII of the American Declaration of the Rights and Duties of Man; and the applicability of the 1951 Convention on the Statute of Refugees and its 1967 Protocol, among others.

In this regard, in Petition N. 10675 on the Case involving the Interdiction of Haitians, the Inter-American Commission of Human Rights considers that when Article XXVII of the American Declaration of the Rights and Duties of Man concerning the right to request and receive asylum refers to the phrase "pursuant to the International Conventions", it refers to the relevant instruments represented by the 1951 Convention on the Statute of Refugees and its 1967 Protocol as part of the progressive development of international law.

In Petition N. 12071, the Inter-American Commission of Human Rights requested precautionary measures against the Bahamas and in this case expressed the need to resort to the 1951 Convention on the Statute of Refugees and its 1967 Protocol, in order to analyze and integrate the right of asylum, especially as included in the American Declaration of the Rights and Duties of Man.

In searching for these international instruments, the Inter-American Commission of Human Rights basically found the Consultative Opinion OC-17/02, of August 28, 2002, of the Inter-American Court of Human Rights, which in relation to this topic expresses: "The need for a regional system to be complemented by a universal system finds expression in the practice of the Inter-American Commission of Human Rights and is fully consistent with the object and purpose of the American Convention on Human Rights (or the Pact of San Jose), the American Declaration of the Rights and Duties of Man and the Statute of the Commission".

The Inter-American Commission of Human Rights (IACHR), in its resolution on the Precautionary Measures of March 12, 2001, granted in favor of a group of refugees in Venezuela, was questioned by the State, which argued that the provisions of the American Convention on Human Rights, and especially Article 22.7, do not apply to refugees as they refer to asylum, and this is a case of refugee rather than asylum.

In this case, the Inter-American Commission of Human Rights established the importance and the need to integrate the regional system and the universal system for the protection of refugees, especially with the 1951 Convention on the Statute of Refugees and its 1967 Protocol, and in addition the need to understand asylum as a measure for the general protection of those suffering persecution.

The aforementioned reasoning evidences the urgent need to make a joint interpretation of Article XXVII of the American Declaration on the Rights and duties of Man in relation to Article 22.7 of the American Convention on Human Rights (or the Pact of San Jose), which examines the "Right to Seek and Receive Asylum", as regards its scope and contents and whether this interpretation is based on the application of the

1951 Convention on the Statute of Refugees and its 1967 Protocol, with the aim of permitting an integration of the regional system with the universal system in this field involving protection to people that are being persecuted.

This interpretation, which is made on the scope and contents of the right of asylum, must also go beyond that to determine that the right has to be constructed in such a way as to include the progressive development of the international law of human rights, the international law of refugees, humanitarian international law and international criminal law.

The need to have this interpretation has also been stressed in a series of meetings on the topic, especially in the Tlatelolco Colloquium in Mexico on Asylum and the Protection of Refugees in Latin America; in the 1994 Declaration of San Jose in Costa Rica on Refugees and People Displaced in the Hinterland; also at the 2001 Meeting of Experts held in San José, Costa Rica, establishing in all of them that this interpretation might also be examined in a Consultative Opinion of the Inter-American Court of Human Rights, in view of the relevant role that the inter-American system of protection of human rights has played in this topic involving the protection of refugees and other people in need of international protection in the continent.

An interpretation establishing the unequivocal relationship between the definition of "refugee", which was enshrined in the 1951 Convention on the Statute of Refugees and its 1967 Protocol, and the contents and scope of the "Right of Asylum" which is included in Articles XXVII of the American Declaration of the Rights and Duties of Man and in Article 22.7 of the American Convention on Human Rights of Pact of San Jose, based on the integrative and supplemental work between the Universal and the Regional Systems, which in turn would establish the progressive development of the Right of Asylum in this issue involving the international protection in the American Continent.

In this order of ideas such an interpretation would resolve the terminological issues between asylum and refugee which are faced in the American continent and especially in the universal system where the terms asylum and refuge are indistinctly used in order to represent or convey the condition of refugee.

In this manner, the right of asylum is in general understood as a universal institution for the protection of the person being persecuted, which may be granted through inter-American treaties or conventions on asylum with all its peculiarities, or through the 1951 United Nations Convention on the statute of refugees and its 1967 Protocol when referring to the international protection of refugees in the continent.

This interpretation is based on the nature of a human right as granted to asylum both in the American Declaration of the Rights and Duties of Man and in the American Convention of Human Rights when referring to the "right to seek and receive asylum", and as such is included in the list of human rights which have general content and application.

In conclusion, in order to overcome this terminological problem between asylum and refugee which has led to practical consequences in the region, it could well be determined that the progressive development of the right of asylum in the American continent has granted it the nature of an institution for protection proper, with a general application that enables establishing a relationship between asylum and refugee on the grounds of the existing complementarity between the universal and the regional systems, allowing therefore the application of the international law of human rights, the

international law on refugees, humanitarian international law and criminal international law.

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CJI/RES. 175 (LXXVIII-O/11)

**OPINION OF THE
INTER-AMERICAN JURIDICAL COMMITTEE ON THE
RELATIONSHIP BETWEEN ASYLUM AND REFUGE**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that in the procedures for the granting of asylum and refuge there has been terminological confusion that may affect its effective application in the Inter-American System and that it is advisable to contribute to its clarification;

TAKING INTO CONSIDERATION that said confusion gives rise to situations that affect the guardianship and protection of victims of persecution, thereby denying them asylum or refuge;

RECALLING the provisions in the Universal Declaration on Human Rights, the American Declaration of Rights and Duties of Man, the American Convention on Human Rights, the International Covenant of Civil and Political Rights, the 1951 UN Convention on the Status of Refugees and its 1967 Protocol, and the Conventions on Asylum in the framework of the Inter-American System;

AFFIRMING that asylum as a human right is the common backbone of general content and scope for protection of persecuted people, under the conditions set by international law;

BEARING IN MIND the advisory Opinions of the International Court of Human Rights and the practice of the Inter-American Commission for Human Rights;

CONSIDERING the Report on Refugees (CJI/doc.368/11) presented by the rapporteur of the theme, Dr. Ana Elizabeth Villalta Vizcarra,

STATES THE FOLLOWING OPINION:

1. A request for asylum or refuge cannot fail to be considered solely on the basis of terminological confusion on the part of the requesting person. The State is obliged to allow access to procedures of eligibility provided for asylum and refuge.

2. Asylum and refuge are institutions that coincide in the essential goal of protecting human beings when victims of persecution under the conditions established by international law. Accordingly, the instruments that regulate both questions are complementary and should be interpreted and applied in a harmonious fashion.

3. None of the above impinges upon the specific aspects of both regimes, especially as regards their application procedures.

This resolution was approved unanimously at the regular session held on March 28, 2011, by the following members: Drs. João Clemente Baena Soares, David P. Stewart, Fabián Novak Talavera, Mauricio Herdocia Sacasa, Hyacinth Evadne Lindsay, Miguel Aníbal Pichardo Olivier, Jean-Paul Hubert, Guillermo Fernández de Soto, Freddy Castillo Castellanos and Ana Elizabeth VillaltaVizcarra.

Topics concluded at the August 2011 session

At its August 2011 meeting, the Committee decided to conclude the treatment of two topics: "participatory democracy and citizen participation" and "freedom of thought and expression."

1. Peace, Security, and Cooperation

Documents

CJI/doc.378/11	Progress report on the indicative scheme commented for the drafting of the report on the inter-american instruments in the area of peace, security and cooperation (presented by Dr. Mauricio Herdocia Sacasa)
CJI/RES. 183 (LXXIX-O/11)	Peace, segurity and cooperation
Annex: CJI/doc.388/11 rev.1	Inter-American Juridical Committee. Progress report on the instruments of the OAS related to peace, security and cooperation

At the fortieth regular session of the OAS General Assembly (Lima, June 2010), the Inter-American Juridical Committee was asked to conduct, within its existing resources, a comparative analysis of the principal legal instruments of the inter-American system related to peace, security, and cooperation, resolution AG/RES. 2611 (XL-O/10).

At the 77th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, August 2010), Dr. Negro clarified the mandate established by resolution AG/RES. 2611 (XL-O/10), explaining that the original proposal was very broad and covered all kinds of legal instruments, including resolutions from other organs of the inter-American system, and that for that reason the word "principal" had been used, to restrict the treatment of the topic to the treaties in force. Regarding the reference to "cooperation," he noted that the concept was related to that of peace and security.

Dr. Novak also explained that the mandate had arisen from a proposal made by the Peruvian foreign ministry, on account of its concern regarding the commitments entered into at the regional level, both through resolutions of the inter-American system and through treaties. In his opinion, the Committee's work should define what progress had taken place, what the limits were at the inter-American level, and what possible recommendations could be formulated in order to attain greater progress with respect to peace and security in the region.

Dr. Hubert spoke of new concepts of security: not solely restricted to the use of weapons or activities related to war, but also, and primarily, covering topics related to human security and poverty.

Dr. Herdocia noted that starting with an analysis of the treaties in force within the regulatory framework of the OAS, consideration should be given to the concept of democratic security, since broadened to the topic of multidimensional security, as set out in the 2003 Declaration of Mexico. That conceptual vision, going further than the treaties, is set out in OAS declarations and in documents adopted by the Member States; it is, therefore, a conceptual world, separate from the normative world of the OAS.

The Chairman said that the topic was indeed of great importance, since the concept of traditional security had been reassessed and the threats facing the security system are different from those that gave rise to the inter-American legal instruments. In other words, security is no longer seen as a merely legal or territorial issue: the concept has been expanded to include other ideas, such as human security and multidimensional security. He recalled the various revisions of the OAS basic instruments, the

intense debates regarding the TIAR that took place within the Permanent Council, which ultimately did not attain the results expected.

Dr. Villalta asked what approach should be adopted toward cooperation among the states for the maintenance of peace and security, since in the OAS documents both aspects appear as related concepts. In this regard, she recalled the actions of the Contadora Group. She concluded by asking what the goals of the requested analysis would be.

Dr. Negro explained that the request had arisen from a Peruvian proposal, with Venezuela's counterproposal then being made within the CAJP. Later, the delegations discussed the two proposals in the General Committee of the General Assembly. He added that perhaps it would be pertinent to clarify the content of the mandate in the light of the Declaration of Lima, which could serve as a way for making progress with the Juridical Committee's treatment of the topic. Dr. Toro reported that the Secretariat of Political Affairs had prepared a document containing all the instruments adopted on these questions, and that he would convey a copy of it to the members of the Juridical Committee. It was decided to return to the topic at a later date.

Finally, Dr. Mauricio Herdocia was chosen to serve as rapporteur.

During the 78th regular session of the Inter-American Juridical Committee held in Rio de Janeiro in March 2011, the rapporteur of the theme, Dr. Mauricio Herdocia Sacasa, presented a preliminary document entitled "Progress report on indicative schemes commented for the drafting of the report on the inter-american instruments in the area of peace, security and cooperation" (CJI/doc.378/11) pursuant to the mandate of the General Assembly requesting a comparative analysis of the chief juridical instruments in the inter-American system concerning peace, security and cooperation (A/G/RES. 2611 (XL-O/10)).

In the opinion of the rapporteur, the study should reflect how effective the inter-American juridical instruments are in facing both old and new threats. Also, opportunities for cooperation should be included that allow for an evaluation of OAS mechanisms to prevent and anticipate crises and enhance the link between peace, security and cooperation. He also emphasized the full effect of the instruments adopted together with the Charter of 1948 and mentioned the latest initiatives in respect to the theme of human security (multiple threats, ways in which they are linked together and their multidimensional reach).

The rapporteur offered thanks for the list of inter-American documents on the matter prepared by the Department of International Law and included in the attachment to his report, and requested the continuous support of the Secretariat, especially as regards signatures and ratifications of instruments on the matter.

The President thanked the rapporteur for his report, which stressed the important challenge posed for the Committee by the mandate received, and invited the Secretariat to offer all the necessary assistance.

Dr. Hubert recognized the value of the rapporteur's document and referred to new forms of security. In this respect the rapporteur explained his intention to include the material on new forms of security both on the regional and universal level. He also expressed interest in his proposal to allow strengthening the use of the hemispheric instruments for settling disputes, including the possibility of adopting a treaty as well as finding ways to reform the Inter-American Treaty of Reciprocal Assistance.

The President then proposed to lend continuity to the theme at the session to be held in August 2011, when it is expected to engage in reflection on the use of dispute-settling mechanisms in the inter-American system. It bears pointing out that on the suggestion of the President, the theme of Inter-

American Jurisdiction of Justice was conceptually included in the treatment of the theme being discussed.

During the 41st regular session of the General Assembly of the OAS held in El Salvador in June 2011, the Inter-American Juridical Committee was requested to "provide information on progress made concerning comparative analysis of the chief juridical instruments of the inter-American system in respect to peace, security and cooperation" AG/RES. 2671 (XLI-O/11).

During the 79th regular session of the Inter-American Juridical Committee held in Rio de Janeiro, Brazil in August 2011, the rapporteur of the theme, Dr. Mauricio Herdocia, presented his "Progress report on the instruments of the OAS related to peace, security and cooperation", document CJI/doc.388/11, which offers a general panorama that reflects to what extent the Inter-American juridical instruments are used to face both traditional and new threats. The report separates the work in two moments: the Chapultepec Conference of 1945 and the Mexico Conference of 2003 which introduced the multidimensional view of security. The balance is positive in that an attempt was made to connect these two worlds, but there exist elements that must be improved in order to strengthen the security system in the Americas. In this context, the States and the OAS play a preponderant role in facing the new threats and the challenges to peace and security. With regard to the actions following this mandate, the rapporteur suggested intensifying the dialogue with the Multidimensional Secretariat and the Committee on Hemispheric Security, resuming the revision of the TIAR (Rio Pact) in a context that includes the multidimensional view, reinforcing the role of the OAS, and identifying a structured and integral system of prevention where peace, security and cooperation are made stronger at all levels.

The Chairman thanked the rapporteur and explained the intention of the Juridical Committee to present the report to the General Assembly and call the attention of the States on this question. In this sense, he considered that presenting the rapporteur's document would be an answer to the request made by the General Assembly. Dr. Novak congratulated the rapporteur on his solidly researched report. He emphasized the extensive nature of the theme and urged the rapporteur to change the title of the document so that it is a final rather than a "progress" report, and to submit it to the General Assembly. Finally, he asked to adjust the title of point IX as "evaluation and proposals", giving it a number. Here he was supported by Dr. Villalta, who asked to exclude point X in future stages, when this becomes a final document. Dr. Castillo in turn requested diffusing this document when it is presented to the General Assembly, in addition to including the pertinent elements of point X in the part related to evaluation and proposals. Dr. Baena Soares thanked the rapporteur for presenting his paper and underlined the key points, firstly expressing his disagreement with the proposal to revise the TIAR, and secondly suggesting that the Social Charter be given more space. He considered that the mandate had ended, but not the theme. Dr. Hubert agreed with the idea of sending the document to the member States that have an essential responsibility in developing the matter. As a way to diffuse the document, he proposed trying to approach the academic community. As for the Social Charter, he urged not to consider it so relevant. Finally, he considered that the mandate was concluded. In turn, Dr. Gómez Mont Urueta agreed with the suggestion to send the document to the States as soon as possible.

The Chairman asked that the rapporteur's revised document be sent to the Permanent Council. In addition, given the Summit of the Americas to be held in Cartagena in April 2012, he proposed that the Chairman of the Committee sends a message to the General Secretary or to the Chancellors for the report to be sent to the Summit. He ended by asking for approval of a resolution to accompany sending the document to the Permanent Council.

On August 26, the Chairman of the IJC sent to the Permanent Council of the Organization of the American States resolution "Peace, security and cooperation" CJI/RES. 183 (LXXIX-O/11),

explaining that the document presented is in compliance with the mandate of the General Assembly "to conduct report on progress made on the comparative analysis of the principal legal instruments of the inter-American system related to peace, security, and cooperation", AG/RES. 2671 (XLI-O/11).

The documents presented are transcribed below. First, the document CJI/doc.378/11 prepared by the rapporteur, Dr. Mauricio Herdocia Sacasa, "Progress report on the indicative scheme commented for the drafting of the report on the inter-American instruments in the area of peace, security and cooperation", which is followed by the resolution adopted by the Inter-American Juridical Committee, "Peace, security and cooperation", CJI/RES. 183 (LXXIX-O/11), which contains the document CJI/doc.388/11 rev.1, "Inter-American Juridical Committee. Progress report on the instruments of the OAS related to peace, security and cooperation".

CJI/doc.378/11

PROGRESS REPORT ON THE INDICATIVE SCHEME COMMENTED FOR THE DRAFTING OF THE REPORT ON THE INTER-AMERICAN INSTRUMENTS IN THE AREA OF PEACE, SECURITY AND COOPERATION

(presented by Dr. Mauricio Herdocia Sacasa)

I. MANDATE AND SCOPE

In the mandate of the General Assembly regarding resolution AG/RES. 2611 (XL-O/10), the Inter-American Juridical Committee was requested to conduct a comparative analysis – with the existing resources - of the main legal instruments of the Inter-American System concerning peace, security and cooperation.

Said analysis, according to the line of thought expressed during the 77th regular session in Rio de Janeiro, should transcend a simple comparative analysis and thoroughly consider the effectiveness, pertinence, topicality and new developments and challenges in the area of security in the Americas, taking as a reference not only the traditional treaties constructed during the first stage of the organization halfway through the 20th Century, but especially the multidimensional and multithematic vision contained in the Declaration of Security in the Americas of October 2003. It should also have take as a reference the endeavors made by the sub-regional schemes such as SICA, UNASUR, CARICOM and CAN, among others, and analyze the new instruments which have appeared recently such as the Inter-American Convention on Transparency in Conventional Weapon Acquisitions (CITAAC), the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials (CIFTA), as well as the Confidence-Building Measures, among others, plus the close relationship of these topics with democratic development and the cooperation between the States to these ends. In this regard, the word "cooperation" contained in the mandate must be understood as the expression of cooperation in terms of building peace and security among the OAS Member States. An evaluation of the cooperation between American States in issues related to security would be equally timely, especially between neighboring countries as well as references to regional and bi-national experiences, as much as possible, including transparency in the purchase of weapons.

In general the study should therefore reflect the degree of capability of the Inter-American juridical instruments in countering the threats – both the traditional and the new ones – as well as the concerns and other challenges against peace and security, and the opportunities for cooperation, paying special attention to the endeavors to appraise the mechanisms of the Organization in the prevention and foreseeing of crises, and serve the link between peace, security and cooperation and the manner in which this interdependence is reflected in the inter-American system. The evaluation of the manner in which the existing instruments are being applied was also considered to be of fundamental importance, and the support of the Secretariat of the Committee

would be highly relevant because of the reports in the area of security in the region that reflect alarming numbers for our countries, for example, in the field of citizen security and the number of homicides per hundred thousand inhabitants, as well as in the area of migration and in the action of gangs.

The intention of the Rapporteur is not to present the study in this specific opportunity reserved for the next regular session in August, but solely to resume and refresh the discussion held during the last regular session, in order to provide a structure or thematic guide for a scheme that – being simply an indication – might help to unfold the concerns of the members and the different topics with the necessary cooperation of the Secretariat of the IAJC and of some members who have made themselves available to share with the Rapporteur the subregional or bilateral experience. To date, we have a list of the main instruments in the area provided by the OAS Department of International Law (please see attachment).

Background information on the model of peace, security and cooperation: A new world under an old conceptual umbrella

The study calls for starting with the construction made in 1945, resulting from the Conference on Problems of War and Peace, which took place in Chapultepec, and which proposed a security scheme – materialized in an extraordinarily strict manner – and founded this triptych with the elements of peace, security and cooperation, each one of them with its own paradigm. In this regard, peace, for example, gave rise to the American Treaty of Pacific Solutions (Pact of Bogota). In the theme on security we have the Inter-American Treaty of Reciprocal Assistance (TIAR), and in terms of cooperation several clauses were included in both treaties and also in the Charter of the Organization, which was conceived as the great conceptual and normative framework for the articulation of the works of the OAS. It is interesting to highlight at once that the conflicts were produced in the interior of the States rather than between nations, therefore evidencing that the model of internal organization was also related to regional conflicts.

It should also be highlighted that these instruments, with which the system continues to exist together with the OAS Charter, are basically the result of a configuration achieved in 1945. The Pact of Bogota prevails fully; the Inter-American Treaty of Reciprocal Assistance is also in force, together with the 1948 Charter and its amendments, which have updated some of their provisions, which led one author to say that this was the case of several Charters with different Member States. However, it is really the vision of 1945 which will be confronted with the repositioning resulting from the Special Conference on Security in Mexico, representing a step forward in a new structural vision of security in the Americas which possibly has not been strong enough to set the basis of the legal building that would eventually come afterwards.

With the end of the cold war, obviously the old coordinates of the security vision disappeared. A world had been structured in the Inter-American system whose premises were mainly military and ideological. The Inter-American Treaty of Reciprocal Assistance was also built as an instrument for containing the alleged ideological threats in the Continent, which will also be reflected, at the sub-regional level, with military organizations, for example in Central America with the CONDECA. The end of the armed conflicts and the end of the East-West polarization brought a new vision for universal security and for Inter-American security. Once the smoke of armed confrontation had disappeared, the profile of the human dimension of these processes emerged clearly, beyond the number and the outreach of armaments and military forces.

The multidimensional vision

The first stage in this scheme appears in the Bridgetown Declaration. The Declaration establishes that security problems cannot be limited exclusively to the military environment, that they have to transcend a multidimensional vision, which of course will be received by some regional instruments such as the Framework Treaty on Democratic Security in Central America, or in the vision of democratic security in the Andean Community.

The initiatives were also very powerful in reshaping the new Canadian vision around the theme of human security, which will properly be reflected not as a juridical instrument but as a conceptual vision of the new model in the Summits of the Americas, mainly after the 2003 meeting in Mexico.

Special Conference on Security, Mexico

This important landmark is therefore the 2003 Special Conference on Security in Mexico. This Conference brought several contributions to the table of discussions. The **first** of them was that there are new concerns to address, which differ from the traditional ones; **secondly**, the threats are different in nature and disconnected. It is not just a multiplicity of threats, but the manner in which they are interconnected to one another and how they are mutually reinforcing, thus creating a far more complex landscape than the single dimension of the challenges we were used to facing in the past (for example, in the case of narcotics terrorism), and **thirdly,** they have a multidimensional outreach that includes political aspects and it is precisely there that we see the contents of the democratic, economic and social themes, as well as those referring to healthcare and the environment, among others. We are not referring in this case to the old model of security, but to a new plurithematic visions, which is also multifaceted and multidimensional as regards the security expressed in renewed perspective, although it does not necessarily result in a juridical instrument. This could be one of the conclusions to which we might arrive in due course.

Important news

This new vision of security is also rooted in the preservation and reinforcement of democracy, its institutions, values and principles. That is to say, multidimensionality: now necessarily the aspect involving the strengthening of democracy and the application of the Inter-American Democratic Charter.

In the past the theme on democracy had been absent from the vision of security and was only reserved to the internal "within the walls" cloister of sovereignty. But today it lies at the center of defense, in the structuring of a new inter-American security model, and its essential elements are inseparable from that new architecture, as mentioned in one Opinion of the IAJC.

Reinforced cooperation

To confront this new world of security, as was highlighted at the Mexico special meeting, **reinforced cooperation** is required to face this new vision, which states that "*the basis and the raison d'être of security is the protection of the human being*": a complete return to the roots of the Inter-American system in the defense of human dignity contained in the American Declaration of the Rights and Duties of Man and the Conventions on Asylum. Security gets stronger when we go deep into its human dimension. The conditions of human security get better with full respect for dignity, for human rights and for the fundamental freedoms of man, as well as by promoting economic and social development, education and the fight against poverty, disease and starvation. That is to say, a concept of security that exceeds the traditional concept and has gained a far more comprehensive and diversified perspective.

The truth is – in a first approximation – that, differently from the Chapultepec meeting, which defined the legal instruments to contain or develop this new vision on security, in reality the Mexico Conference on Security only basically defined the new world of security. This is very clearly expressed in the Mexico Declaration, but it is only the image of security and its structure, and herein lies the difference with Chapultepec, as the former also provided a world of instruments such as the Pact of Bogota or the Inter-American Treaty of Reciprocal Assistance or the norms that would later be included in the 1948 OAS Charter itself.

It was not clearly explained how this new vision of multidimensional security, diversified and multifaceted, would be subsumed in the instruments, or how the social proposal would be embodied in the instrument as part of the new security model, and what would be the case with the existing instruments, as there is only a mere reference that the Inter-American Treaty of Reciprocal Assistance would be revised; no guideline was suggested on how, to what extent or

where or on which parameters to advance in the solution of the prevailing conflicts. This gap continues to some extent until the Lima Declaration of June 2010 and is related to the mandate contained in it for the IAJC.

Activation of the Pact of Bogota

This should not refrain us from highlighting that the old instruments such as the Pact of Bogota have practically revived the voices of the International Court of Justice. This instrument foresaw a direct navigation channel from the Inter-American System to the universal Court through two provisions. For the first time ever, in the late 50s, Honduras and Nicaragua would be the first ones to deal with the provisions in the case of the Decision of the King of Spain. An important number of American countries are going to the International Court of Justice more intensively. We cannot avoid mentioning the cases Argentina vs. Uruguay, Colombia vs. Ecuador, Chile vs. Peru, Costa Rica vs. Nicaragua, Nicaragua vs. Honduras, Nicaragua vs. Colombia, and there was also an attempt, which was later withdrawn, concerning Brazil vs. Honduras, and now again Costa Rica vs. Nicaragua. In other words, we are witnessing a growing resort to the International Court of Justice and in most cases, on the grounds of the Pact of Bogota, that is to say, using the door opened by the American Treaty for the settling of disputes. I believe this has to be highlighted in the forthcoming study.

I also wished to bring the idea that in the landscape of the Lima Declaration the thought that conflict among the States still persists has possibly prevailed, as well as situation of internal tension, such as in some American countries, and also situations of recurrent crisis among the States, and even potential threats. The Lima Declaration somehow emphasizes the importance of the idea of reaffirming concrete mechanisms in furtherance of the preventive duty of the Organization and with the duty of preserving peace and security among the American States themselves, as this is the primordial purpose the OAS should have in the first instance. The Lima Declaration expressed in part 4, that *"the obligation of the Member States, in their international relationship, to refrain from resorting to the use of force, except in cases of legitimate defense, in conformity with the prevailing treaties or in fulfilling those treaties"*. There is also another topic which finds the appropriate environment for the control and limitation of weapons. Item No. 6 seems to be important in view of the commitment to continue contributing to overcome situations of tensions and settle crises, with full respect to the sovereignty of States. That is to say, in this Declaration too there is some emphasis on the need to operate or confirm the relevance of the use of those mechanisms which focus on the preservation of peace among the American States. And in this regard, items 3, 4, 5 and 6 of the Declaration bear this strong emphasis, which is reaffirmed in item 7 when it indicates the need to continue implementing measures for the promotion of confidence, these being precisely the instrumental measures for deactivating processes of crisis and creating confidence among the States. The study could at least provide a general indication on the degree of implementation of those measures.

We can mention here two highly relevant conventions which the Declaration has emphasized. Both of them have a follow-up mechanism, i.e. the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials, and the Inter-American Convention on Transparency in Conventional Weapons Acquisitions. So, these are some of the highlights also of the Lima Declaration that in one way or another should be taken into account.

Strategic observation

The study must propitiate an observation and a strategic and systemic vision of some fundamental topics. In fact this observation, which already began in 1991 with the Declaration of Santiago, when it refers to a full and strategic revision of all the security system in the Americas. And this observation should allow addressing some of the following topics, in principle: In the first instance, if our Inter-American juridical instruments have the normative and instrumental tools to respond to and face traditional threats, as well as the new ones, plus concerns and other

challenges against security, and to visualize the legal opportunities for a closer work focusing on strengthening peace, security and cooperation structures in the Inter-American System.

A second topic that seems worth measuring in the study is the degree of harmonization between the existing legal instruments and the new multidimensional vision on security, because to date it has simply been expressed as a very broad, comprehensive overview within the Declaration of Mexico, but no juridical instrument at the Inter-American level reflects it as a juridical postulate. The study should assess the degree of approval and implementation of juridical instruments and then evaluate the state of the art as regards the existing legal instruments. This in view of the new vision of security established in Mexico and reinforced in Lima. As indicated above, the purpose cannot be just to compare the existing juridical instruments, but in view of the new vision that has been devised concerning multidimensional security, the study must also analyze the degree of responses of juridical instruments to confront, among others, the following topics: illicit trafficking of firearms; transparency in weapons purchases; measures for the promotion of confidence; prevention of conflicts and resolution of disputes, including the theme on the International Court of Justice; and social dimension of security, peace and cooperation, which in turn includes topics such as poverty, exclusion and inequity; the theme on the control, limitation and non-proliferation of armaments; release of expenses and transference or release of resources for development; cooperation in terms of security; and OAS mechanisms for following-up juridical instruments.

Consideration should also be taken of the work that the Commission on Hemispheric Security is implementing, the instruments derived from the CIFTA, for example, and of the recent major conventions adopted in the area of firearms trafficking, terrorism, fight against impunity and fight against corruption. The theme involving culture of peace and education, transnational delinquency, the fight against drugs trafficking, trafficking in persons, trafficking of migrants, organized crime, gangs and villains, the question of asset- and money-laundering, the fight against terrorism, kidnapping and the topics on crimes on the internet. These are some of the global topics concerning which we need to establish whether and to what extent they are included in the prevailing instruments, and their real operational capacity, according to each case.

Finally, the relevance of highlighting the link between security, human rights and democracy is confirmed, together with the need to evaluate the mechanisms of the Organization in order to prevent, foresee and implement early alert mechanisms in case of potential crises; the theme of globally assessing the existing instruments in the area of international solution of disputes and paying attention to the link between peace, security and cooperation and the manner in which their interdependence in the system is reflected; and issuing a global assessment on the strong and weak points of the peace, security and cooperation scheme that exist in the Inter-American system. Of course, all this is designed to evaluate the degree of updating, capacity and potential in relation to the global vision delivered during the Mexico Especial Conference and on the Declaration of Lima.

Within this approximation it is important to recount the concrete mechanisms in the OAS Charter aimed at facing situations of tension and crisis between American States, such as Article 61, which can be invoked by the states when necessary to settle any crisis that might arise and of course the empowerment of the Secretary General to convey to the attention of the organs of the System certain situations related to these topics.

In addition to the general diagnosis on the situation, some recommendations could be deemed pertinent, taking into consideration, for example, that although it is true that the State continues to be the great player in the theme of security, the involvement of citizens and of the community, as well as public and private alliances, has a role to play in this new manner of facing insecurity and strengthening cooperation between the States that share common problems in the area of security.

Basic Indicative Scheme (simply an indication of some general topics. Not to be considered as a TABLE OF CONTENTS)

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1.1 The 1945 Chapultepec Conference
1.1 The vision of the resulting treaties
1.1.1 The OAS Charter and its amendments
1.1.2 The Inter-American Treaty of Reciprocal Assistance and its amendment
1.1.3 The Pact of Bogota

II. The Special Conference on Security in Mexico

2.1 The Bridgetown Declaration
2.2 The Multidimensional Vision of Security
2.3 The Commission of Hemispheric Security
2.4 The path to materialization of the agreements

III. Traditional and new threats against security, and opportunities for cooperation

3.1 Illicit trafficking of firearms, including light and small weapons;
3.2 Transparency in armament acquisition;
3.3 Measures for Promoting Confidence;
3.4 Prevention of conflicts and resolution of disputes, including the theme of the International Court of Justice;
3.5 The social dimension of security, peace and cooperation, which includes poverty, exclusion and inequity;
3.6 Control, limitation and non-proliferation of armaments;
3.7 Reducing costs in armaments and transfer or release of resources for development;
3.8 Cooperation.
3.9 The fight against terrorism,
3.10 The fight against impunity and corruption.
3.11 The culture of peace and education for peace;
3.12 Security and the environment.
3.13 Transnational organized delinquency;
3.14 The fight against drug trafficking activities,
3.15 Traffic in persons,
3.16 Traffic of migrants,
3.17 Organized crime;
3.18 Gangs and villains;
3.19 Asset- and money-laundering;
3.20 Kidnapping of persons, and
3.21 Cyber-crimes (crimes on the Internet).

IV. Instruments for peace, security and cooperation in the Inter-American System: the State, mechanisms, preventive alerts and operationality

4.1 The OAS Charter
4.2 The Pact of Bogota
4.3 TIAR (Inter-American Treaty on Reciprocal Assistance)
4.4 The Inter-American Convention against the Manufacturing and Illicit Trafficking of Firearms, Ammunitions, Explosives and Related Materials (Consultative Committee of the Inter-American Convention against the Manufacturing and Illicit Traffic of Firearms, Ammunition, Explosives and other Related Materials: CIFTA)
4.5 The Inter-American Convention on the Transparency of Acquisition of Conventional Weapons.
4.6 The Inter-American Convention against Terrorism (Inter-American Committee against Terrorism: CICTE)

4.7 The Inter-American Convention for Drug Abuse Control (CICAD) and the Mechanism of Multilateral Evaluation for advancing in the fight against the illicit production, traffic and consumption of narcotic drugs, psychotropic substances and their related crimes.

4.8 The Inter-American Convention against Corruption and its follow-up mechanism.

4.9 Measures for the promotion of confidence (the Santiago and San Salvador Declarations and Miami Consensus).

4.10 Treaty for the proscription of Nuclear Weapons in Latin America and the Caribbean (Tlatelolco Treaty).

V. Subregional experiences in the area of peace, security and cooperation

5.1 SICA
5.2 UNASUR
5.3 CAN
5.4 CARICOM
5.5 Others

VI. Link between Democracy, Peace, Security and Cooperation

6.1 The Inter-American Democratic Charter

VII. Value and transcendence of the principles of the Lima Declaration

VIII. Appraisal of the degree of the qualification of Inter-American instruments in the fight against new threats and challenges to peace and security

IX. Recommendations

X. Attachments: Instruments in the Inter-American System in the area of peace, security and cooperation - current status

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Attachment: Reference documents on multidimensional security in the Americas/Documentos de referencia sobre seguridad multidimensional en las Américas (Document prepared by the Department of International Law/ Documento preparado por el Dept. de Derecho Internacional) – DD/doc.02/11 – 1 mar. 2001)

COMITÉ JURÍDICO INTERAMERICANO
INTER-AMERICAN JURIDICAL COMMITTEE

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1 de marzo 2011
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DOCUMENTOS DE REFERENCIA SOBRE SEGURIDAD MULTIDIMENSIONAL EN LAS AMÉRICAS

REFERENCE MATERIAL ON MULTIDIMENSIONAL SECURITY IN THE AMERICAS

78º período ordinario de sesiones/ 78th Regular Session
Rio de Janeiro
Del 21 de marzo al 1 de abril –March 21 – April 1

(Documento preparado por el Departamento de Derecho Internacional)
(Document prepared by the Department of International Law)

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- Declaración sobre Seguridad en Las Américas, México 2003/Declaration on Security in the Declaración de Santiago: Conferencia Regional sobre Medidas de Fomento de la Confianza y de la Seguridad, 1995/Declaration of Santiago: Regional Conference on Confidence and Security-Building Measures, 1995
- Declaración de San Salvador: Conferencia Regional de San Salvador sobre Medidas de Fomento de la Confianza y de la Seguridad en Seguimiento de la Conferencia de Santiago, 1998/Declaration of San Salvador: San Salvador Regional Conference on Confidence-and Security-Building Measures in Follow-up to the Santiago Conference, 1998
- Declaración de Miami sobre Medidas de Fomento de la Confianza y de la Seguridad, 2003/Declaration of Miami on Confidence-and Security-Building Measures, 2003

II. Documentos Sobre Seguimiento / Documents on the Follow-up

- Seguimiento de la Conferencia Especial sobre Seguridad, México 2003:/Follow-up to the Special Conference on Security, Mexico 2003:
- Informe sobre las Medidas y Acciones Relacionadas con la Implementación de la Declaración sobre Seguridad en las Américas/Report on Measures and Activities Related to Implementation of the Declaration on Security in the Americas
- Reflexiones 2010 en Cumplimiento de la Declaración sobre Seguridad en la Américas/Observations 2010 in Furtherance of the Declaration on Security in the Americas

III. Instrumentos del Sistema Interamericano / Inter-American System Instruments

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Fuego, Municiones, Explosivos y otros Materiales Relacionados/Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials

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- Protocolo de Reformas al Tratado Interamericano de Asistencia Reciproca (TIAR) /Protocol of Amendment to the Inter-American Treaty of Reciprocal Assistance (Rio Treaty)
- Convención para Prevenir y Sancionar los Actos de Terrorismo Configurados em Delitos Contra las Personas y la Extorsión Conexa cuando estos tengan Trascendencia Internacional/Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance
- Convención Interamericana para Facilitar la Asistencia en Casos de Desastre/ Inter-American Convention to Facilitate Disaster Assistance
- Convención Interamericana Contra el Terrorismo/Inter-American Convention against Terrorism

IV. Lista de Medidas de Fomento de la Confianza y la Seguridad: Informes de los Estados Miembros sobre la Aplicación de Medidas de Fomento de la Confianza y la Seguridad Correspondientes al Período 1995-2005/ List of Confidence - and Security-Building Measures: Member States' Reports on the Application of Confidence- and Security-Building Measures for the Period 1995 to 2005

- Conferencia Regional sobre Medidas de Fomento de la Confianza y de la Seguridad de Santiago, 1995/ Regional Conference on Confidence- and Security-Building Measures in Santiago, 1995

V. Fomento de la Confianza y la Seguridad: Resoluciones de la Asamblea General/ Confidence and Security-Building Measures: General Assembly Resolutions

- Transparencia y Fomento de la Confianza y la Seguridad en las Américas/Transparency and Confidence-and-Security Building in the Americas
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- Fomento de la Confianza y de la Seguridad en las Américas/Confidence-and-Security Building in the Americas
- Cooperación para la Seguridad en el Hemisferio/Cooperation for Security in the Hemisphere
- Fomento de la Confianza y de la Seguridad en las Américas/Confidence-and-Security Building in the Americas
- Fomento de la Confianza y de la Seguridad en las Américas/Confidence-and-Security Building in the Americas
- Segunda Conferencia Regional sobre Medidas de Fomento de la Confianza y de la Seguridad/Second Regional Conference on Confidence-and-Security-Building Measures
- Medidas de Fomento de la Confianza y de la Seguridad en las Américas/Confidence-and- Security-Building Measures in the Americas
- Conferencia Regional de Seguimiento de la Conferencia de Santiago sobre Medidas de Fomento de la Confianza y la Seguridad/Regional Conference to Follow-up on the Santiago Regional Conference on Confidence-and-Security-Building Measures
- Medidas de Fomento de la Confianza y la Seguridad en las Américas/Confidence-and-Security-Building Measures in the Americas
- Medidas para el Fortalecimiento de la Confianza y de la Seguridad en la Región/Confidence-and-Security Building in the Region
- Información sobre Gastos Militares y Registro de Armas Convencionales/Information on Military Expenditures and Register of Conventional Arms
- Reunión de Expertos sobre Medidas de Fomento de la Confianza y Mecanismos de Seguridad en la Región/Meeting of Experts on Confidence-and-Security Building Measures in the Region

- Cooperación para la Seguridad y Desarrollo en las Américas/Cooperation for Security and Development in the Hemisphere

DOCUMENTOS DE REFERENCIA SOBRE SEGURIDAD MULTIDIMENSIONAL EN LAS AMÉRICAS

REFERENCE MATERIAL ON MULTIDIMENSIONAL SECURITY IN THE AMERICAS

I.- Declaraciones / Declarations

Declaración de Lima 2010
Español: http://www.oas.org/es/40ag/docs/dec_lima_esp.doc
Declaration of Lima, 2010
English: http://www.oas.org/en/40ga/docs/dec_lima_eng.doc

Declaración Sobre Seguridad en Las Américas, México 2003
Español: http://www.oas.org/csh/CES/documentos/ce00339s02.doc
Declaration on Security in the Americas, Mexico, 2003
English: http://www.oas.org/csh/CES/documentos/ce00339e04.doc

Declaración de Santiago: Conferencia Regional Sobre Medidas de Fomento de la Confianza y de la Seguridad, 1995
Español: http://www.oas.org/csh/spanish/mfcdeclsant.asp
Declaration of Santiago: Regional Conference on Confidence and Security-Building Measures, 1995
English: http://www.oas.org/csh/english/csbmdeclarsant.asp

Declaración de San Salvador: Conferencia Regional de San Salvador Sobre Medidas de Fomento de la Confianza y de la Seguridad en Seguimiento de la Conferencia de Santiago, 1998
Español: http://www.oas.org/csh/spanish/mfcdeclsans.asp
Declaration of San Salvador: San Salvador Regional Conference on Confidence-and Security-Building Measures in Follow-up to the Santiago Conference, 1998
English: http://www.oas.org/csh/english/csbmdeclarsansal.asp

Declaración de Miami sobre Medidas de Fomento de la Confianza y de la Seguridad, 2003
Español: http://scm.oas.org/doc_public/SPANISH/HIST_03/RE00218S04.doc
Declaration of Miami on Confidence-and Security-Building Measures, 2003
English: http://scm.oas.org/doc_public/ENGLISH/HIST_03/RE00218E04.doc

II.- Documentos Sobre Seguimiento / Documents on the Follow-up

Seguimiento de la Conferencia Especial Sobre Seguridad, México 2003
Página del Seguimiento: http://www.oas.org/csh/spanish/ces.asp
Follow-up to the Special Conference on Security, Mexico 2003
Official follow-up webpage: http://www.oas.org/csh/english/scs.asp

Informe Sobre las Medidas y Acciones Relacionadas con la Implementación de la Declaración Sobre Seguridad en las Américas:
Español: http://scm.oas.org/doc_public/SPANISH/HIST_10/CP23592S04.doc
Report on Measures and Activities Related to Implementation of the Declaration on Security in the Americas
English: http://scm.oas.org/doc_public/ENGLISH/HIST_10/CP23592E07.doc

Reflexiones 2010 en Cumplimiento de la Declaración Sobre Seguridad en la Américas
Español: http://scm.oas.org/doc_public/SPANISH/HIST_10/CP23636S05.doc
Observations 2010 in Furtherance of the Declaration on Security in the Americas
English: http://scm.oas.org/doc_public/ENGLISH/HIST_10/CP23636E10.doc

III.- Instrumentos del Sistema Interamericano / Inter-American System Instruments

Convención Interamericana sobre Transparencia en las Adquisiciones de Armas Convencionales
Español: http://www.oas.org/juridico/spanish/tratados/a-64.html
Firmas y ratificaciones: http://www.oas.org/juridico/spanish/firmas/a-64.html
Inter-American Convention on Transparency in Conventional Weapons Acquisitions
English: http://www.oas.org/juridico/english/treaties/a-64.html
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Introducción al Tratado (CIFTA): http://www.oas.org/dsp/espanol/cpo_cifta_armas.asp
Español: http://www.oas.org/juridico/spanish/tratados/a-63.html
Firmas y ratificaciones: http://www.oas.org/juridico/spanish/firmas/a-63.html **Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials**
Introduction to the Treaty (CIFTA): http://www.oas.org/dsp/english/cpo_cifta_armas.asp
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Convención para Prevenir y Sancionar los Actos de Terrorismo Configurados en Delitos Contra las Personas y la Extorsión Conexa cuando estos tengan Trascendencia Internacional
Español: http://www.oas.org/juridico/spanish/tratados/a-49.html
Firmas y ratificaciones: http://www.oas.org/juridico/spanish/firmas/a-49.html
Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance
English: http://www.oas.org/juridico/english/treaties/a-49.html
Signatories and Ratifications: http://www.oas.org/juridico/english/Sigs/a-49.html
Convencion Interamericana para Facilitar la Asistencia en Casos de Desastre
Español: http://www.oas.org/juridico/spanish/tratados/a-54.html
Firmas y ratificaciones: http://www.oas.org/juridico/spanish/firmas/a-54.html
Inter-American Convention to Facilitate Disaster Assistance
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Signatories and Ratifications: http://www.oas.org/juridico/english/sigs/a-54.html
Convención Interamericana Contra el Terrorismo
Español: http://www.oas.org/juridico/spanish/tratados/a-66.html
Firmas y ratificaciones: http://www.oas.org/juridico/spanish/firmas/a-66.html
Inter-American Convention against Terrorism
English: http://www.oas.org/juridico/english/treaties/a-66.html
Signatories and Ratifications:
http://www.oas.org/juridico/english/sigs/a-66.html

IV. Lista de Medidas de Fomento de la Confianza y la Seguridad: Informes de los Estados Miembros sobre la Aplicación de Medidas de Fomento de la Confianza y la Seguridad Correspondientes al Período 1995-2005/ List of Confidence- and Security-Building Measures: Member States' Reports on the Application of Confidence- and Security-Building Measures for the Period 1995 to 2005

Conferencia Regional sobre Medidas de Fomento de la Confianza y de la Seguridad de Santiago, 1995

Español: http://www.oas.org/csh/spanish/mfclist.asp

Regional Conference on Confidence- and Security-Building Measures in Santiago, 1995

English: http://www.oas.org/csh/english/csbmlist.asp

V. Fomento de la Confianza y la Seguridad: Resoluciones de la Asamblea General/ Confidence and Security-Building Measures: General Assembly Resolutions

Transparencia y Fomento de la Confianza y la Seguridad en las Américas
http://www.oas.org/csh/spanish/mfcres.asp

Transparency and Confidence-and-Security Building in the Americas
http://www.oas.org/csh/english/newresolut.asp

Transparencia y Fomento de la Confianza y la Seguridad en las Américas
http://www.oas.org/juridico/spanish/ag03/agres_1967.htm

Transparency and Confidence-and-Security Building in the Americas
http://www.oas.org/juridico/english/ga03/agres_1967.htm

Fomento de la Confianza y de la Seguridad en las Américas
http://www.oas.org/juridico/spanish/ag02/agres_1879.htm

Confidence-and-Security Building in the Americas
http://www.oas.org/juridico/english/ga02/agres_1879.htm

Fomento de la Confianza y de la Seguridad en las Américas
http://www.oas.org/juridico/spanish/ag01/agres_1801.htm

Confidence-and-Security Building in the Americas
http://int.juridico.oas.org/english/ga01/agres1801.htm

Cooperación para la Seguridad en el Hemisferio
http://www.oas.org/juridico/spanish/ag00/agres_1744_xxxo00.htm

Cooperation for Security in the Hemisphere
http://www.oas.org/juridico/english/agres_1744_xxxo00.htm

Fomento de la Confianza y de la Seguridad en las Américas
http://www.oas.org/csh/spanish/res1623.asp

Confidence-and-Security Building in the Americas
http://www.oas.org/juridico/english/ga-res99/eres1623.htm

Fomento de la Confianza y de la Seguridad en las Américas
http://www.oas.org/juridico/spanish/ag-res98/Res1566.htm

Confidence-and-Security Building in the Americas
http://www.oas.org/juridico/english/ga-Res98/Eres1566.htm

Segunda Conferencia Regional sobre Medidas de Fomento de la Confianza y de la Seguridad
http://www.oas.org/juridico/spanish/ag-res97/Res1495.htm

Second Regional Conference on Confidence-and-Security-Building Measures
http://www.oas.org/juridico/english/ga-res97/Eres1495.htm

Medidas de Fomento de la Confianza y de la Seguridad en las Américas
http://www.oas.org/juridico/spanish/ag-res97/Res1494.htm

Confidence-and- Security-Building Measures in the Americas
http://www.oas.org/juridico/English/ga-res97/eres1494.htm

Conferencia Regional de Seguimiento de la Conferencia de Santiago sobre Medidas de Fomento de la Confianza y la Seguridad
http://www.oas.org/juridico/spanish/ag-res96/Res-1412.htm

Regional Conference to Follow-up on the Santiago Regional Conference on Confidence-and-Security-Building Measures
http://www.oas.org/juridico/english/ga-res96/Res-1412.htm
Medidas de Fomento de la Confianza y la Seguridad en las Américas
http://www.oas.org/juridico/spanish/ag-res96/Res-1409.htm
Confidence-and- Security-Building Measures in the Americas
http://www.oas.org/juridico/English/ga-res96/res-1409.htm
Medidas para el Fortalecimiento de la Confianza y de la Seguridad en la Región
http://www.oas.org/csh/spanish/documentos/AGRES1288S.pdf
Confidence-and-Security Building in the Region
http://www.oas.org/csh/english/documents/AGRES1288E.pdf
Información sobre Gastos Militares y Registro de Armas Convencionales
http://www.oas.org/csh/spanish/documentos/AGRES1284S.pdf
Information on Military Expenditures and Register of Conventional Arms
http://www.oas.org/csh/english/documents/AGRES1284E.pdf
Reunión de Expertos sobre Medidas de Fomento de la Confianza y Mecanismos de Seguridad en la Región
http://www.oas.org/csh/spanish/documentos/AGRES1237S.pdf
Meeting of Experts on Confidence-and-Security Building Measures in the Region
http://www.oas.org/csh/english/documents/agres1237.pdf
Cooperación para la Seguridad y Desarrollo en las Américas
http://www.oas.org/csh/spanish/documentos/AGRES1179S.pdf
Cooperation for Security and Development in the Hemisphere
http://www.oas.org/csh/english/documents/AGRES1179E.pdf

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CJI/RES. 183 (LXXIX-O/11)

PEACE, SECURITY AND COOPERATION

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that resolution AG/RES. 2671 (XLI-O/11) requested the Inter-American Juridical Committee to conduct a report on progress made on the comparative analysis of the principal legal instruments of the inter-American system related to peace, security, and cooperation;

BEARING IN MIND the study presented by the rapporteur Dr. Mauricio Herdocia Sacasa on “Progress report on the instruments of the OAS related to peace, security and cooperation”, document CJI/doc.388/11,

RESOLVES:

1. To express its gratitude to the rapporteur Dr. Mauricio Herdocia Sacasa for his report.

2. To approve document CJI/doc.388/11 rev.1, “Report of the Inter-American Juridical Committee on the instruments of the OAS related to peace, security and cooperation”, which is attached to the resolution herein.

3. To transmit this resolution to the OAS Permanent Council for its due consideration.

This resolution was approved unanimously at the session held on August 5, 2011, by the following members: Drs. João Clemente Baena Soares, Hyacinth E. Lindsay, Jean-Paul Hubert, Fernando Gómez Mont Urueta, David P. Stewart, Ana Elizabeth Villalta Vizcarra, Fabián Novak Talavera, Guillermo Fernández de Soto, Mauricio Herdocia Sacasa and Freddy Castillo Castellanos.

CJI/doc.388/11 rev.1

INTER-AMERICAN JURIDICAL COMMITTEE REPORT. PROGRESS REPORT ON THE INSTRUMENTS OF THE OAS RELATED TO PEACE, SECURITY AND COOPERATION

I. Mandates and Scope

The mandate of the General Assembly contained in resolution AG/RES. 2611 (XL-O/10) commissioned the Inter-American Juridical Committee to use the existing resources to carry out a comparative analysis of the main juridical instruments of the inter-American system related to peace, security and cooperation. Later on, resolution AG/RES. 2671 (XLI-O/11) contained a request for a report on the progress made on the comparative analysis of the main juridical instruments of the inter-American system on the matter.

This analysis, according to the consideration voiced in the 77th regular session held in Rio de Janeiro, should go beyond comparative analysis and explore in depth the effectiveness, pertinence, actuality and new developments and challenges for security in the Americas, using as a reference not only the traditional treaties drafted in the early days of the organization in the middle of the 20th century, but also and especially the multidimensional and pluri-thematic vision contained in the Declaration on Security in the Americas dated 28 October 2003. The analysis should reflect the efforts made in sub-regional schemes such as SICA, UNASUR, CARICOM and CAN, among others, and show the new instruments and their recent follow-up mechanisms, such as the Inter-American Convention on Transparency in Conventional Weapons Acquisition (CITAAC), the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, as well as the Measures to Develop Trust, among others, and the close link between these matters and democratic development and cooperation among the States. The word "cooperation", as used in the mandate, should be understood as the expression of collaboration in building peace and security among the Member States of the OAS.

In general the analysis should not only present a general picture but consequently also consider the adequacy of the Inter-American legal instruments to face both traditional and new threats, preoccupations and other challenges to peace and security as well as opportunities for cooperation.

On 25 March the rapporteur presented a Progress Report on a Commented Indicative Scheme for Preparing the Report on the Inter-American Instruments related to Peace, Security and Cooperation (CJI/doc.378/11). The report herein details that indicative scheme.

II. Antecedents of the model of peace, security and cooperation

2.1 The Chapultepec Conference of 1945

The analysis starts at the Conference on Problems of War and Peace held in Chapultepec in 1945, where a scheme of security was proposed – and materialized in an extraordinarily rigorous way – that brought together this quadruple conjunction of the elements of peace, security, cooperation and development each with its own paradigm.

In this sense, peace, for example, produced the American Treaty on Pacific Settlement (Pact of Bogotá). The theme of security was dealt with in the Inter-American Treaty of Reciprocal Assistance (TIAR), while cooperation deserved several clauses both in the two treaties and in the very Charter that saw the birth of the Organization in 1948, conceived as the great conceptual and normative mark to articulate the work of the OAS. In the area of development the Inter-American Charter of Social Guarantees was produced. It is interesting to emphasize at once, however, that the conflicts took place more inside the States than among the nations, showing that the model of internal organization is also linked to regional conflicts and among neighboring nations.

2.2 The view of the resulting treaties

It should be pointed out that these instruments with which the system continues to live together with the Charter of the OAS are basically the result of this configuration constructed in 1945. The Pact of Bogotá is still in full effect, as are the Inter-American Treaty of Reciprocal Assistance and the Charter of 1948 with its reforms to update some provisions, which even led one author to qualify it as several Charters with different Member States (see appendix I). Nonetheless, at heart it is really with

the view of 1945 that one has to confront the repositioning resulting from the Special Conference on Security held in Mexico in 2003, which moved on to a new structural view of security in the Americas that may not have been strong enough to finally erect the juridical building that was eventually to succeed it.

The end of the Cold War saw the disappearance of the old coordinates of the view of security. In the Inter-American system a world had been structured on certain military and ideological premises. That is how the Inter-American Treaty of Reciprocal Assistance is built, as an instrument to contain ideological threats on the Continent which are even reflected on the sub-regional level with military organizations such as CONDECA in Central America. The end of the armed conflicts and the ceasing of the East-West polarization brought a new view of universal and inter-American security. Once the smoke of armed conflict had been blown away, there emerged a clear profile of the human dimension of these processes, beyond the number and reach of arms and military forces - to a certain extent a new world beneath the old umbrella of the model of security constructed in another time and with different references, but with many components fully in force and necessary that have been complementing, broadening and enriching it in the last sixty four years.

2.2.1 The Charter of the OAS

At the Ninth International American Conference held in Bogotá in 1948, in addition to the Charter that created the OAS, the following documents were adopted:

- The American Treaty of Pacific Settlement, also known as the "Pact of Bogotá " and
- The American Declaration of the Rights and Duties of Man.

The Organization of the American States (OAS) is set up as a governmental and regional international organization structured to create a system of peace and justice, foster solidarity among the American States, strengthen their collaboration and defend sovereignty, territorial integrity and independence. Among the proposals is enshrined that of consolidating peace and security in the Continent, preventing the possible causes of difficulties and ensuring peaceful solution to any controversies that arise among the Member States.

The founding Charter of the OAS, as the rector of inter-American relations, gave life to a labor that had been in effect since decades before through Hispano-American Congresses and Treaties of the 19th century and the American International Conferences that began in 1889.

Taking up again the earlier ideas of “solidarity democracy”, the original Charter formulates a transcendental innovation that will not only remain in later reforms but will also follow a constantly enriched and increasingly deep line by determining that “the solidarity of the American States and the lofty ideals that they pursue call for their political organization based on effective exercise of representative democracy” (article 5 of that time).

The pristine Charter already contains the fundamental mechanisms of the Consultative organ, which not only continues exactly the same but is used frequently (Article 39, original).

2.2.2 The Inter-American Treaty of Reciprocal Assistance (TIAR) and its amendment

Adopted within the logic of the Cold War, imbued with the confrontation of two separate blocks, the 1947 Inter-American Treaty of Reciprocal Assistance reproduces and broadens the fundamental idea that the armed attack by any State against an American State was tantamount to an attack against all the American States, thus developing the hypotheses both of conflicts with third extra-regional States as well as conflicts between two or more American States.

In 1975 the TIAR Protocol of Amendments was adopted, introducing, among other changes, a limited application between the TIARP Party States and a broader definition of aggression as of the famous United Nations Resolution No. 3314 (XXIX). The relationship between keeping peace and economic development, and the need to have a specific treaty on those issues, was expressed in the provisions contained in Article 11. Although this Protocol has obtained eight ratifications so far, it is still not in force.

The TIAR was first applied quite soon after being approved in 1947. Please see below a general overview with some of the cases in which the Treaty was invoked[1]:

a) The Treaty was invoked for the first time in 1948, when the Government of Costa Rica, based on the situation depicted in Article 6, denounced that Nicaraguan troops had invaded the country.

b) In 1950, the government of Haiti requested the action of the Organ of Consultation, pursuant to the provisions of Article 6 of the TIAR, on the grounds that the government of the Dominican Republic committed acts of intervention that presumably would affect its territorial integrity and that would represent a dangerous situation for the peace of the continent. The Dominican Republic, in turn, responded by accusing Haiti of threatening its security, and also requested action from the Organ of Consultation.

c) In 1954, ten OAS member states requested action from the Organ of Consultation, by virtue of Article 6 of the TIAR, on the "growing interventionist activity evidenced by the international communist movement in the Republic of Guatemala and the danger that this movement could represent for the peace and security of the continent". The Council then convened a meeting of the Organ of Consultation, which was nevertheless postponed, in view of the changes in the Guatemalan government.

d) In 1955 Costa Rica requested the application of the TIAR provision because "the Government of Nicaragua has in the past few months launched a systematic campaign against the Government of Costa Rica". Some days later the denunciation was that the territory was being invaded. An investigative commission was again appointed to study the denunciation and both governments were asked to abide by the provisions of the 1949 Friendship Pact, recommending all the States to improve their system for the control of unlawful trafficking of weapons. Finally, in January 1956, both countries signed an Agreement addressing the points under discussion, based on the provisions of the Friendship Pact.

e) In 1942, Ecuador and Peru signed in Rio de Janeiro the Protocol of Peace, Friendship and Borders. The enforcement of this Protocol is guaranteed by the United States, Brazil, Argentina and Chile. However, in 1955 Ecuador requested a meeting of the Organ of Consultation and accused Peru of concentrating troops on the border. The quick intervention of the guarantors meant that the Organ did not have to meet.

f) In April 1957 the Government of Honduras requested a meeting of the Organ of Consultation in view of the "repeated violations of the territory of the Republic of Honduras by the Government of the Republic of Nicaragua ".

g) In 1959 the Panamanian government requested a meeting of the Organ of Consultation and denounced that a group of foreigners from Cuba had entered the Panamanian territory to provide support to nationals engaged in the attempts to overthrow the government.

h) In June 1959, Nicaragua filed a denunciation that "it was being invaded by groups of rebels of several nationalities … using planes obtained in the Republic of Costa Rica ".

i) In 1960 the Government of Venezuela filed a denunciation before the Council against the Dominican Republic, accusing the government of intervention and aggression,

j) In 1961 Peru filed a note accusing Cuba of unlawful acts of the government against nationals and foreigners, as well as about "communist infiltration in other countries". Later on that same year the government of Colombia, pursuant to the provision contained in Article 6 of the TIAR, requested the convocation of a Consultation Meeting for similar reasons.

k) In 1962, Bolivia requested a meeting of the Organ of Consultation on the grounds that Chile intended to use and divert the course of the Lauca River, which would be an attack on its territorial integrity.

l) Also in October 1962, the "missile crisis" exploded. The United States, pursuant to the provisions of Article 6 of the TIAR, requested a meeting of the Consultation Organ on the grounds of "conclusive evidence that the Government of Cuba has allowed the use of its territory for the operation of offensive arms with nuclear capacity provided by extra-continental powers ".

[1] Arrighi, Jean Michel. "El papel de la OEA en la defensa de la democracia".

m) In April 1963, the Government of the Dominican Republic denounced the occupation of its Embassy in Haiti by police forces of that country.

n) In December 1963, Venezuela filed a denunciation before the Council of the Organization based on acts of intervention and aggression against the territory by the Government of Cuba.

o) In January 1964 Panama filed a denunciation against the Government of the United States of America accusing the troops stationed in the area of the Canal of entering the territory and clashing with the population, resulting in several civilian casualties.

p) In 1969, after a series of military clashes between Honduran and Salvadorian troops, both governments requested a meeting of the Organ of Consultation by application of the TIAR provisions.

q) In 1975, following a request of several countries, the Sixteenth Consultation Meeting of Ministers of Foreign Affairs was held. The meeting, acting as the Organ of Consultation of the TIAR, decided to allow the States, in accordance with their own interests and if they so wished, to normalize their bi-lateral relationships with Cuba.

r) In 1978, in conformity with Article 6 of the TIAR, the Government of Costa Rica requested a meeting of the Organ of Consultation to consider the threats posed by the Government of Nicaragua.

From all the above cases we see clearly that they refer to situations of tension or conflict among American nations, most of them referring to convocations from Central-American and Caribbean countries.

The last two convocations to the TIAR included the involvement of extra-regional States, as we will see below:

I. In 1982 in the case of the Malvinas Islands.

II. In 2001, in the case of the terrorist attacks in the US it was convoked both on the grounds of the Charter and the Rio Treaty (TIAR).

3.1 The Pact of Bogotá

The Pact of Bogotá practically revived the voices of the International Court of Justice. This instrument provided for a direct course from the inter-American system to the universal Court through two clauses. In the late 50s, Honduras and Nicaragua intervened for the first time in their provisions with the case of the Decision of the King of Spain.

Article 27 of the Charter of the OAS States that: “a special treaty will establish the proper means for resolving controversies and determine the procedures pertinent to each of the peaceful means so as not to leave any controversy among the American States without a solution”. This treaty is the above-mentioned American Treaty of Pacific Settlement (the Pact of Bogotá).

Since the first treaties of the 19th century and the early American Conferences, the vocation of the future inter-American system was evidently to produce rules related to the peaceful settlement of disputes, including the first Conventions on arbitration and special mechanisms to solve differences. The so-called Inter-American Peace System evolved towards the Pact of Bogotá, a single instrument of exceptional value that established the conquering of direct access to the International Court of Justice without the need for a declaration of complementary acceptance.

On various occasions the Pact of Bogotá has been invoked as a basis for accessing the International Court of Justice, and the jurisprudence of the latter has revealed the autonomous nature of its provisions with regard to the Optional Clause established in the Bylaws of the ICJ. Since 1957, when it lay asleep, the Pact woke from a long lethargy to the voices of the International Court of Justice. This was the basis of the jurisdiction in relation to the Case of the King of Spain[2]. The Pact has been cited a further 9 times since then as jurisdiction and competent instance [1986 (2), 1999 (1), 2001 (1), 2005 (1), 2008 (2), 2009 (1) and 2010 (1)] in an attempt to open the doors of the International Court of Justice.

[2] Both in the decision of the Council of the Organization of American States of July 5, 1957 as in the Washington Agreement between the respective Minister of Foreign Affairs of Honduras and Nicaragua on July 21 of that same year, it was agreed to settle the dispute for good through the American Treaty on Pacific settlement (Pact of Bogota)

On various occasions[3] the Court has been receptive to the voices of the Bogotá Pact by interpreting and positively clarifying its provisions in a harmonious, non-exclusive manner.

The latest cases presented before the Court show the Pact of Bogotá resurging with extraordinary force as a recurrent instance that has already been tested.

The Bogotá Pact has few ratifications, 14 in all. Nevertheless, the words of the eminent jurist Eduardo Jiménez de Aréchaga warn us *"not to measure the efficacy of these agreements on pacification by the frequency of their use, since their very existence in itself constitute a preventive function"*. Such efficacy also cannot be measured by the number of ratifications[4], because if the ratifying entities are States that share a border, then they themselves are possibly users of same.[5]

III. The multidimensional view of security

The first milestone of this scheme appears in the Declaration of Bridgetown. This pioneering instrument determines that security problems cannot be limited exclusively to the military sphere, but have to transcend to a multidimensional view. Of course, this view will be captured on the regional level through instruments such as the Framework Treaty on Democratic Security in Central America, or else the vision of democratic security in the Andean Community.

The initiatives were also powerful enough to remodel the old pattern. The Canadian position on the issue of human security will appropriately be reflected as a conceptual vision of the new model rather than as a legal instrument at the Summits of the Americas, and specifically after the 2003 Mexico Conference.

The multidimensional vision of security contributes to the consolidation of peace, integral development and social justice. It is based on democratic values, respect, the promotion and defense of human rights, solidarity, cooperation and respect for national sovereignty[6].

3.1 The Declaration of Bridgetown

The Declaration of Bridgetown: The Multidimensional Approach to Hemispheric Security - AG/DEC. 27 (XXXII-O/02) was adopted at the fourth plenary session of the 32nd regular session of the OAS General Assembly held on 4 June 2002 in Barbados.

The Declaration recognizes that security in the hemisphere encompasses political, economic, social, environmental and health aspects, and recommends the development of appropriate mechanisms for further cooperation and coordination in a targeted manner so as to address new threats and other multidimensional challenges of security in the hemisphere.

Accordingly, the traditional concept and approach have to expand the dimensions already covered in order to respond to new and non-traditional threats, including topics such as terrorism, drug trafficking, transnational organized crime, traffic of migrants, climate change, the problem of gangs, human trafficking, among others.

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[3] With concrete decisions of the Court in cases referring to Armed Border and Transborder Activities (Nicaragua versus Honduras) and the Territorial and Maritime Dispute in the Caribbean Sea (Nicaragua versus Colombia). It has also been invoked for the cases referring to the Arbitration of the King of Spain (December 23, 1906 - Nicaragua and Honduras); Border and Transborder Activities (Nicaragua v. Costa Rica); the Dispute on Navigation and Related Rights (Costa Rica versus Nicaragua); the Maritime Dispute (Peru/Chile) of January 16, 2008; the Aerial Herbicide Spraying (Ecuador v. Colombia) of March 31, 2008; Certain Questions referring to Diplomatic Affairs (Honduras versus Brazil) in 2009; and Certain Activities carried out by Nicaragua in the border area (CR versus Nic) in 2010.

[4] Only 14 States are Part of the Pact of Bogota, at the moment: Brazil, Colombia, Costa Rica, Chile, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Ecuador and Uruguay. Among the 15 originals States Parties, El Salvador has denounced it on November 26, 1973.

[5] Inter-American Juridical Yearbook. 1986. OAS General Secretariat, Washington D. C., 1987.

[6] Declaration on Security in the Americas. Especial Conference on Security, Mexico City, October 27-28, 2003. Approved in the Third Plenary Session of October 28,2003.

3.2 The Special Conference on Security in Mexico

The 2003 Special Conference on Security in Mexico was a very significant milestone, a turning point to see the issue of security from a multidimensional perspective, taking into account changes in both the global and hemispheric spheres and any subsequent new challenges for security issues.

As the rapporteur expressed in his previous report, several contributions were brought to the table in this conference. The first point is that there are new concerns to pay attention to, different from the traditional ones; secondly, the threats are diversified and interconnected. It is not only a multiplicity of threats, but how they are linked, interconnected to each other and how they reinforce each other and generate a much more complex picture than the simple sole dimensionality of the challenges we used to face in the past, for example, in the case of narcoterrorism. And thirdly, there is a multidimensional approach, including political aspects and here is included the theme of democracy, as well as the economic, social, cultural, environmental and health perspectives, among others. We are not talking about the former security model, but about a new multi-thematic, multi-faceted and multi-dimensional view of security which is expressed in this new scheme, though not necessarily translated into a legal instrument.

IV. Traditional threats and new threats to security and cooperation opportunities

4.1 Illicit trafficking of firearms, including light and small weapons

At the 41st Session of the General Assembly held in El Salvador, AG/RES. 2627 (XLI-O/11) identified the need to implement the United Nations instrument "International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons" (International Tracing Instrument / ITI), as well as cooperation on marking and tracing illicit firearms in the hemisphere.

Through resolution AG/RES. 2297 (XXXVII O/07) "Addressing the Illicit Trade in Small Arms and Light Weapons: Stockpile Management and Security", States are invited to promote the transparent management of small arms and light weapons, as well as the destruction of illegal weapons.

4.2 Transparency in the procurement of armaments

One of the objectives of the OAS is to promote transparency in arms acquisitions, pursuant to the relevant resolutions of the UN and the OAS on the matter and to invite the States that have not yet done so to consider signing or ratifying, as the case may be, the Inter-American Convention on Transparency in Conventional Weapons Acquisitions (CITAAC).

The CITAAC encourage the transparent purchase of weapons by States and emphasizes the need for dialogue and cooperation among nations so as to get acquainted with such purchases, thereby promoting measures of trust and understanding

4.3 Measures to promote confidence and security

The measures for confidence-building have been endorsed by meetings in Chile, El Salvador and Miami, and were endorsed at the OAS General Assembly as an important achievement that needs to be further strengthened to create better conditions for security and peace in the Hemisphere.

Considerable progress has been made in implementing measures to build confidence and security among the American nations, resulting in a consolidated list of measures, totaling 36 so far. The OAS has played the role of a facilitator and coordinator in the implementation of these measures, which represent an important contribution designed to enhance transparency, understanding and the strengthening of security.

4.4 Prevention of conflicts and settlement of disputes, including the issue of the International Court of Justice

The Charter of the OAS, the Pact of Bogotá and the Rio Treaty consecrate the use of mechanisms such as the Consultation Meeting and the possible invocation of the International Court of Justice to overcome the challenges of tension or conflict and settle crises by peaceful means accepted and implemented at the regional and global level.

The 1993 Declaration of Managua for the Promotion of Democracy and Development expressed the conviction that the Organization's mission is not limited to the defense of democracy in

cases of breaches of its fundamental values and principles; it also requires ongoing and creative work to consolidate democracy, as well as a constant effort to prevent and anticipate the real causes of the problems that affect the democratic system of government. This task should be completed together with the mandates to the Secretary General of the Florida General Assembly for the development of certain initiatives in this area.

4.5 The social dimension of security, peace and cooperation, including poverty, exclusion and inequality

The 2003 Declaration on Security in the Americas includes a clear reference to the need to strengthen cooperation mechanisms and actions to urgently address situations such as extreme poverty, inequality and social exclusion through continued public policy actions enforced by governments, as is deemed appropriate. Some of these actions must be aimed at achieving social and economic development in the domestic sphere through investment and foreign cooperation.

The OAS has indicated that these problems make people vulnerable, which compromises human safety and therefore tends to weaken democratic systems of nations, calling for a commitment to strengthen cooperation mechanisms in these areas.

4.6 Control, limitation and non-proliferation of weapons of mass destruction

Since the 2003 Declaration of Special Security, the importance of continuing to promote the control, limitation and non-proliferation of weapons of mass destruction to prevent an arms race in the hemisphere has remained emphatic. It is also acknowledged that this is a fundamental issue for the maintenance of peace and security, without compromising the capacity to meet the needs of defense and security.

It is of utmost importance for the OAS to create a suitable environment for the control, limitation and non-proliferation of weapons of mass destruction by means of measures of confidence-building such as the presentation of national inventories of weapons and transparency in the acquisition of heavy weaponry.

4.7 Reducing expenditure on armaments and transferring or earmarking resources for development

One of the essential purposes of the OAS, since its Charter was drawn up[7], has been to achieve an effective limitation of conventional weapons that allows more resources to be allocated to the economic and social development of the Member States.

The Lima Declaration encourages each Member State to devote more resources made available from arms spending in order to strengthen the economic development of its people.

4.8 Enhanced cooperation

As of the Special Conference on Security (Mexico, 1993), there has been a strengthening of the mechanisms for cooperation among States, resulting from instruments agreed on to deal with traditional and non-traditional threats and challenges facing societies today.

In addition, the Lima Declaration of 2010 took up this theme and the nations pledged to strengthen inter-American cooperation for the "integral development and, in this context, reinforce cooperation mechanisms and actions to urgently address extreme poverty, inequality and social exclusion."

Cooperation on security and peace issues is a cornerstone for mutual support among nations to enable them to improve their respective security situations through technical, financial and professional cooperation.

4.9 The fight against terrorism

The Inter-American Convention against Terrorism and the Convention to Prevent and Punish Acts of Terrorism in the Form of Crimes against Persons and Related Extortion of International Significance has already been signed. In both Conventions, Member States undertake to adopt measures and strengthen cooperation between them to prevent crimes involving terrorist attacks, in

[7] Article 2, item h. Charter of the Organization of American States, 1948.

accordance with the provisions of both Conventions. Intensified efforts are required to ratify both Conventions, which at the moment involve 24 and 18 Member States respectively.

4.10 The fight against impunity and corruption

The Inter-American Convention against Corruption was approved for the purpose of promoting and strengthening the development by Member State of the necessary mechanisms to prevent, detect, punish and eradicate corruption, as well as to promote, facilitate and regulate cooperation among States to ensure the effectiveness of measures and appropriate actions. This convention has had the highest approval rate among inter-American countries: an impressive figure of 33 ratifications.

The Conference of Member States on the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) was also set up for States to report to the Committee and submit an annual country report on internal progress and challenges in implementing the Convention.

4.11 Culture of peace and peace education

The OAS Fund for Peace was created, designed to favor a culture of effective peace among the populations, including formal and informal education.

4.12 Safety and the environment

These topics are closely linked. Climate change makes humans more vulnerable than ever because it affects the quality of life of residents and can become a threat to human life itself. Natural disasters and those caused by the activities of man and other security issues must be effectively addressed through a multi-disciplinary and multi-dimensional approach.

4.13 Transnational organized crime

There is a Hemispheric Plan against Transnational Organized Crime was devised 4 years ago. However, it is necessary to intensify efforts on this important, pressing subject, given today's high levels of insecurity in the hemisphere and its impact on democratic institutions, which find themselves undermined and invaded. A joint effort is necessary in combating this scourge. In addition, it seeks to promote the implementation of the United Nations Convention against Transnational Organized Crime (the Palermo Convention) and its three protocols by Member States of the Organization of American States (OAS)[8]. It might be important to consider the drafting of an American Convention on this matter.

As far as the crime of kidnapping[9] is concerned, the General Assembly held in 2010 in Peru referred to the need for greater cooperation at the hemispheric level and again took up the topics addressed during the First Hemispheric Conference on the Fight against Kidnapping held in Bogotá, Colombia, on 12-13 May, 2010, including prevention, prosecution, punishment and elimination of the crime of kidnapping and the necessary care for victims and their families.

4.14 Combating drug trafficking

The fight against drug trafficking is a vital element, due to its capacity of expansion and its connection with other scourges. In this context it is important to stress the concept of shared and differentiated responsibilities among consumer and transit countries and in view of their different stages of development. The 2011-2015 Action Plan of the Hemispheric Drug Strategy[10] was created as an instrument of policy to govern the collective effort.

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[8] Execution of the Hemispheric Plan of Action Against Transnational Organized Crime and Strengthening of Hemispheric Cooperation AG/RES. 2379 (XXXVIII-O/08) (Approved at the Fourth Plenary Session of June 3, 2008.

[9] AG/RES. 2574 (XL-O/10) "Hemispheric Cooperation against the crime of kidnapping and assistance to victims". Approved at the fourth plenary session held on June 8, 2010. Fortieth Regular Session, Lima, Peru.

[10] Approved by the Inter-American Drug Abuse Control Commission (CICAD) at the fortieth regular session held on May 4-6. 2011 in Paramaribo, Surinam.

The main purpose of this Action Plan is to support the implementation of the Hemispheric Drug Strategy, which involves strengthening institutions, reducing demand and supply, installing control measures and fostering international cooperation.

The Multilateral Evaluation Mechanism (MEM) is a very important tool for exchanging information and experiences as well as analyzing the measures being taken to strengthen its effectiveness.

4.15 Traffic of persons

The OAS does not have a legal instrument to address this issue, but in recent years has been following up on issues such as slavery, forced labor and slavery-like practices, exploitation of prostitution, traffic of women for matrimonial purposes, sex tourism, child pornography, pedophilia and other forms of sexual exploitation.

The second meeting of experts on this issue was held in 2009, when the spirit of collaboration and cooperation that should exist among states was quite evident, as well as their efforts to address and jointly coordinate the approach to be given to the issue of traffic of persons.

The Secretariat of Multi-dimensional Security is implementing a regional strategy to follow up on the efforts of Member States in exchanging information and promoting policies for the prevention and prosecution of criminals and the identification and protection of victims of traffic, especially women, adolescents and children.

4.16 Traffic of migrants

The constant movement of migrants from one country to another is being used by gangs or crime-related groups to kidnap and detain migrants, therefore affecting their safety and integrity, and even murdering those who for economic, social or political reasons leave their country of origin in search of better opportunities.

To date, the OAS has no legal instrument on this issue. This topic has been addressed in some of the Organization's declarations and resolutions (migrant workers and their families) approved at regular or special sessions, as well as by the Commission on Hemispheric Security. However, the migration issue is one that has gained a strong security dimension and the instruments of protection need to be updated and strengthened to enhance the Program for the Promotion and Protection of Human Rights of Migrants, including Migrant Workers and their Families AG/RES. 2141 (XXXV-O/05).

4.17 Gangs

Resolution AG/RES. 2541 (XL-O/10)[11], entitled "Regional Strategy for the Promotion of Inter-American Cooperation in Dealing with Criminal Gangs: Tips and Recommendations" deals with the prevention, rehabilitation and social re-integration of gangs and the enforcement of legislation on the issue.

It is urgent for the OAS, as well as for the States most affected by this non-traditional security phenomenon, to consider a legal instrument taking due account of the social and human elements involved, including the need to continue implementing policies and actions for the prevention, rehabilitation and social re-integration of gang members in order to ensure a comprehensive approach in combating the problems caused by the action of gangs. This question demands reinforced cooperation efforts.

4.18 Cyber crime

Cyber crime is a new modern challenge to national and hemispheric security that impacts the stability of States. The big problem is that this type of crime circumvents inter-American legislations or efforts because of the rapid growth of cybernetics.

The creation and implementation of a Hemispheric Plan for Cyber Security is needed. In this sense the Caribbean countries have made progress in devising a Regional Plan.

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[11] Approved at the fourth regular session held on June 8, 2010, within the framework of the Fortieth Ordinary Session, Lima, Peru.

The Secretariat for Multi-dimensional Security provides technical assistance to OAS Member States to help them develop national teams to respond to incidents involving cyber security (CSIRTs) and to promote the approval of national policies and strategies to strengthen security in the cyber realm.

V. The instruments of peace, security and cooperation in the inter-American system: objectives, mechanisms, and comments

5.1 TIAR

The American Conference for the Maintenance of Peace and Security in the Continent adopted the Inter-American Treaty of Reciprocal Assistance (TIAR), providing a framework for joint defense should any American nation suffer an armed attack from another American nation or from third countries.

Its main objective is to ensure peace by all means, to provide effective reciprocal assistance in addressing the challenge of armed attacks against any American State and to avert threats of aggression against any of them.

In 1975 a Protocol was added to the Rio Treaty, updating the definition of aggression by taking up the resolutions of the nations and also establishing certain limits to its scope vis-à-vis the TIAR Member States, only as regards the original American sphere. This Protocol has not yet come into effect.

As we have already seen, the TIAR has been invoked by American States on many occasions to resolve complex situations and conflicts among them, and on two occasions involving States outside the region.

In recent times the Committee on Hemispheric Security and the Declaration on Security have expressed the need for a thorough review of the Rio Treaty to bring principles into line with the new demands and challenges in the areas of security, peace and cooperation in the countries of the American hemisphere. This is still a pending challenge.

5.2 Charter of the OAS and its Protocols of Amendment

Since its inception in 1948, the OAS Charter has been amended four times to provide it with greater efficiency, effectiveness and acceptance throughout the American hemisphere.

The first of these amendments, adopted in Buenos Aires in 1967 and in force since 1970, included extensive changes to the structure of the Organization. The second amendment, adopted in Cartagena de Indias in 1985 and in force since 1988, expanded the scope of the Permanent Council and the Secretary General. The third one, adopted by the 1992 Protocol of Washington and in force since 1997, introduced norms on protection of democratic standards. Finally, the amendment to the Chart adopted in Managua in 1993, in force since 1996, reformulated part of the organizational structure to strengthen the enforcement of policies targeting the integral development of Member Countries.

These four amendments adapted the Charter of the Organization to the changes that occurred in the inter-American system and to the demands and needs of Party States by means of a process that allowed adopting complementary instruments, adapting institutions and bodies and developing new mandates.

The OAS Charter provides that reforms come into force when ratified by two thirds of the Member States, but are only binding for those which have ratified the Convention (Articles 140 and 142 of the Charter), unlike the Charter of the United Nations.

As noted by Jean Michel Arrighi, reforms have different levels of ratification (see Appendix) and there is no uniformity in the process of adhesion to these important amendments to the Charter. This in turn has allowed greater flexibility despite a noticeable dispersion of players, since different States are party to “different” Charters.

5.3 Pact of Bogotá

The Treaty establishes that disputes arising between American states have to be settled by peaceful means and establishes the necessary procedures. These procedures are the good offices and

mediation, investigation and conciliation, arbitration, and finally resort to the International Court of Justice.

The provisions of the Pact of Bogotá and the statements under the optional clause obviously represent two different ways to access the Court's jurisdiction, but they are by no means mutually exclusive[12]. On the contrary, the International Court of Justice has sought to provide a harmonious interpretation to its provisions so that they feed from the same spirit expressed in the case of the Electricity Company in the sense of "opening new paths of access to the Court."[13]

An Inter-American Court of Justice?

Though not new, this idea has been taken up by the Secretary General of the OAS, José Miguel Insulza, and in the Inter-American Juridical Committee by one of its former members, Dr. Eduardo Vio Grossi.

In fact, during the 5th International American Conference it was agreed:

"... To submit to the Commission of Jurists the project presented by the Delegation of Costa Rica concerning the creation of a Permanent Court of American Justice ..."[14]

Later on, at the 8th International Conference of American States it was agreed that:

"it is the firm purpose of states in the American Continent to set up an American Court of International Justice ..."[15]

The Juridical Inter-American Juridical Committee recalled in 1993 "that the co-rapporteurs, Dr. Jorge Reinaldo A. Vanossi and Manuel A. Vieira presented at the August 1991 regular session a "Draft Declaration of the Juridical Committee on the establishment of an Inter-American Court of Justice, including a Criminal Panel"[16]

Long afterwards, the idea would again be re-launched by the OAS Secretary General himself, in the 2005-2006 Annual Report, indicating that:

> *"... an institution that was proposed but never materialized was an Inter-American Court of Justice ... the International Court in The Hague was established as successor to the Permanent Court. At that time the American States amounted to almost 50% of the United Nations and therefore with great weight in the new Court ... Now the situation has changed completely. The weight of the American States is significantly lower in the Court and perhaps they may be able to reconsider the possibility of a regional Court that would complement properly the current American system. We may be nearing the "opportunity" envisaged in 38, in that it is well worth examining in our specialized agencies "*[17]

Different approaches are for and against this idea. On the one hand, those who express a prudent reserve, arguing that it is better to preserve the central figure of the International Court of Justice to which American countries have often resorted and avoid institutional fragmentation and the proliferation of courts. It has also been argued that there is no guarantee that States that have not adopted the optional clause of acceptance of the jurisdiction of the Court are more inclined to do so for an Inter-American Court and that the same instruments of the inter-American system, such as the

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[12] Ibid, paragraph 136.

[13] Electricity Company of Sofia and Bulgaria (Belgium v.Bulgaria), Judgment, 1939, PCIJ, Series A/B No. 77, p. 76.

[14] 14th session of the V American International Conference, held on May 3, 1923. Resolution entitled "Consideration on the best means to enforce more widely the principle of judicial or arbitral settlement between the Republics of the American Continent." No. 58 of the Final Minutes.

[15] Eighth International American Conference, held on December 22, 1938. Declaration on the Inter-American International Court of Justice.

[16] Resolution CJI/RES. II-21/93 of August 25, 1993, entitled "Resolution on the Topic on Creation of an Inter-American Criminal Court".

[17] Secretary General. OAS/Ser.D/III.56 in: *Legal Themes of the 2005-2006 Annual Report of the OAS Secretary General.*

Pact of Bogotá, provide for recourse to the International Court of Justice, as an integral and indivisible part of its procedures.

The supporters of the initiative have indicated that there is no court in the inter-American system with extensive jurisdiction available to all OAS Member States without distinction. It has also been argued that the existence of certain principles and rules within the inter-American order would likely be better understood and applied by its own courts in the region, not to mention the reduction of costs and resources that this might entail. Discussions in the Committee are still open in relation to this important initiative, which would only be realized by an amendment to the OAS Charter. Interpreting the OAS Charter and settling disputes among OAS Member States have been regarded as potential functions of the new Court.

5.4 American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials (Consultative Committee on Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (CIFTA)

The CIFTA, adopted on November 13, 1997, is the first binding treaty on the subject. Thirty 30 States have ratified it so far.

The purpose of this Convention is to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials and to promote and facilitate cooperation and exchange of information and experiences among Party States on the matter.

The Convention currently has a Working Plan for the years 2011-2012, which provides for guidelines on which the CIFTA will work, such as model legislation in the areas already defined, implementation of provisions, exchange of information, tagging of guns, management and destruction of stockpiles, permits or export licenses, import and transit and international cooperation activities.

5.5 Inter-American Convention on Transparency in Conventional Weapons Acquisitions

The purpose of the Convention, which was adopted in 1999, is to provide a fuller contribution to regional openness and transparency in the acquisition of conventional weapons by exchanging information on such acquisitions, in order to build confidence among States in the Americas.

Party States shall report annually to the depositary on their imports and exports of conventional weapons in the previous calendar year, providing information, in the case of imports, about the exporting State, and the amount and type of imported conventional weapons. In the case of exports, they will have to provide information on the importing State, and the amount and type of conventional weapons exported. Any State Party may supplement the information provided with any additional comment deemed relevant, such as the designation and model of conventional weapons. Only 15 States have ratified this Convention.

5.6 Inter-American Convention against Terrorism and the Inter-American Committee against Terrorism (CICTE)

The Convention aims to prevent, punish and eliminate terrorism. To this end, Party States undertake to adopt the necessary measures and strengthen cooperation between them in accordance with the provisions of this Convention.

Party States shall hold periodic meetings of consultation, as appropriate, to facilitate full implementation of the Convention, including consideration of related matters of interest identified by the Party States.

If not already done, each Party State shall establish legal and administrative measures to prevent, combat and eradicate the financing of terrorism and to ensure effective international cooperation in this regard.

In 1999, the General Assembly endorsed the recommendations and decisions contained in the Mar Del Plata Commitment and the CICTE was established through resolution AG/RES. 1650 (XXIX-O/99).

The events of September 11, 2001 resulted in the adoption of a new approach to inter-American efforts against terrorism. On September 21, 2001, during the XXIII Meeting of Consultation of

Foreign Ministers, Ministers adopted the Resolution on Strengthening Hemispheric Cooperation to Prevent, Combat and Eliminate Terrorism (RC.23/RES.1/01).

The main purpose of the Inter-American Committee against Terrorism (CICTE) is to promote and develop cooperation among Member States to prevent, combat and eliminate terrorism, in accordance with the principles of the OAS Charter, the American Convention against Terrorism and with full respect for the sovereignty of countries.

5.7 Inter-American Drug Abuse Control Commission (CICAD) and the Multilateral Evaluation Mechanism to advance the fight against drug production, trafficking and consumption of narcotic drugs and psychotropic substances and related crimes

The CICAD, created in 1986 by the OAS General Assembly, is the forum addressing the drug problem. It was established to develop a drug strategy in the continent and to support the institutional strengthening of our countries, in addition to promoting joint solutions and allowing multilateral evaluation mechanisms to track progress made by countries, both individually and collectively.

The primary mission of the CICAD is to strengthen the human and institutional capacities of Member States to reduce the production, trafficking and illicit use of drugs.

It has a Multilateral Evaluation Mechanism (MEM), which was proposed at the Second Summit of the Americas in 1998, to perform specific actions such as to "continue developing national and multilateral efforts to achieve full implementation of the Anti-Drug Hemisphere Strategy and strengthen this alliance based on the principles of respect for the sovereignty and territorial jurisdiction of the States ... "

The MEM is a system for evaluating public policies and actions developed by the OAS Member States, participating in assessing anti-drug efforts and progress made by their partners, based on standardized indicators and a common questionnaire. The countries' responses are evaluated by a group of government experts, who also propose recommendations.

5.8 Inter-American Convention against Corruption and its Follow-up Mechanism

The Convention was adopted in 1997 with the following purposes: To promote and strengthen the development by each of the Party States of the necessary mechanisms to prevent, detect, punish and eradicate corruption, and to promote, facilitate and regulate cooperation between Party States to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the exercise of public functions and acts of corruption specifically related to such activities.

It consists of a Mechanism for Following Up on the Implementation of the Inter-American Convention against Corruption (MESICIC), through which Party States submit annual progress and compliance reports on the Convention. The continued work of the expert committee of the MESICIC is highly important, as well as the implementation of the content of the convention within each country, in order to further strengthen the exchange of experiences and good practices in implementing the convention, plus the existing cooperation and action plans to support the enforcement of the Convention and the participation of civil society.

5.9 Measures to promote trust (Declaration of Santiago and San Salvador and the Miami Consensus)

The Measures of Confidence and Security were established after the Regional Conference on the Promotion of Confidence and Security held in Santiago, Chile in November 2005. The adoption of these measures has contributed to transparency, mutual understanding and regional security.

An innovative example was presented by the Central American countries through the Central American Security Commission, where the measures discussed and adopted helped to strengthen the climate of security and confidence.

Later on, the San Salvador Regional Conference on Measurement Confidence and Security, a follow-up on the 1998 Conference of Santiago de Chile, reaffirmed "the full force of the Declaration of Santiago and expressed willingness to continue the process of enhancing confidence and security in the Hemisphere."

The 2003 Miami Consensus on Confidence and Security Measures follows the regional conferences of Santiago and San Salvador to evaluate their implementation and to make recommendations to the Special Conference on Security.

There is a consolidated list of Measures of Confidence and Security (MFCS) to be reported in accordance with the OAS resolutions (adopted at the meeting held in January 15, 2009), which consists of 36 measures that have been built according to the recommendations of the conferences of Santiago, San Salvador and the Miami Consensus.

5.10 Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)

The Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco) was adopted in Mexico City on 14 February 1967. It has two Additional Protocols.

The Treaty of Tlatelolco has become the model for the establishment of other nuclear-weapon-free zones in different regions of the world such as the South Pacific (Treaty of Rarotonga), Southeast Asia (Treaty of Bangkok), Africa (Treaty of Pelindaba) and Central Asia (Treaty of Semipalatinsk). Once in force, these will cover more than half of the world's countries and all the territories in the Southern hemisphere.

The Declaration on Security in the Americas (2003) states that the establishment of the first nuclear-weapon-free zone in a densely populated area through the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco) and its protocols constitutes a substantial contribution to international peace, security and stability.

5.11 Committee on Hemispheric Security

The role of the Committee on Hemispheric Security is crucial in articulating all these issues concerning security and involving both traditional and non-traditional or new threats.

As stated in paragraph 43 of the Declaration on Security in the Americas, the Committee on Hemispheric Security is the coordinating body for cooperation among the organs, agencies, entities and mechanisms of the Organization related to the various aspects of security and defense in the hemisphere, respecting the mandates and areas of their duties, to ensure the implementation, evaluation and monitoring of the Declaration on Security in the Americas.

Similarly, the Committee on Hemispheric Security is in charge of maintaining the necessary liaisons with other subregional, regional and international institutions and mechanisms related to the various aspects of security and defense in the hemisphere, respecting the mandates and areas of their powers to achieve the enforcement, evaluation and monitoring of the Declaration on Security in the Americas.

For the years 2010 and 2011, the mandates entrusted to the Committee on Hemispheric Security include monitoring the Special Conference on Security, Disarmament and Nonproliferation in the hemisphere, supporting the work of the Inter-American Committee against Terrorism, making recommendations to the Annual Report of the Inter-American Drug Abuse Control Commission (CICAD) on the Evaluation Mechanism of CICAD, following up on the meetings of Ministers Responsible for Public Security in the Americas, following up on the regional strategy for promoting inter-American cooperation for the treatment of criminal gangs and monitoring the work plan against the traffic of persons in the Western hemisphere.

Other issues such as anti-personnel mines, transparency in arms acquisitions, hemispheric cooperation against the crime of kidnapping and assistance to victims, promotion of confidence- and security-building in the Americas, and security concerns in small insular Caribbean states are included in the agenda of the Committee on Hemispheric Security.

5.12 OAS Secretariat for Multidimensional Security

The OAS Secretariat for Multidimensional Security, created on December 15, 2005, derives from the Declaration on Security in the Americas which re-launched the multi-dimensional vision of security and the value of man-centered security, a return to the tenets of the Declaration of Bridgetown. It also springs from the 2004 Special Summit of the Americas in Monterrey, México, whose Declaration of Nuevo León reaffirmed the principles of the Declaration on Security in the

Americas. The Secretariat, organized around the executive office of the Secretary for Multi-dimensional Security, comprises four departments: Public Safety, Security and Defense, Executive Secretariat of the Commission (CICAD) and the Executive Secretariat of the Inter-American Committee against Terrorism (CICTE).

The Secretariat for Multi-dimensional Security encourages collaboration in two ways: among the OAS Member States and between them and the American system and other international bodies. The Secretariat plays a major role in promoting cooperation and strengthening the skills and capacities of States to develop activities that allow them to successfully face the challenges of security, allowing for comprehensive evaluation, development of prevention actions, policies and mechanisms to respond effectively to the challenges in terms of safety.

The Secretariat serves as the executive technical secretariat for the Meeting of Ministers of Public Security of the Americas, the Conference of Defense Ministers of the Americas, the Inter-American Commission for Drug Abuse Control and its instrument of Multilateral Evaluation Mechanism, as well as for the American Committee against Terrorism, the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, the Hemispheric Plan against Transnational Organized Crime, and the Inter-American Convention on Transparency in the Acquisition of Conventional Arms. The Secretariat also manages the Assistance Program against Anti-personnel Mines.

It has an Inter-American Observatory on Citizen Safety that collects official information provided by OAS Member States and by other international organizations. It therefore serves as a reference tool on trends in crime, violence and judicial systems in the countries of the Americas, as well as on public security policies.

5.13 Meetings of Consultation of Ministers of Foreign Affairs

Article 61 of the Charter of the OAS allows convening the Meeting of Consultation of Foreign Ministers as a consultative body in order to "consider problems of an urgent nature and of common interest to the American States."

Any Member State of the Organization may request the Permanent Council to convene the Meeting of Consultation through Article 62.

As shown, the Charter of the OAS is broader in scope than the Rio Treaty, covering as it does both general topics of interest and hypothetical conflicts. It also allows greater participation in the decision-making process because the members of the Charter outnumber those who are bound by the TIAR. In this regard it should be recalled that the TIAR also has its own Consultative Body, though the actors are different.

The Consultation Meeting has also addressed conflicting situations within countries or between States. Among the best known cases is the establishment of an inter-American force in 1965.

The activities of the Consultative Meeting of Foreign Ministers, whether in the context of the Charter or of the Rio Treaty, have caused considerable controversy and are performed against the backdrop of relationships - not always friction-free - between the peace and security mechanisms on the regional and universal levels. Twenty-six Consultative Meetings have been held to date.

The Meeting of Consultation can be convened, according to circumstances, through the Charter of the OAS or through the Rio Treaty, and so it has been in practice. Moreover, States can follow both paths simultaneously, as, for example, on the occasion of the terrorist attacks against the United States of America.

The latest applications based on the Charter are the cases of Ecuador that led to the realization of the 25th Meeting of Consultation alleging violation of its territory, and Costa Rica, that alleged invasion of its territory, which led to the 26th Meeting of Consultation of Ministers of Foreign Affairs of the OAS. The Consultation Meeting considered and approved the actions in a Report of the OAS Secretary General on the situation.

5.14 Assistance Program against antipersonnel landmines

In 1992 the Organization of American States created the Assistance Program for Demining in Central America (PADCA) in response to requests from Central American States affected by the scourge of landmines.

The Program expanded its support and in 1998 became a Comprehensive Action Program Against Antipersonnel Mines (AICMA), in charge of the same main tasks as originally determined, but also comprising actions directed towards the recovery of land damaged by explosive devices and landmines. This is a multilateral program which, in addition to the countries supported, gathers together a considerable amount of donors and contributing nations, international organizations and nongovernmental entities, including the Inter-American Defense Board (IADB).

There are still great challenges to overcome before reaching the goal of making the Americas the first mine-free zone in the world, as expressed by the OAS General Assembly in Resolution AG/RES. 2559 (XL-O/10).

VI. Sub-regional experiences in peace, security and cooperation

6.1 SICA

The Framework Treaty on Democratic Security in Central America is a pioneer in advancing this issue for the Americas. The influence of this model was highlighted extensively during the Special Conference on Security held in Mexico on 27 and 28 October 2003, noting "the substantive contributions of the Central American Integration System to hemispheric security, as well as progress in the development of its Democratic Security Model."[18]

At the International Conference in support of the Central American Security Strategy, held in Guatemala on 22-23 June 23, 2011, the guidelines and projects of the Strategy were disclosed to the international donor community.

The OAS, through resolution AG/RES. 2626 (XLI-O/11) entitled "Conference in Support of the Central American Security Strategy", recognizes the efforts of the American States in updating the costs of their Security Strategy.

6.2 UNASUR

The UNASUR has advanced in drawing up an international peace, security and cooperation Protocol, which includes proposals submitted by Peru, regarding a Protocol of Peace; by Chile, regarding a South American Security Architecture, and by Ecuador, regarding a Code of Conduct.

So far, progress has been made in organizing a document designed to implement the framework for relations between Member States, the conduct to be followed on military matters and the adoption of a solid base of principles.

6.3 CAN

The issue of Security and the Promotion of Confidence is based on the "Lima Commitment: Andean Charter for Peace and Security and the Limitation and Control of Expenditure on Foreign Defense" held in Lima (June 2002). The agreements are aimed at defining an Andean Common External Security Policy, characterizing a Peace Zone in the Andean Community, limiting military spending to direct those resources to social investment, and intensifying cooperation in the fight against terrorism and illicit arms-trafficking, among others[19].

Also, through Decision 552 of June 2003[20], the "Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All Its Aspects" was created. Decision 552 establishes a comprehensive strategy against illicit trade in small arms and light weapons, considering

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[18] Herdocia, Mauricio. “Desarrollo e Influencia del Modelo de Seguridad Democrática de Centroamérica”. Paper presented at the Regional Forum on “Democratic Governance and democratic security in Central America: state-civil society cooperation strategies”. Managua, Nicaragua, 1- 4 February, 2005.

[19] http://www.comunidadandina.org/exterior/seguridad.htm

[20] http://www.comunidadandina.org/exterior/seguridad.htm

the links that this type of traffic maintains with drug trafficking, organized crime, corruption and terrorism.

6.4 CARICOM

The Treaty on Security Assistance among CARICOM Member States, signed in June 2007, seeks to provide effective and timely response to the management of natural and man-produced disasters in order to reduce and eliminate their adverse consequences by ensuring rapid and efficient deployment of regional resources to manage and terminate crises and to fight serious crime; it has also been instrumental in combating and eliminating threats against national and regional security and in the preservation of territorial integrity.

At the 13th Special Meeting of the Conference of Heads of Government of the Caribbean Community (CARICOM) held in Trinidad and Tobago in April 2008, the special security concerns of the Caribbean region were identified. The tools and strategic priorities for cooperation on security which were implemented and are still in place in that region have also been incorporated into the agenda.

In addition, the meetings of the Committee on Hemispheric Security of the Permanent Council, held on March 25, 2010 and March 31, 2011, respectively, addressed and discussed the monitoring of the implementation of resolution AG/RES. 2485 (XXXIX-O/09), "Special Security Concerns of Small Island States."

Some of the main activities of the CARICOM Implementation Agency for Crime and Security (IMPACS) are as follows[21:]

- Development of a Regional Strategy for Crime and Security, and Comprehensive National Security Plans.
- Implementation of the Strategy on Small Arms and Light Weapons (SALW) and the Regional Integrated Ballistics Information (RIBIN, etc.).
- Revision of the National Joint Coordination Center (NJCC).
- Improved regional capacity in intelligence investigations, kidnapping and homicide (Regional System of Research Administration (RIMS) etc.)
- Implementation of the Regional Cyber Security Plan.
- Implementation of the CARIPASS travel card for the region.
- Study of systems and databases for an Integrated Criminal History System (ICRS).

The 32nd Summit of the Caribbean Community (CARICOM) held in June 2011 approved a provision to regulate gun possession in the Caribbean. The Heads of State commissioned a review of existing treaties, and consideration and development of amendments to strengthen the monitoring arrangements in the region.

VII. Link between democracy, peace, security and cooperation

7.1 Inter-American Democratic Charter

The Inter-American Democratic Charter was an opportunity to develop, expand and deepen a collective scheme for the defense of democracy on the basis of the previous efforts displayed.

The Inter-American Democratic Charter finds its true roots in the 1948 OAS Charter and its Amendments, in the 1991 Santiago Commitment to Democracy and the Renewal of the Inter-American System, and in the 1992 Resolution 1080 on Representative Democracy and in the Washington Protocol which lays down the procedure for suspension of a member of the Organization when its democratically constituted government is overthrown by force.

The Charter has been cited six times in the cases of Venezuela (2002), Bolivia (2002 and 2005), Peru (2004), Nicaragua (2004 and 2005), Ecuador (2005) and Honduras (2009).

The Juridical Committee, through resolution CJI/RES. 159 (LXXV-O/09) entitled "The essential and fundamental elements of representative democracy and their relation to collective action

[21] http://www.caricomimpacs.org/

within the framework of the Inter-American Democratic Charter," expressed that there is a vital link between the effective exercise of representative democracy and the Rule of Law, which is specifically expressed in the observance of all the essential elements of representative democracy and the fundamental components of the exercise thereof. Consequently, the democratic regime is not exhausted in electoral processes, but is also expressed in the legitimate exercise of power within the framework of the Rule of Law, which includes respect for the elements, components and attributes of democracy.

It is necessary to consider the proposals[22] made in 2007 by the Secretary General of the OAS, José Miguel Insulza, on the possible development of mechanisms to strengthen the democratic system in the hemisphere, through a review of the Inter-American Democratic Charter in the light of the changes that have occurred.

A major challenge facing the Democratic Charter (one that is derived from experience) is to specify various aspects of the concept of alteration of the constitutional regime that seriously impairs the democratic order and the possible invocation of the Charter by actors other than the Executive.

VIII. The value and importance of the principles in the Lima Declaration

In the panorama of the Lima Declaration, the important image persists of conflicts among states, situations of internal tension, and also crises that are sometimes recurrent, as well as potential threats. The Lima Declaration somewhat emphasizes the importance of reaffirming concrete mechanisms to comply with the preventive work of the Organization and the work of preserving peace and security among the American states themselves, which is the core task of the OAS.

Another issue is the environment for the control and limitation of armaments. Item No. 6 seems important in view of the commitment to continue contributing to the overcoming of stress and the resolution of crises, with full respect for the sovereignty of States. That is, this Declaration also contains a certain emphasis on the need to operationalize or to reaffirm the importance of using mechanisms that are aimed at preserving peace among the American states. And in that sense, items 3, 4, 5 and 6 of the Declaration have the same strong emphasis which is reaffirmed in section 7 when it indicates the need to continue implementing Measures to Promote Trust, which are precisely aimed to resolve processes of crisis and build understanding among States.

[22] The proposals are:

"1. To strengthen the monitoring mechanisms available to the General Secretariat, extending multilateral evaluation forms to each of the issues that the Democratic Charter considers as essential to the existence and sustainability of democracy.

2. To expand the capacity of the General Secretariat to anticipate and prevent crises that threaten a serious disruption or interruption of the democratic process in Member States.

3. To achieve a formal political consensus, through a resolution of the General Assembly, on the situations that can be identified as serious disruptions or interruptions of the democratic process.

4. To produce periodic reports, if possible annually, on the main themes considered essential for democracy in the Inter-American Democratic Charter.

5. To strengthen the capacity of the General Secretariat to assist Member States in the process before or after the crisis covering monitoring, negotiation, dialogue and political agreements, as well as national reconciliation and the strengthening of institutions, political parties and organizations, civil society and the supremacy of civilian versus the military sphere.

6. To expand access to the OAS, to apply for Council action, to all the powers of member Governments.

7. To maintain and strengthen the role of the OAS as the main observation and electoral promotion organization in the Americas.

8. To expand the action of the OAS substantively as regards consolidation of democratic institutions, respect for the Rule of Law, independence of the Courts of Justice, and

9. To strengthen republican institutionality and the democratic Rule of Law. Although democratic gaps are more accentuated in civil and social spheres, we still have some serious political deficits.

IX. Assessment of the level of empowerment of the inter-American instruments to confront new threats and challenges to peace and security and Proposals

9.1 A vital starting-point lies in considering that the dimension, seriousness, complexity and interrelation of current security issues may endanger the stability of democratic processes. The degree of capacity of the OAS and member States to face new and traditional threats is therefore crucial and deserves an exhaustive revision of the instruments available to face those challenges. However, as important as the operation of the OAS itself is the capacity of the States themselves to continue strengthening and developing their own democratic structures, in a two-way road where the OAS and Member States are an indivisible whole and reciprocally influence one another.

9.2 A first look at the field of OAS instruments of peace, security and cooperation shows that great strides have materialized, on the one hand, in new instruments, programs, actions, views and statements, as well as in institutional structures, as opposed to the lagging, on the other hand, of certain instruments that require renewal, rethinking or revitalization in the light of the profound changes occurring simultaneously with the construction of conventional and innovative responses to criminal activities that transcend traditional spaces and require collective forms of response with equally transnational means and bases to counter the global arrangements used by organized crime.

9.3 Several of the most important changes between the 1945 model and the current structure of the OAS are concentrated in the new multi-dimensional approach to security and the generation not only of new specific instruments but also on follow-up mechanisms, as well as monitoring, evaluation and control which offer a more dynamic and participatory vision between what is agreed and the implementation of the agreement (Annexes III and IV). In addition to this, there is the creation of new bodies and secretariats that contribute to these efforts. These are probably the most notable comparative elements, along with the development of a collective response to cases of infringement of the democratic order and of the legitimate exercise of power, and the efforts to reinforce the system of protection of the human rights, which also has important organs (the Inter-American Court of Human Rights and Inter-American Commission of Human Rights).

9.4 However, as I have expressed in my duties as Rapporteur on other occasions, the OAS lives in part under the umbrella of the old model created in the first half of the 20th century. Unlike the 1945 model and style of construction, that created its instruments to materialize the post-war and Cold War views, including the ideological confrontation that imprints the Rio Treaty, the new multi-dimensional view has failed to achieve that degree of organic specificity. It has frequently dealt with progressive and gradual amendments to the existing instruments, as in the case of the Charter itself and its amendments and the (frustrated) efforts to modify the Rio Treaty and the Pact of Bogotá. It should be noted, however, that the efforts for complementing and amending these instruments and the creation of new treaties and follow-up and implementation mechanisms have been outstanding, encouraging and enriching, and noticeably the role of the Commission of Hemispheric Security, the Secretariat of Multidimensional Security and the bodies that derive from special instruments, as well as the role of the Permanent Council and its Commission of Juridical and Political Affairs.

9.5 This regional scenario is not that different from that of the United Nations, which is still living under the umbrella of the old 1945 Charter, even without amendments if we make a comparison with the many rounds to amend the Protocols to the Charter. Despite the major changes in areas such as peacekeeping, the world organization is still using and reinterpreting whole chapters such as Chapter VII, but new demands have overwhelmed the original premises.

9.6 Within the multi-dimensional vision, the pillar of social development is not yet completely solidified. Additional cooperative and innovative efforts are needed in a matter that is inseparable from that of peace and security. The Charter is a relevant mark, but it needs to be developed with a true spirit of solidarity and tangible goals. Hence the importance of the Social Inter-American Charter as one of the pillars of the organization being built, without which the model of multidimensional security shall remain incomplete.

9.7 An important issue is the question of a brief comparison between the status of ratification of the previous instruments and the current situation (Annex II). With some frequency, some concern is expressed regarding the processes of ratification and accession to new treaties and instruments. However, in general, these instruments have a very acceptable level of legal binding for States, with some exceptions. But even some of them reach a significant number of adhesions, such as the Convention against Corruption, with 33 ratifications. In general, it is in the field of ancient treaties that we find some low levels of ratification, such as in the case of the Pact of Bogotá. As stated previously, and in line with Eduardo Jimenez de Arechaga, more important that the number itself is the usefulness and the results of its enforcement, as well as which are really the parties and their geographical contiguity.

9.8 This leads to a complementary point. Current events are showing a revival of the Pact of Bogotá to open the way to the International Court of Justice in several cases between American States, which has been invoked 10 times since its creation, mostly in recent years. In that sense, the initiative to assess the possible creation of an Inter-American Court of Justice should also be seen in that context, regardless of the legitimate pros and cons preesnted by each of the arguments. In this regard, the element of the effect that the Pact bears is an important factor for addressing a point that is closely connected with the imperative proclaimed by the Charter about not leaving any controversy unresolved, and where the jurisdiction has the final word.

9.9 Another important aspect in assessing the subject matter of the Rapporteur is to emphasize once again that within the inter-American system, conflicts between states have arisen more frequently in the domestic scenario. Sometimes they require more from the Inter-american Democratic Charter than from other types of instruments, which presents the need to consider widening the spaces to be invoked and enforced, and also to specify the situations related to the modification of the democratic order. The Democratic Charter is an essential part of the multidimensional model and its elements, components and attributes are an essential part of the democratic model, so when it is impacted a collective response of the Organization follows.

9.10 However, this should not reduce the power of the organization to fulfill its primary mission to help maintain peace and security among States and, particularly, to develop preventive actions to strengthen this purpose. The Lima Declaration very correctly calls attention to the fundamental principles governing the relationships between States and their strict compliance, such as the need to continue studying areas such as trust-building measures and weapons limitation

9.11 One of the signs of possible weakness in the system, rather than in its instruments, lies in the lack of preventive mechanisms able to foresee and prevent crises. A good way to consolidate ever-lasting solutions would be to enhance follow-up activities on commitments made, including reinforcement of the General Secretariat in these cases.

9.12 Moreover, one should not neglect the preventive value of sub-regional integration. America is rich in sub-regional integration processes. Many potential territorial conflicts, conflicts of interest or conflicting positions could be resolved through these schemes that have gathered an important legacy of experiences and institutions dedicated to the settlement of conflicts and disputes.

The Organization then has a great opportunity to strengthen the mechanisms of peace, security and cooperation by strengthening links with the vision and security mechanisms that are emerging with great force in the field of integration in CARICOM, UNASUR, SICA and the Andean Community, among other laudable efforts. The OAS also intends to bridge and cooperate with these models.

9.13 Making an assessment of the security model is a complex duty in the OAS. The efforts that are being made and have been described in the document and reviewed in this general overview show an Organization that is aware of its role and responsibility. There are certainly valuable tools. But there are still gaps in the implementation of the multi-dimensional model and it is necessary to strengthen the prevention component and continue to improve control mechanisms that have proven to be useful tools for concerted efforts and initiatives that actually materialize.

9.14 The OAS does have the instruments to perform its mission in this field, but that might not be sufficient. In fact, new treaties are now required to face challenges such as organized crime and traffic of migrants. It is essential to review the TIAR model versus the Democratic Security model,

even vis-à-vis the OAS Charter itself, which needs to include the vision of multi-dimensional security among its purposes. The causes of crisis must be foresee and prevented, and myths torn down that separate collective action from domestic efforts on behalf of the goals that countries in their sovereignty have chosen by opening spaces to cooperation.

9.15 The Inter-American Democratic Charter, which is also an instrument for peace, security and cooperation, needs constantly reflected upon and discussed in order to broaden the chances of its being effectively enforced. The Inter-American Social Charter should also become one of the central components of this new architecture of multidimensional security.

9.16 The topics addressed in the 2011 Declaration of San Salvador on Citizen Security in the Americas also set a priority agenda on the item of public security, outlining a new approach that involves the participation of all sectors, both governmental and of civil society, in a new inter-American, national and community spirit that should be extended to the integral relationship between peace, security and cooperation. Two themes stand out with new weight: the elimination of violence against women in all its dimensions and the importance of mainstreaming a gender perspective in security policies, and the need to generate new tools to give to the young, especially to those in situations of risk - opportunities and access to education, training, employment, culture, sports and recreation.

The evident assessment that the present threats and challenges are different and are closely connected must reinforce the understanding that it is necessary to think of innovative mechanisms that embody those new realities in all fields: juridical, social, cultural and financial. The new world cannot be faced with old weapons. Organized crime, terrorism and narco-activity, for example, do not represent the old common delinquency and cannot be curbed using the same means. The forms of action today are totally different and use all the advantages linked to the transnational nature of crime and can no longer be addressed solely and with traditional means, without running the risk of losing the battle. It is necessary to consider special tools, without losing sight that the fundamental premise for the success of these challenges will always lie in strengthening the Rule of Law and the democratic functioning of institutions, along with an OAS able to give life to the model of effective safety built in Mexico in the year 2003.

9.17 This effort also needs to remember that the State, without jeopardizing the necessary participation of all, remains the key player in ensuring the comprehensive security vision of the OAS. No other actor can replace its responsibility or its core role.

9.18 Realities as diverse and powerful as those that come together in today's world must **acknowledge that the history of the OAS as an organization is inseparable from the history of countries just as domestic law is inseparable from international law, especially in these days that have radically expanded the number of issues to be governed by international standards. The model of peace, security and regional cooperation is also to some extent a reflection of the internal model and the strengthening of democratic institutions within nations. Democracy, Rule of Law and Human Rights are an inseparable part of this comprehensive effort where peace, security and cooperation are mutually reinforcing at the continental and national level.**

Annex I

ESTADO DE RATIFICACIÓN DE LA CARTA DE LA OEA 1948 Y SUS PROTOCOLOS DE REFORMAS

INSTRUMENTO	RATIFICACIÓN
Carta de la OEA	35 Estados la ratificaron.
Protocolo Buenos Aires, 1967	31 Estados lo han ratificado.
Protocolo Cartagena de Indias, 1985	29 Estados lo han ratificado.
Protocolo de Washington, 1992	25 Estados lo han ratificado.
Protocolo de Managua, 1993	32 Estados lo han ratificado.

Annex II

TRATADOS	PAISES QUE HAN RATIFICADO
1. Convención Interamericana sobre Transparencia en las Adquisiciones de Armas Convencionales	15 países han ratificado.
2. Convención Interamericana Contra la Fabricación y el Tráfico Ilícitos de Armas de Fuego, Municiones, Explosivos y otros Materiales Relacionados	30 países han ratificado.
3. Tratado Interamericano de Asistencia Recíproca	23 países han ratificado.
4. Protocolo de Reformas al Tratado Interamericano de Asistencia Recíproca (TIAR)	8 países han ratificado (No vigente).
5. Convención para Prevenir y Sancionar los Actos de Terrorismo Configurados en Delitos Contra las Personas y la Extorsión Conexa cuando estos tengan Trascendencia Internacional	18 países han ratificado.
6. Convención Interamericana Contra el Terrorismo	24 países han ratificado.
7. Convención Interamericana contra la Corrupción	33 países han ratificado.
8. Tratado Americano de Soluciones Pacíficas (Pacto de Bogotá)	15 países han ratificado. Uno lo denunció.
9. Tratado para la Proscripción de las Armas Nucleares en América Latina y El Caribe (Tratado de Tlatelolco)	33 países han ratificado
10. Carta Constitutiva de la Organización de los Estados Americanos (OEA) de 1948.	Las 35 países han ratificado.

Annex III

CUADRO COMPARATIVO CIERTOS INSTRUMENTOS JURÍDICOS INTERAMERICANOS RELATIVOS A LA PAZ, SEGURIDAD Y COOPERACIÓN (documento de apoyo)

INSTRUMENTO	OBJETIVO	MECANISMO DE SEGUIMIENTO E IMPLEMENTACIÓN	OBSERVACIONES
1. Tratado Interamericano de Asistencia Recíproca.1947	El Tratado segura la paz por todos los medios posibles, prevé ayuda recíproca efectiva pare hacer frente a los ataques armados contra cualquier Estado Americano y conjurar las amenazas de agresión contra cualquiera de ellos.	El Órgano de Consulta del Sistema Interamericano	Parte de los tratados fundadores de la visión interamericana discutida tras la Conferencia de Chapultepec. Instrumento utilizado para resolución de conflictos entre las naciones americanas y
2. Carta de la Organización de los Estados Americanos. 1948 y reformas	Los Estados americanos consagran en esta Carta la organización internacional que han desarrollado para lograr un orden de paz y de justicia, fomentar su solidaridad, robustecer su colaboración y defender su soberanía, su integridad territorial y su independencia. Dentro de las Naciones Unidas, la Organización de los Estados Americanos constituye un organismo regional.	Asamblea General Ordinaria y Extraordinaria, Reunión de Consulta de MRREE Consejo Permanente, Secretaria General, Comité Juridico Interamericano, Comision Interamericana de Derechos Humanos, entre otros.	Marco general para la regulación, coordinación y mantenimiento de las relaciones interamericanas por medios democráticos, pacíficos y de seguridad.
3. Tratado Americano de Soluciones Pacíficas. (Pacto de Bogotá) 1948	Los Estados convienen en abstenerse de la amenaza, del uso de la fuerza o de cualquier otro medio de coacción para el arreglo de sus controversias y en recurrir en todo tiempo a procedimientos pacíficos.	Mecanismos propios, incluido el acceso a la Corte Internacional de Justicia	Ha sido invocado 10 veces ante la CIJ
4. Tratado para la Proscripción de las Armas Nucleares en la América Latina y el Caribe (Tratado de Tlatelolco).1967 y sus Protocolos Adicionales I y II	Las Partes Contratantes se comprometen a utilizar exclusivamente con fines pacíficos el material y las instalaciones nucleares sometidos a su jurisdicción,	Conferencia General. Consejo y Secretaría. Informe de las partes a la OIE	Primera zona libre de armas nucleares
5. Convención para Prevenir y Sancionar los Actos de Terrorismo configurados en Delitos Contra las Personas y la Extorsión Conexa cuando estos tengan Trascendencia Internacional. 1971	Los Estados contratantes se obligan a cooperar entre sí, tomando todas las medidas que consideren eficaces de acuerdo con sus respectivas legislaciones y especialmente las que se establecen en esta Convención, para prevenir y sancionar los actos de terrorismo y en especial el secuestro, el homicidio y otros atentados contra la vida y la integridad de las personas a quienes el Estado tiene el deber de extender protección especial conforme al derecho internacional, así como la extorsión conexa con estos delitos.	Comisión de Seguridad Hemisférica	Se consideran delitos comunes de trascendencia internacional cualquiera que sea su móvil, el secuestro, el homicidio y otros atentados contra la vida y la integridad de las personas a quienes el Estado tiene el deber de extender protección especial conforme al derecho internacional, así como la extorsión conexa con estos delitos
6. Protocolo de Reformas al Tratado Interamericano de	El Protocolo de Reformas al TIAR, busca reiterar la voluntad de las naciones de permanecer unidas dentro del		Incorpora los aspectos contenidos en la Definición de agresión

	Asistencia Recíproca. 1975	Sistema Interamericano, compatible con los propósitos y principios de las Naciones Unidas, así como su inalterable decisión de mantener la paz y seguridad regionales mediante la prevención y solución de conflictos y controversias que sean susceptibles de comprometerlas; reafirmar y fortalecer el principio de no intervención y el derecho de cada Estado a escoger libremente su organización política, económica y social; y reconocer que para el mantenimiento de la paz y la seguridad en el Continente debe garantizarse, asimismo, la seguridad económica colectiva para el desarrollo de los Estados Americanos.		
7.	Comisión Interamericana para el control del abuso de drogas (CICAD) y el Mecanismo de Evaluación Multilateral para avanzar en la lucha contra la producción, el tráfico y el consumo ilícitos de estupefacientes y sustancias psicotrópicas y sus delitos conexos.	Establecida con el fin de elaborar una estrategia antidroga en el continente, apoyar el fortalecimiento institucional en los países de nuestro continente, promover respuestas conjuntas y permitir mecanismos multilaterales de evaluación para dar seguimiento al progreso realizado por los países, individual y colectivamente.	Mecanismo de Evaluación Multilateral (MEM)	
8.	Declaración de Santiago: Conferencia Regional sobre Medidas de Fomento de la Confianza y de la Seguridad, 1995	La adopción de medidas de fomento de la confianza y de la seguridad constituye una contribución importante a la transparencia, el entendimiento mutuo y la seguridad regional, así como al logro de los objetivos del desarrollo, incluidos la superación de la pobreza y la protección del medio ambiente. El desarrollo económico, social y cultural está indisolublemente asociado con la paz y la seguridad internacionales.	Solicitan a la Comisión de Seguridad Hemisférica que prepare un informe sobre la materia. Realización conferencia de seguimiento.	
9.	Convención Interamericana contra la Corrupción. 1996	Promover y fortalecer el desarrollo, por cada uno de los Estados Partes, de los mecanismos necesarios para prevenir, detectar, sancionar y erradicar la corrupción; y Promover, facilitar y regular la cooperación entre los Estados Partes a fin de asegurar la eficacia de las medidas y acciones para prevenir, detectar, sancionar y erradicar los actos de corrupción en el ejercicio de las funciones públicas y los actos de corrupción específicamente vinculados con tal ejercicio.	Conferencia de los Estados Parte del Mecanismo de Seguimiento de la Implementación de la Convención Interamericana contra la Corrupción (MESICIC). Informes en las reuniones plenarias del Comité. Informes anuales de avance.	

10. Convención Interamericana Contra la Fabricación y el Tráfico Ilícitos de Armas de Fuego, Municiones, Explosivos y otros Materiales Relacionados. 1997	El propósito de la presente Convención es: impedir, combatir y erradicar la fabricación y el tráfico ilícitos de armas de fuego, municiones, explosivos y otros materiales relacionados. Promover y facilitar entre los Estados Partes la cooperación y el intercambio de información y de experiencias para impedir, combatir y erradicar la fabricación y el tráfico ilícitos de armas de fuego, municiones, explosivos y otros materiales relacionados.	Comité Consultivo de los Estados Parte	Se toma en cuenta la necesaria cooperación en estos temas de seguridad y paz para el hemisferio.
11. Declaración de San Salvador: Conferencia Regional de San Salvador sobre Medidas de Fomento de la Confianza y de la Seguridad en Seguimiento de la Conferencia de Santiago, 1998	Acuerdan recomendar la aplicación, de la manera que sea más adecuada, de medidas adicionales a la Declaración de Santiago, de Chile de 1995.	Comisión de Seguridad Hemisférica.	La aplicación de medidas de fomento de la confianza y de la seguridad facilitará, a través de acciones prácticas y útiles, procesos de cooperación de mayor envergadura en el futuro en áreas tales como el control de armamentos y la seguridad hemisférica.
12. Convención Interamericana sobre Transparencia en las Adquisiciones de Armas Convencionales. 1999	El objeto de la Convención es contribuir más plenamente a la apertura y transparencia regionales en la adquisición de armas convencionales, mediante el intercambio de información sobre tales adquisiciones, a los efectos de fomentar la confianza entre los Estados de las Américas.	Los Estados Partes informarán anualmente al depositario acerca de sus importaciones y exportaciones de armas conven-cionales en el año calendario anterior, proporcionando infor-mación, en el caso de las impor-taciones, sobre el Estado expor-tador, y la cantidad y el tipo de armas convencionales impor-tadas; y en el caso de las expor-taciones, información sobre el Estado importador, y la canti-dad y el tipo de armas conven-cionales exportadas. Todo Estado Parte podrá comple-mentar su información agregan-do los datos adicionales que considere pertinentes, tales como la designación y el modelo de las armas convencionales.	Solo 14 países han ratificado
Carta Democrática Interamericana. 2001	La defensa y mantenimiento de la democracia representativa como sistema político y de gobierno de las naciones y como elemento indispensable para el mantenimiento de la paz, seguridad y desarrollo del hemisferio.	Consejo Permanente, Secretario General, Asamblea General	Invocada en los casos de Venezuela, Bolivia, Perú, Nicaragua, Ecuador y Honduras.
13. Convención Interamericana Contra el Terrorismo. 2002	La presente Convención tiene como objeto prevenir, sancionar y eliminar el terrorismo. Para tal efecto, los	Comité Interamericano contra el Terrorismo (CICTE)	24 países han ratificado

	Estados Parte se comprometen a adoptar las medidas necesarias y fortalecer la cooperación entre ellos, de acuerdo con lo establecido en esta Convención.	Los Estados Parte celebrarán reuniones periódicas de consul-ta, según consideren oportuno, con miras a facilitar: La plena implementación de la Conven-ción, incluida la consideración de asuntos de interés relaciona-dos con ella identificados por los Estados Parte	
14. Declaración de Bridgetown. 2002	El objetivo era buscar el desarrollo de enfoques comunes de los diferentes aspectos de la seguridad en el Hemisferio que conducirá a la armonización dentro del sistema interamericano de seguridad y es, por tanto, esencial para aumentar la confianza y la seguridad entre los Estados Miembros	Comisión de Seguridad Hemisférica	Se incorpora la visión multidimensional de la seguridad en el Hemisferio. Dando un giro drástico a la anterior concepción de seguridad nacional.
15. Declaración sobre Seguridad en Las Américas, México 2003	Desarrolla la nueva concepción de la seguridad en el Hemisferio de alcance multidimensional, que incluye las amenazas tradicionales y las nuevas amenazas, preocupaciones y otros desafíos a la seguridad de los Estados del Hemisferio, incorpora las prioridades de cada Estado, contribuye a la consolidación de la paz, al desarrollo integral y a la justicia social, y se basa en valores democráticos, el respeto, la promoción y defensa de los derechos humanos, la solidaridad, la cooperación y el respeto a la soberanía nacional.	La Comisión de Seguridad Hemisférica coordine la cooperación entre los órganos, organismos, entidades y mecanismos de la Organización relacionados con los diversos aspectos de la seguridad y defensa en el Hemisferio, respetando los mandatos y el ámbito de sus competencias, con objeto de lograr la aplicación, evaluación y seguimiento de la presente Declaración.	Reconoce la importancia y utilidad que tienen, los instrumentos y acuerdos interamericanos, tales como el Tratado Interamericano de Asistencia Recíproca (TIAR) y el Tratado Americano de Soluciones Pacíficas (Pacto de Bogotá), Reconoce la consolidación de la primera zona libre de armas nucleares en un área densamente poblada, a través del Tratado para la Proscripción de las Armas Nucleares en la América Latina y el Caribe (Tratado de Tlatelolco) y sus Protocolos, constituye una contribución sustancial a la paz, la seguridad y la estabilidad internacionales. Indica que es importante seguir el proceso de examen y evaluación del Tratado Interamericano de Asistencia Recíproca (TIAR) y del Tratado Americano de Soluciones Pacíficas (Pacto de Bogotá).
16. Declaración de Miami sobre Medidas de Fomento de la Confianza y de la Seguridad, 2003	Dar seguimiento a las conferencias regionales de Santiago y San Salvador sobre medidas de fomento de la confianza y de la seguridad para evaluar su implementación y considerar los siguientes pasos para consolidar la confianza mutua	Garantizar la implementación de las medidas de fomento de la confianza y la seguridad que se acuerden mediante el intercam-bio de información respecto de las tareas de implementación en cada uno de los Estados Miem-bros de la OEA a la Comisión de Seguridad Hemisférica, a través del Sistema de Informa-ción de la OEA (OASIS).	Conferencias de Ministros de Defensa de las Américas son un mecanismo relevante que contribuye al fortalecimiento de la confianza, la transparencia y el intercambio de puntos de vista sobre temas de defensa y seguridad.

Declaración de Lima. Paz, Seguridad y Cooperación en las Américas, 2010	Renovar y fortalecer el Compromiso con la seguridad, la paz y la cooperación interamericanapara hacer frente a las amenazas tanto nuevas como tradicionales que afectan a la regiõn. Reitera el compromiso de continuar contribuyendo a la superaciõn de situaciones de tensiõn y a la solucion de crisis, con pleno respeto a la soberanía	Comisión de Seguridad Hemisférica.	Invitación a los Estados Miembros que aún no lo hayan hecho, a que den pronta consideración a la ratificación o adhesión, según sea el caso, de la Convención Interamericana contra la Fabricación y el Trafico Ilícitos de Armas de Fuego, Municiones, Explosivos y Otros Materiales Relacionados (CIFTA) y Convención Interamericana sobre Transparencia en las Adquisiciones de Armas Convencionales (CITAAC).
17. Declaración de San Salvador Sobre Seguridad Ciudadana en las Americas, 2011	Es su prioridad continuar dirigiendo esfuerzos, acciones y voluntad política para fortalecer la seguridad ciudadana, como un ámbito de la seguridad pública, en sus países	Consejo Permanente. Secretaria General Reunión de Ministros de Seguriad Pública de las Américas, Reunión de Ministros de Justicia u otros Ministros, Procuradores o Fiscales Generales, de las Américas.	Se toma en cuenta la seguridad del individuo como el el centro de la seguridad ciudadana**.**
18. Comisión de Seguridad Hemisférica.	El papel de la Comisión de Seguridad Hemisférica es trascendental en la articulación de todos estos temas concernientes a la seguridad, tanto con las amenazas tradicionales como las no tradicionales o nuevas. Su papel de coordinación, seguimiento, aplicación, y evaluación de las diversas Declaraciones, Reuniones, Tratados y Conferencias.		Su papel es trascendental como mecanismo de seguimiento y coordinación del sistema interamericano en la materia en los términos de la Declaración Especial sobre Seguridad de México.
19. Secretaría de Seguridad multidimensional de la OEA**.**	La Secretaría juega un papel principal en la promoción de la cooperación y el robustecimiento de las habilidades y capacidades de los Estados para desarrollar actividades que les permitan enfrentar con éxito los desafíos de la seguridad, permitiendo una evaluación comprensiva, el desarrollo de acciones de prevención y políticas y mecanismos para responder de manera eficiente ante los retos y desafíos en materia de seguridad.	Funje como Secretaria técnica de la Reunión de Ministros de Seguridad Pública de las Américas, de la Conferencia de Ministros de Defensa, de la CICAD y su instrumento MEM del Comité Interamericano contra el Terrorismo y de varias Convenciones y planes. De ella dependen cuatro Departamentos: Seguridad Pública, Seguridad y Defensa, Secretaria Ejecutiva de la CICAD y Secretaría Ejecutiva del CICTE	Creada con el fin de dotar al sistema de una mayor coordinación para tratas las amenazas tradicionales y los nuevos desafíos de seguridad para el Hemisferio.
20. Reuniones de Consulta de Ministros de Relaciones Exteriores.	Es un órgano de consulta, para*:* “considerar problemas de carácter urgente y de interés para los Estados Americanos”.	La solicitud de convocatoria debe dirigirse al Consejo Permanente	El artículo 61 de la Carta de la OEA permite convocar la Reunión de Consulta. Se ha convocado conjuntamente con el órgano de consulta del TIAR
21. Programa de asistencia integral contra Minas antipersonal	El Programa es concebido como una tarea humanitaria, con el fin de restablecer una vida segura y tranquila en las	La Secretaría de Seguridad Multidimensional funge como	Grandes avances se han logrado con el apoyo de los programas de la limpieza de las minas en

	comunidades afectadas por minas,	Secretaría técnica del Programa	regiones como CA
22. Reuniones de Ministros	Reuniones especiales de ciertos Ministros en áreas claves de la Seguridad y Defensa y Justicia	Reunión de Ministros de Seguridad Pública de las Américas MISPA), Reunión de Ministros de Defensa de las Américas, Reunión de Ministros de Justicia u otros Ministros, Procuradores o Fiscales Generales, de las Américas (REMJA),	Reuniones frecuentes

2. Participatory democracy and citizen participation

Documents

CJI/RES. 176 (LXXIX-O/11)	Participative democracy and citizen participation
Annex: CJI/doc.383/11 rev.1	Report of the Inter-American Juridical Committee on mechanims of direct participation and strengthing of representative democracy

At the fortieth regular session of the OAS General Assembly (Lima, June 2010), the Inter-American Juridical Committee was asked to conduct a legal study into the mechanisms for participatory democracy and citizen participation provided for in the laws of some of the region's countries, resolution AG/RES. 2611 (XL-O/10).

At the 77th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, August 2010), the Chairman recalled the mandate set out in the resolution cited in the previous paragraph. In his opinion, this mandate should be interpreted in restrictive terms and not be included in the Committee's treatment of the topics related to strengthening democracy, for which Dr. Hubert is the rapporteur.

An intense debate then took place on the leading-edge mechanisms adopted by the constitutions and laws of the nations of the Americas to ensure citizen participation; these have gone beyond the formal constraints of law to cover such additional topics as the socially excluded, indigenous populations, ethnic minorities, gender equality, etc. Mention was also made of growing public participation in matters of consumer protection and administrative decentralization, which was enabling municipalities to participate more actively in the democratic process.

After offering an overview of citizen participation practices in his country, Dr. Herdocia seconded the Chairman's opinion that the topic be dealt with separately, and that the Juridical Committee should set about preparing a study on citizen participation in the democratic model. He also reminded the meeting that both the OAS Charter and the Inter-American Democratic Charter state that participatory democracy is a legal right in the Americas.

Dr. Baena Soares said that the Committee's study should essentially offer a critical assessment of the topic and not be restricted to identifying the different forms of citizen participation. At the same time, since the General Assembly mandate refers to "some" countries, he said it would be necessary to redefine that criterion.

Dr. Castillo said that although participatory democracy had been extensively studied, there had been little analysis of the practical implementation of mechanisms for citizen participation. He proposed studying the guarantees that enable that participation to take place. He added that he thought in addition to forms of electoral participation, equal weight should be given to some basic guidelines for organized participation, for example, in preparing the budget or through the involvement of groups such as bar associations, which in one way or another represent organized citizenship.

Dr. Stewart noted that the mandate could lead to discussions of a political nature, with ideological considerations hindering its analysis. He added that the common-law countries had citizen participation practices, such as consultations, that did not necessarily derive from legislation, and that the Committee's study should not be limited solely to laws in the formal sense, but should also include other forms of participation.

Dr. Villalta said that the General Assembly's mandate referred to the countries of the Americas. In her opinion, the domestic laws of the OAS countries should be compiled and, depending on what was received, a report on the topic could be prepared.

Dr. Novak proposed that the members collect that information in their home countries: not just their laws, but also published papers on the topic.

The Chairman gave a summary of the opinions that had been shared and noted that consensus existed on the following points: 1) the topic should be addressed using a restrictive interpretation; 2) this topic should be kept separate from the topic of strengthening democracy; 3) the aim should not be to discuss participatory democracy, but rather to identify citizen participation mechanisms for making representative democracy more effective.

Dr. Negro noted the willingness of the Secretariat for Legal Affairs to keep in contact with the Political Secretariat, in order to convey any studies prepared by that office.

The Chairman asked the Secretariat to prepare a note to be sent to the delegations of the OAS Member States, requesting the information necessary for progressing with the topic. It must be noted that Dr. Fabián Novak was elected to serve as the rapporteur for this topic.

During the 78th regular session of the Inter-American Juridical Committee held in Rio de Janeiro in March 2011, the rapporteur of the theme, Dr. Fabián Novak Talavera, presented a document entitled "Mechanisms of direct participation and strengthening of representative democracy" (CJI/doc.367/11) in pursuit of the mandate of the General Assembly requesting a juridical system of the internal constitutions and legislations that include mechanisms related to participative democracy and citizen participation.

The rapporteur explained that his work consists of a legislative study rather than a theoretical analysis, contains a survey of all the constitutions and includes the legislations that were sent by eight member States of the Permanent Missions to the OAS: Bahamas, Canada, Ecuador, Mexico, Panama, Peru, the Dominican Republic and, just prior to the opening of the session, Paraguay.

Among his preliminary observations, the rapporteur stated that the constitutions gather together various mechanisms of direct participation. These mechanisms are in fact considered to be auxiliary to rather than substitutes of the representative institutions. From the comparative point of view, he verified the existence of the same recourse in different countries, but with distinctive peculiarities.

In this respect, he pointed out thirteen mechanisms of direct participation that involve forms that are progressively included in the respective national systems, among which he underscored the following:

- Right to petition;
- Right to request information of private or public interest;
- Right to referendum;
- Right to participate in plebiscites;
- Right to revocation;
- Right to citizen volunteering or collaboration;
- Right to participate in public administration enabling citizens to intervene in policies relating to certain themes;
- Right to participate in open and similar local councils;
- Right to request rendering of accounts;
- Right of indigenous peoples to participate and consult;
- Right to participate in land reform policies;
- Right to defend diffuse interests.

Dr. Herdocia Sacasa thanked the rapporteur for such precise work and stressed the support that the technical staff offers to rapporteurs. In his opinion, democracy is one and only and encompasses the participative dimension, besides being a substantial mechanism that is more than auxiliary. Finally, he urged the rapporteur to include the forms of citizen participation of the autonomous governments of the Atlantic Coast in Nicaragua and to review the pertinence of Consultative Councils in development matters.

Dr. Castillo Castellanos, after appreciating the rapporteur's study, underlined its utility. He urged verifying the legislative development of the institutions in the various constitutions, and in the case of Venezuela the technique of "transferring competencies" to the citizens, as provided for in article 185 of the Constitution of the Bolivarian Republic of Venezuela. Likewise, he recommended including in the report illustrations of the effective use of these mechanisms in practice.

Dr. Stewart thanked the rapporteur and agreed with the other members of the Committee as to the usefulness of the document. He stated that participative democracy and representative democracy refer to the same thing: neither acts as a substitute of or alternative to the other. He insisted that referring to the direct democracy of the Greeks is not a practical or realistic alternative in modern society. With regard to the right to participate in public administration, he suggested referring to the obligations of the State rather than circumscribing this to citizen's rights. Finally, he recommended distinguishing the use of certain mechanisms described in the study whose use depends on how competencies are distributed and on the size of the country.

Dr. Lindsay in turn expressed her interest in sending a copy of this work to universities in Jamaica.

Dr. Villalta commented on the situation of the right to insurrection granted by the constitution of her country.

Dr. Hubert joined in the general appreciation of the report and expressed his pleasure at reading the fourth footnote warning about misusing the mechanisms of direct participation. Referring to the influence of new technologies on the demands of the Egyptian people, he urged verifying this influence on the forms of citizen participation.

The Chairman, referring to defending diffuse interests, stated that public actions appear to be less diffuse when the aim is to protect collective interests that recognize essential rights. In this respect, he explained the public debates and demonstrations in several countries concerning exploration of minerals. He also mentioned the right to health and pensions where personal claims are transformed into collective demands through judicial interventions, in particular the use of tutelage.

The rapporteur of the theme thanked the commentators and promised to include their statements in the report to be presented in August. He concluded with two more questions. The first referred to footnote number four that is part of a concern about cases where those democracies that delegate an exaggerated amount of competencies for reasons that are not very clear. In this respect he asked the member of the Committee to determine whether or not to keep this idea as a note or to include it in the substantive part of the document. His second question dealt with the scope of this document, in other words whether to register the present situation or check to see if these mechanisms really function, which would entail a statement that goes beyond the juridical. This latter case would also imply the effective exercise of the mechanisms available to the States and those that citizens can exercise.

In answer to the rapporteur's reflections, Dr. Hubert declared that the mandate allows the Committee to expand on the study. As to the first question, he suggested leaving the explanation in the footnote rather than in the text. This position was shared by Dr. Castillo Castellanos, who further urged the rapporteur to continue his study on application of the norms. Dr. Herdocia Sacasa in turn referred to the exhaustive nature of the document and proposed dealing with legislative developments as something complementary.

The Secretary for Juridical Affairs, Dr. Jean-Michel Arrighi, then proposed that the rapporteur's document be efficiently promoted and diffused outside of the Committee. This was approved by the President. On closing the debate, the President again expressed his thanks to the rapporteur and invited him to present the final version at the August session.

During the 41st regular session of the General Assembly of the OAS held in El Salvador in June 2011, the Inter-American Juridical Committee was requested "to provide information on the progress made on the juridical study of the mechanisms of participative democracy and citizen participation contained in the legislations of some countries in the region" AG/RES. 2671 (XLI-O/11).

During the 79th regular session of the Inter-American Juridical Committee held in Rio de Janeiro, Brazil in August 2011, the rapporteur of the theme, Dr. Fabián Novak, presented to the Committee members his report CJI/doc.383/11 - "Mechanisms of direct participation and strengthening of representative democracy".

The rapporteur explained the background to the question and commented on the presentation of his first report, discussed at the session held in March of this year. He informed the meeting that he had included in this new version of his report all the comments submitted by the members, among which he made special mention of a reference to democracy in Greece. He added that the mechanisms of participation described are not exclusive, nor do they substitute participative democracy, and that in all cases the basic ingredient should be respect for the constitutional rule from which they derive. Also, an adjustment was made to the footnote on the misuse of the mechanisms of direct participation, and an attempt was made to include as much national legislation as possible despite the fact that not all the States had provided information.

Dr. Herdocia thanked the rapporteur for taking his recommendations into account. He also expressed his admiration for the inclusion of national constitutions and legislations. He remarked on item d) on page 18 concerning the limitations of the mechanisms. Dr. Freddy Castillos expressed his thanks for the rapporteur's document and agreed with Dr. Herdocia about the conclusion of item d). As to item c) on misuse of the mechanisms of participation, he asked that the idea be elaborated to make the improper use clearly established. He ended by reflecting on the preliminary concepts that involve cession of sovereignty in favor of the electors. Dr. Fabián Novak explained both references. In relation to misuse of the mechanisms, he explained his concern about abusive consultation hindering the mechanisms of representative democracy, such as the role of civil society and even of Congress. Dr. Jean-Paul Hubert congratulated the rapporteur on his work and thanked him for explaining item c).

Dr. Baena Soares thanked the rapporteur for his paper. As for item d), he requested clarification of the mechanisms involved. Dr. David Stewart made two suggestions regarding items c) and d). In paragraph c), he suggested a reference to indicate that the mechanisms do not substitute representative democracy. In paragraph d) there would seem to be a need to indicate that it is the responsibility of the government to ensure that the population is provided with the necessary information to make a decision. Dr. Hubert remarked that the proposal made by Dr. Stewart about paragraph c) would change the meaning of the rapporteur's proposal. The rapporteur thanked Dr. Stewart and proposed including his suggestion in paragraph d). In respect of item c), he explained that item a) already contains his concern, so item c) would remain as presented.

Dr. Gómez Mont Urueta explained the situation in his country with regard to the development of certain mechanisms of direct participation pointed out in item c). In addition, he referred to the dynamics of searching for solutions that entail arbitration by mechanisms of participation that can conflict with the traditional mechanisms of decision. Accordingly, he posed two questions to the rapporteur, the first to do with the co-substantial or complementary nature of such mechanisms, and the second with regard to the mechanisms to protect direct participation. Here he suggested previous public debate as a guarantee of protection. Another form of protection is to have the States guarantee jurisdictional control against the possible arbitrary nature of decisions so as to preserve the balance and not limit citizens' guarantees or liberties. Dr. Novak expressed his thanks for the comments. As regards item g) on the limits and mechanisms of citizen participation, he supported the idea of including the proposed forms of protection. In item d), he also agreed with the idea of informing citizens presented by Dr.s Gómez and Stewart. As for Dr.

Gómez's first proposal, he recalled the debates held in the past where it was agreed to consider it as a co-substantial aspect when treated as a democracy with mechanisms that participate but must not be seen as conflictive. Dr. Herdocia expressed his thanks for the proposal made by Dr. Gómez and explained that the controls of jurisdiction are contained within the framework of the rule of law.

The rapporteur offered his thanks and informed the meeting of his intention to make the proposed changes in a final version to be presented soon.

The Chairman explained the next steps in the report and asked the Secretariat to prepare a draft resolution to be sent immediately to the Permanent Council and to attach both documents to the Annual Report. The resolution was approved unanimously on Thursday, 4 August, as "Democracia participativa y participación ciudadana" (*Participative democracy and citizen participation*).

On 26 August the Chairman of the IJC sent to the Permanent Council of the Organization of the American States the resolution "Participative democracy and citizen participation", CJI/RES. 176 (LXXIX-O/11), explaining that the document presented is in compliance with the mandate of the General Assembly regarding "preparing a juridical study on the mechanisms of participative democracy and citizen participation contained in the legislations of some countries in the region", AG/RES. 2671 (XLI-O/11).

Following this came the transcription of the resolution adopted by the Inter-American Juridical Committee, "Participative democracy and citizen participation", CJI/RES. 176 (LXXIX-O/11), which contains the document CJI/doc.383/11 rev.1, "Report of the Inter-American Juridical Committee on mechanims of direct participation and strengthing of representative democracy".

CJI/RES. 176 (LXXIX-O/11)

PARTICIPATIVE DEMOCRACY AND CITIZEN PARTICIPATION

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that Resolution AG/RES. 2671 (XLI-O/11) requested the Inter-American Juridical Committee a legal study of the mechanisms of participatory democracy and citizen participation contained in the legislation of some countries on the region;

BEARING IN MIND the study presented by the rapporteur Dr. Fabián Novak on "Mechanisms of direct participation and strengthening of representative democracy", document CJI/doc.383/11,

RESOLVES:

1. To express its gratitude to the rapporteur Dr. Fabián Novak for his report.

2. To approve document CJI/doc.383/11rev.1, "Report of the Inter-American Juridical Committee on mechanisms of direct participation and strengthening of representative democracy" which is attached to the resolution herein.

3. To transmit this resolution to the OAS Permanent Council for its due consideration.

This resolution was approved unanimously at the session held on August 4, 2011, by the following members: Drs. João Clemente Baena Soares, Hyacinth E. Lindsay, Jean-Paul Hubert, Fernando Gómez Mont Urueta, David P. Stewart, Ana Elizabeth Villalta Vizcarra, Fabián Novak Talavera, Guillermo Fernández de Soto, Mauricio Herdocia Sacasa and Freddy Castillo Castellanos.

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CJI/doc.383/11 rev.1

REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE ON MECHANISMS OF DIRECT PARTICIPATION AND STRENGTHENING OF REPRESENTATIVE DEMOCRACY

I. Delimitation of the mandate granted to the rapporteur

The General Assembly of the OAS, at the session held in Lima in 2010, adopted resolution AG/RES. 2611 (XL-O/10), in which it requested the Inter-American Juridical Committee to undertake "a legal study of the mechanisms of participatory democracy and citizen participation contained in the legislation of some countries in the region".

In light of which, at its 77th regular session held in Río de Janeiro, Brazil, the Inter-American Juridical Committee decided to designate Dr. Fabián Novak as rapporteur for this theme and also ask the Office of the Committee to remit a communication to the Member States of the OAS for them to cooperate with the Committee by sending all the available information they have on the mechanisms of citizen participation incorporated in their respective juridical systems.[1] Likewise, following a broad debate, the Committee agreed that it would be suitable for the paper written by the rapporteur to be of a legislative rather than doctrinaire or theoretical nature in order to show the current status of the mechanisms of direct participation that are incorporated in the various political systems of the region, based on which a set of conclusions and recommendations would be formulated.

In this sense the following report to the members of the Committee is based on the analysis not only of the constitutional texts of all the Member States of the OAS but also the legislative development made in some of them.

2. Representative democracy and mechanisms of direct participation in the countries that make up the OAS

2.1 Preliminary concepts

The so-called *representative democracy* that is incorporated in all the constitutional systems of the countries that make up the OAS is usually defined as that in which the people elect the governors, to represent them and perform the function of government. In this respect, it has to be added that one of the chief functions of representation is the legitimization of public power. In effect, in representative democracy those who hold the public power are legitimate representatives of the nation. Accordingly, and in principle, all those who possess public power are representatives of the nation and people, and their power is legitimate as long as this is maintained functioning within the limits of this representation.[2]

As the years have gone by, the total number of countries that make up the OAS have progressively incorporated into their systems of representative democracy a serie of mechanisms of intermediation or direct participation that are peculiar to so-called *semi-direct or participative democracy*,[3] which has unquestionably sought to enhance and strengthen this model of government.[4]

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1 At the moment this report was concluded, the Office of the Committee had already received answers from the Permanent Missions of the Bahamas, Canada, Ecuador, Mexico, Panama, Paraguay, Peru and the Dominican Republic.

2 GARCÍA-PELAYO. Manuel. **Obras Completas**. t. I, Madrid: Centro de Estudios Constitucionales, 1991. p. 374.

3 Today, professional opinion prefers to use the term *semi-direct democracy* to differentiate it from *direct democracy*, which is at present considered impracticable, given the current volume of the local populations and the impossibility of permanently consulting them. In this regard, see CONTRERAS, José. **La Democracia Participativa en el Constitucionalismo Latinoamericano**. In: USECHE, Luis Enrique. **La Participación Ciudadana en el Derecho Constitucional Latinoamericano**. In: **El Nuevo Derecho**

Some preambles or articles of the Political Constitutions of the region even expressly define the participative nature of the democracy in the State in question, thereby affirming its representative characteristics.[5]

Constitucional Latinoamericano, v. I, Caracas: Fundación Konrad Adenauer/CIEDLA/COPRE, 1996. p. 251. As pointed out by MIRÓ QUESADA, Francisco. **Democracia Directa: un análisis comparado en las constituciones latinoamericanas**. In: **El Nuevo Derecho Constitucional Latinoamericano**, v. I, Caracas: Fundación Konrad Adenauer/CIEDLA/COPRE, 1996. p. 133: "Direct democracy implies a set of practices, institutions and policies by means of which individuals participate in the political power as directly as possible and with the minimum of intermediation. Direct democracy is more participation than intermediation. […] Accordingly, when we analyze political systems we find *none* where there is pure direct democracy, in general the institutions of direct democracy appear combined or else mixed with those of representative democracy. That is why we speak of semi-direct democracy". The same theme is addressed in GARCÍA CHOURIO, José Guillermo. **Instituciones de Democracia Directa y Participación Ciudadana**. Lima: Cuadernos para el Diálogo del Jurado Nacional de Elecciones, 2008, p. 35-36: "Strictly speaking this is simply a redefinition that uses the prefix "semi" to relativize and set a distance between what in ancient times was an exercise of face-to-face politics and what today has a real possibility of being practiced in the light of the modern institutions of democracy". Finally, Weber preferred to speak of *rationalized direct democracy* to distinguish from Athenian democracy the direct-consultation procedures included in representative democracy. WEBER, Max. **Economía y Sociedad.** México: Fondo de Cultura Económica, 1984. p. 234.

4 This affirmation does not deny the problems that may arise from misuse of these mechanisms on the part of the government in place, mechanisms that have been widely developed by Latin American professional opinion based on certain experiences over the last few years. So, institutions such as the referendum and the plebiscite, among others, can be used to grant more power to the Executive Power in detriment of the Legislative in order to approve populist laws, weaken Congress and the political parties, intervene in the media or control social organizations. Contributing to this is the tendency of many voters in the region to see the figure of the President as the exclusive depositary of democratic legitimacy, to whom they delegate the right and obligation to resolve the country's problems according to his/her best judgment and understanding. This model is called *delegative democracy*, that is, a system in which the Head of State uses the mechanisms of direct participation in order to affirm personal rather than institutional projects and consolidate self-affirming and self-legitimizing proposals rather than real demands of the citizens.

Another danger is if the mechanisms of direct participation consecrated in the constitutional texts are coupled with other provisions that weaken democratic institutionality; in this case too, the mechanisms of direct participation will by no means strengthen representative democracy. See LISSIDINI, Alicia. **Democracia Directa Latinoamericana: Riesgos y Oportunidades**. In: **Democracia Directa en Latinoamérica**. Buenos Aires: Prometeo Libros, 2008. p. 14-15; KAUFMANN, Bruno. **Prólogo**. In: **Democracia Directa en Latinoamérica.** Buenos Aires: Prometeo Libros, 2008. p. 10.

5 An example is the Constitution of Costa Rica, which expressly points out in article 9 that "The Government of the Republic is […] representative, *participative*, […]"; the Constitution of Honduras points out in article 5 that the Government must respect the principle of *participative democracy*, and article 2 states that the sovereignty of the people can also be exercised *directly* through plebiscite and referendum; article 1 of the Constitution of Paraguay reaffirms the principles of representative, *participative* and pluralist democracy, while articles 2 and 7 of the Constitution of Nicaragua define that republic as being democratic, *participative* and representative, and the Constitution of Venezuela defines Society and Government as being democratic and *participative* (see

There is certainly no intention of returning to the direct democracy of the Greeks,[6] but to establish greater mechanisms of citizens' participation and consultation to allow the State to act more efficiently in an atmosphere of orderly, democratic and institutionalized channeling of citizens' demands. Furthermore, a representative democratic system does not imply a divorce from or rejection of citizen participation; much to the contrary, it invites the citizens to be actively present in decision-making process.

The Inter-American Democratic Charter itself, in articles 2 and 6, acknowledges that "representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry", that "it is the right and responsibility of all citizens to participate in decisions relating to their own development", and that "promoting and fostering diverse forms of participation strengthens democracy".

The mechanisms of direct participation are therefore seen not as substitutes but rather as consubstantial elements of representative institutions, to which they lend strength and vigor. In synthesis, there is just one democracy, based on representativity and comprised of mechanisms for direct participation.

2.2 Mechanisms of direct participation in the Internal Constitutions and Legislations of the member countries of the OAS

As has already been pointed out, the democracies that make up the OAS have nurtured their political systems with a set of direct mechanisms for citizen participation which are normally enshrined as the political rights of the citizen.

We shall now proceed to detail the mechanisms enshrined in the constitutional sphere of the countries of the Americas, as well as their development and legislative regulation.

a. The right of petition

Some Constitutions in the American region consecrate the right of citizens to present petitions or pleas of an individual or collective nature, for social or private reasons, addressed to the authorities,[7] on matters of their competence which should obtain a motivated and opportune response within the time schedule set by the Constitution or the law.

Some Constitutions even provide for sanctioning the authorities that violate this right,[8] or else simply provide that the petition be considered denied if no answer is given within the legal time schedule.[9]

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the Preamble and Articles 5 and 6). The Colombian Constitution defines the State as a democratic and *participative* republic (Article 1) which facilitates the *participation* of all in the decisions that affect them (Article 2), where the people exercise their sovereignty *directly* or through their representatives (Article 3) and within a democratic and *participative* legal framework (Preamble). The Constitution of Bolivia establishes that the people exercise their sovereignty in a *direct* and delegated fashion (Article 7) and that the government is characterized as being democratic, *participative* and representative (Article 11).

6 This due to the practical impossibility of applying this system in countries with large populations, where direct permanent consultation of each act of the government would prove impossible. Furthermore, Athenian direct democracy involved very few people, who belonged to the dominant classes; women were excluded, and the *Eklesia* (Assembly) only met about 40 times a year. See USECHE, Luis Enrique. **La Participación Ciudadana en el Derecho Constitucional Latinoamericano**. In: **El Nuevo Derecho Constitucional Latinoamericano**, v. I, Caracas: Konrad Adenauer/CIEDLA/COPRE, 1996. p. 205.

7 One exception is given by the Constitution of Colombia, which extends the exercise of this right to private organizations to guarantee fundamental rights (Article 23).

8 This is the case of article 41 of the Constitution of Panamá and article 2, paragraph 20 of the Peruvian Constitution, as well as article 51 of the Constitution of Venezuela, which also provides the possibility of dismissing the employee involved. See also article 20 of Act Nº 6 of the Republic of Panama, dated 22 January 2002.

9 This is the case of article 40 of the Constitution of Paraguay.

This mechanism of citizen' participation is expressly established in the Constitutions of Bolivia,[10] Brazil,[11] Chile,[12] Colombia,[13] Costa Rica,[14] Ecuador,[15] El Salvador,[16] Guatemala,[17] Haiti,[18] Honduras,[19] Mexico,[20] Nicaragua,[21] Panama,[22] Paraguay,[23] Peru,[24] Dominican Republic,[25] Surinam,[26] Uruguay[27] and Venezuela.[28]

b. The right to request information

One mechanism of participation usually provided by some Constitutions of the region is the right of citizens to request information of public access and private, collective or general interest based on databanks or records under the care of civil servants or private citizens who manage public funds or provide public services.

This right may be limited in certain cases or matters (generally linked to national security or private intimacy) and normally also include the possibility of requesting rectification of the information.

Furthermore, the authorities are usually obliged to grant this information as being under their responsibility, and in some cases it is established that the authorities must provide the information free of charge.[29]

This right is usually regulated internally:

a) Specifying the type of information that can be requested as well as the entities that can be the object of this request;

b) Establishing the possibility of correcting or deleting any incorrect, irrelevant, incomplete or outdated information at the request of the interested party;

c) Mentioning if access to the information will be free of charge, or not;

d) Regulating the form in which the requested information will be delivered;

e) Establishing the form that the request must exhibit and the information that should be provided;

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10 Article 24 of the Constitution of the Plurinational State of Bolivia of 2009. This specifies that petitions can be formulated in written or oral form.

11 Article 5, paragraph XXXIV of the Constitution of the Federative Republic of Brazil of 1988. This Constitution points out that the right to petition can be exercised in defense of rights or against illegality or abuse of power.

12 Article 14 of the Political Constitution of the Republic of Chile of 1980.

13 Article 23 of the Political Constitution of the Republic of Colombia of 1991.

14 Article 27 of the Political Constitution of the Republic of Costa Rica of 1949.

15 Article 66, paragraph 23 of the Constitution of the Republic of Ecuador of 2008.

16 Article 18 of the Constitution of the Republic of El Salvador of 1983.

17 Articles 28 and 137 of the Constitution of the Republic of Guatemala of 1985. Here a deadline of 30 days is given for the authority to answer administrative questions and 8 days for political questions.

18 Article 29 of the Constitution of the Republic of Haiti of 1987.

19 Article 80 of the Political Constitution of the Republic of Honduras of 1982.

20 Article 8 of the Political Constitution of the United States of Mexico of 1917.

21 Article 52 of the Political Constitution of the Republic of Nicaragua of 1987 adds the right of citizens to "make constructive criticism".

22 Article 41 of the Political Constitution of the Republic of Panama of 1972.

23 Article 40 of the Political Constitution of the Republic of Paraguay of 1992.

24 Article 2, paragraph 20 of the Political Constitution of Peru of 1993. This Constitution specifies that the members of the Armed Forces and the National Police can only exercise this right individually.

25 Article 22, paragraph 4 of the Constitution of the Dominican Republic of 2010.

26 Article 22 of the Constitution of Surinam of 1987.

27 Article 30 of the Political Constitution of the Oriental Republic of Uruguay of 1967.

28 Article 51 of the Bolivarian Constitution of Venezuela of 1999.

29 This is the case of article 6 of the Mexican Constitution and article 4 of Act Nº 6 of the Republic of Panama dated 22 January 2002.

f) Defining a procedure and schedules for the authorities to respond to the request;

g) Consecrating the action of *habeas data* to be exercised in the pertinent courts when civil servants deny access to information without proper justification; and

h) Setting the sanctions to be placed on civil servants who fail to fulfill their obligations (fines, dismissal, etc.)[30]

This mechanism is at present part of the Constitutions of Bolivia,[31] Brazil,[32] Ecuador,[33] Guatemala,[34] Mexico,[35] Panama,[36] Peru,[37] the Dominican Republic[38] and Venezuela,[39] as well as in the Canadian legislation.[40]

c. The right to initiative[41]

There are also numerous Constitutions in the region that consecrate the right of the citizen to draw up and propose laws or constitutional reform; for this purpose, the support of a percentage or minimum number of citizens is necessary.[42]

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30 See, for example, Act Nº 6 of the Republic of Panama dated 22 January 2002, or Law 1682 of Paraguay dated 28 December 2000, which regulates private information, and Law 1779 on Administrative Transparency dated 13 September 2001.

31 Articles 130 and 131 of the Constitution of the Plurinational State of Bolivia of 2009. These articles contemplate the Action of Protection of Privacy in case the authorities refuse to grant the request.

32 Article 5, paragraph XXXIII of the Constitution of the Federative Republic of Brazil of 1988.

33 Articles 18, paragraphs 2 and 91 of the Constitution of the Republic of Ecuador of 2008. See also articles 96, 97, 99 and 100 of the Organic Law of Citizens' Participation dated 2 February 2010 as well as articles 2, paragraph 3 and 182 to 192 of the Electoral Organic Law and Law of Political Organizations of Ecuador (Code of Democracy) dated 9 April 2009.

34 Article 30 of the Constitution of the Republic of Guatemala of 1985.

35 Article 6, paragraph III of the Political Constitution of the United States of Mexico of 1917.

36 Article 43 of the Political Constitution of the Republic of Panama of 1972. See also Act Nº 6 dated 22 January 2002.

37 Article 2, paragraph 5 of the Political Constitution of Peru of 1993.

38 Article 49 of the Constitution of the Dominican Republic of 2010. See also Act Nº 200-04 on Free Access to Public Information and Decree Nº 130-05, which is its Regulation.

39 Article 28 of the Bolivarian Constitution of Venezuela of 1999.

40 See the Access to Information Act of 1985.

41 This mechanism, which originates in Sparta and Athens, was initially limited to the dominant governing classes. Later on it was extended to the people in general, just as in Europe, Asia and America. This is a right of the citizens to draw up and present projects or draft laws or constitutional reforms, which can be approved or rejected by the Legislative Power or else submitted to referendum. See MIRÓ QUESADA, Francisco. **Democracia Directa y Derecho Constitucional**. Lima: Artes y Ciencias, 1990. p. 139; 143- 144. On the other hand, it must be stated that current professional opinion distinguishes *legislative initiative* (when citizens propose laws and constitutional reforms to Parliament) from *popular initiative* (when citizens propose laws and constitutional reforms to be submitted directly to the approval of the people). LISSIDINI, Alicia. *Ob. cit.*, p. 15. In this regard it should be pointed out that this study includes both, although it makes no distinction between them.

42 The percentage to exercise this citizens' initiative varies from one Constitution to the next. For example, we have article 61 of the Constitution of Brazil which requires 1% of the national electorate to be distributed among no less than 5 States, while article 123 of the Constitution of Costa Rica requires 5% of the citizens enrolled as voters, and the Constitution of Paraguay requires 30,000 electors, whereas the Constitution of Uruguay demands 25% of the total number of citizens qualified to vote to propose laws (Art. 79), 15% of the residents registered with the organs of the local government, on matters of

This mechanism, to promote greater involvement of the citizens in political decisions and democratization of the political agenda, has been considered in order to repair or correct the omissions that are possibly made by the Assembly or Congress, with the citizens correspondingly playing the role of protagonist in creating the laws.

This right is usually accompanied by assertion of certain matters to which this citizens' initiative cannot be applied and which are generally linked to questions involving budgetary, penal, tributary, fiscal, monetary, credit, pension, price-fixing or minimum wage, administrative, security, treaties or territorial matters, among others.

On the other hand, on the legislative level this mechanism of participation usually implies:

a) Defining the requisites for popular initiatives (minimum number of citizens subscribing the initiative, procedures for collecting signatures, explaining the reasons for the initiative, draft of the proposal, constitutional appraisal of the proposal, etc.);
b) Specifying the citizens entitled to this right (for example, those in full possession of their political rights);
c) Permitting the election of spokesmen to support the initiative in Congress or the Assembly;
d) Establishing the procedure to be followed within the Congress or the Assembly once the proposal has been received;
e) Consecrating the power of the Assembly or Congress to appraise, accept or reject the request;
f) Establishing the obligation of announcing the decision that is finally made; and
g) Referencing the budgetary items involved in the cost of the process.[43]

The right to initiative is enshrined in the Constitutions of Argentina,[44] Bolivia,[45] Brazil,[46] Colombia,[47] Costa Rica,[48] Ecuador,[49] Guatemala,[50] Nicaragua,[51] Panama,[52]

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jurisdiction (Art. 305) and 10% of the citizens enrolled in the National Civic Register to propose reforms in the Constitution (Art. 331). The Constitution of Ecuador in turn requires 0.25% of the people registered in the voters' poll to propose changing or derogating a law and 1% if it is a question of reforming the Constitution (Article 103), while the Constitution of Guatemala requires 5,000 citizens duly accredited by the Registry of Citizens to propose reforms in the Constitution (Article 277), among others.

43 See for example the Law of Citizens' Participation of the Federal District of Mexico (articles 34 to 41, dated 30 April 2004), modified successively on 28 January 2005, 16 May 2005, 13 July 2005, 15 May 2007 and 30 December 2009. We also have articles 2 and 11 to 19 of Act Nº 26300 on Rights of Citizen Participation and Control of Peru, as well as articles 6 to 17 of the Organic Law of Citizens' Participation dated 2 February 2010 and articles 2, paragraph 3 and 182 to 192 of the Electoral Organic Law and Law of Political Organizations of Ecuador (Code of Democracy) dated 9 April 2009. Also, Law 834, which establishes the Paraguayan Electoral Code, dated 19 April 1996 (articles 266-275).

44 Article 39 of the National Constitution of the Argentinean Republic of 1994.

45 Articles 11 and 162, paragraph 1, of the Constitution of the Plurinational State of Bolivia of 2009.

46 Articles 14 and 61 of the Constitution of the Federative Republic of Brazil of 1988.

47 Articles 103, 106, 154 and 155 of the Political Constitution of the Republic of Colombia of 1991.

48 Article 123 of the Political Constitution of the Republic of Costa Rica of 1949.

49 Article 103 of the Constitution of the Republic of Ecuador of 2008.

50 Articles 174 and 277 of the Constitution of the Republic of Guatemala of 1985. This is peculiar in that it establishes the right of initiative in favor of a center of studies like the University of San Carlos of Guatemala.

51 Article 140 of the Political Constitution of the Republic of Nicaragua of 1987.

Paraguay,[53] Peru,[54] the Dominican Republic,[55] Uruguay[56] and Venezuela;[57] as well as in the legislation of Mexico.[58]

d. The right to referendum[59]

The American Constitutions usually also establish the possibility of the President, the Congress or the Legislative Assembly submitting a law, a draft law or draft for constitutional reform for various purposes, to a referendum (direct popular consultation). Accordingly, a referendum is usually considered for:

a) Approving laws: Denominated *approbatory referendum*, prior to the act being signed. Here the objective is to appeal to the citizens for them to make the decision to adopt a certain norm.

b) Repeal of laws: Denominated *abrogatory referendum*. In this second case the citizens are asked to eliminate totally or partially the effects of a norm and to assume the responsibility for such a decision.

c) Consultation: Denominated *consultative referendum*, which may be binding or not. In this case the mechanism is oriented towards seeking the citizen's opinion on a specific topic that is important to the country.

In some few cases the referendum also serves to approve integrating electoral districts or intensifying decentralization processes.

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52 Articles 238 and 239 of the Political Constitution of the Republic of Panama of 1972. These articles consecrate the right of initiative to bring about the merging or association of two or more municipalities and for any matter in the charge of Town Councils. Also, Resolution Nº 93 of the National Assembly of Panama dated 31 October 2009 provides that any natural person or legal entity can address the National Direction for Promoting Citizens' Participation for the purpose of presenting a draft law.

53 Articles 123 and 289 of the Political Constitution of the Republic of Paraguay of 1992.

54 Article 2, paragraph 17 of the Political Constitution of Peru of 1993.

55 Articles 22 (paragraph 3), 97 and 203 of the Constitution of the Dominican Republic of 2010.

56 Article 79 of the Political Constitution of the Oriental Republic of Uruguay of 1967.

57 Articles 70, 204 and 341 of the Bolivarian Constitution of Venezuela of 1999.

58 See the local Constituciones and the Laws of Citizens' Participation for the Mexican States of Guanajuato (Decree 130 dated 18 October 2002); Tamaulipas (Decree 426 dated 23 May 2001 altered by Decree 563 dated 8 August 2006); Jalisco (Decree 17369 dated 31 January 1998, Decree 18005 dated 28 September 1999 and Decree 18446 dated 19 September 2000); Morelos (Decree 4095 dated 26 December 2000); Zacatecas (Decree 328 dated 29 August 2001); Coahuila (Decree 177 dated 1 November 2001); Quintana Roo (Decree dated 10 March 2005); Guerrero (Law 684 dated 30 June 2008); Baja California (Decree dated 25 January 2001); Baja California Sur (Decree 1280 dated 27 October 2005); Aguas Calientes (Decree 207 dated 21 November 2001); Colima (Decree 244 dated 15 January 2000); Federal District (Decree dated 30 April 2004). Although there is no uniformity among the laws as to how this participation mechanism is applied, all of them certainly do consecrate the mechanism.

59 The referendum or popular consultation has remote antecedents in the Athenian assemblies, the Roman republic and the ancient German tribes. The word *referendum* is of Latin origin and can be considered etymologically as "what must be consulted". The Swiss were the first to incorporate it into their legal system in the Middle Ages when the *canton* delegates who made up the Federal Diet, whenever they needed instructions, took their decisions *ad referendum*, on condition that they would be ratified by the citizens of the local *cantons*. At present it is seen as the procedure by means of which citizens resort to voting to ratify or disapprove, normally in definitive terms, decisions of a normative nature made by the organs that represent the State. See MIRÓ QUESADA, Francisco. *Ob. cit.*, 1990, p. 98 and 105. Also, AGUIAR DE LUQUE, Luis. **Democracia Directa y Estado Constitucional**. Madrid: Revista de Derecho Privado, 1977.

Some Constitutions also offer the possibility that referendum may be the initiative of the citizens themselves by means of a petition that collects a minimum number of signatures.[60]

Other Constitutions limit this right by excluding certain matters that cannot be subjected to consultation, such as: treaties,[61] national defense, fundamental rights,[62] taxes, amnesties, property, elections, currency and the banking system, revocation of mandates, budget, pensions, loans, contracts or acts of an administrative nature, among others.

Finally, on the legislative level this mechanism is normally used:

a) Pointing out the requisites for the citizens' request for a referendum (a norm subject to consultation, presentation of reasons, minimum number of persons subscribing the initiative, etc.);

b) Specifying the requisites for the convocation of a referendum (date of the consultation, text of the norm subjected to consultation, arguments in favor and against the norm, revision and prior favorable decision favorable of the questions on the part of the Tribunal or Constitutional Court, etc.);

c) Defining the objective of the referendum (approving or disapproving laws, reforming the Constitution, consulting a law, etc.);

d) Regulating the minimum support that a consultation needs to obtain from population in order to be approved;

e) Determining that any controversy regarding the referendum will be submitted to the decision of the pertinent electoral body or court;

f) Establishing the authorities qualified to convoke it and the aspects of a procedural nature; and

g) Referencing the budgetary items involved in the cost of the process.[63]

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[60] For example, the Constitution of Costa Rica requires 5% of the citizens registered on the voter list (Article 105), the Constitution of Honduras requires 6% of the citizens registered in the Electoral National Census (Article 5), the Constitution of Uruguay requires 25% of the total number enrolled and qualified to vote in order to derogate laws (Article 79), the Constitution of Peru requires 0.3% of the electoral population in order to propose constitutional reforms (Article 206), while the Constitution of Ecuador requires 8% of those enrolled in the electoral register to request changes to the Constitution (Article 441). The Constitution of Colombia in turn requires a tenth of the electoral census to request a derogatory referendum (Article 170) and 5% to propose constitutional reforms (Article 375).

[61] On the other hand, Article 325 of the Political Constitution of the Republic of Panama dated 1972 sets forth that the treaties signed concerning the Panama Canal, once approved by Congress, must be submitted to a national referendum. Similarly, Article 420 of the Constitution of the Republic of Ecuador of 2008 provides that citizens can take the initiative of proposing ratification of treaties by means of referendum. Likewise, the Constitution of Venezuela provides for approval via referendum of those treaties that might compromise national sovereignty or transfer jurisdiction to supranational bodies (Article 73), while the Constitution of Bolivia establishes the referendum to approve treaties of limits, economic or monetary integration or granting jurisdiction to international or supranational organizations in the framework of integration processes. Again, it is established that 5% of the citizens registered in the voters' office can request a referendum to approve a treaty concerning any matter (Article 259).

[62] Nevertheless, Article 272 of the Constitution of the Dominican Republic of 2010 does allow this, by establishing the possibility of an approbatory referendum on fundamental rights and guarantees, depending on the approval of the majority of citizens.

[63] See, for example, the Law of Citizens' Participation of the Federal District of Mexico (Articles 23 to 33, dated 30 April 2004), altered successively on 28 January 2005, 16 May 2005, 13 July 2005, 15 May 2007 and 30 December 2009. Also, Articles 37 to 44 of Act Nº 26300 on Citizens' Rights of Participation and Control of Peru and Article 115 of Act Nº 27972 – Organic Law of Municipalities. See too Articles 19 to 24 of the Organic Law

This mechanism of citizen' participation is present in the Constitutions of Antigua and Barbuda,[64] Argentina,[65] Bahamas,[66] Bolivia,[67] Brazil,[68] Colombia,[69] Costa Rica,[70] Dominica,[71] Ecuador,[72] Honduras,[73] Jamaica,[74] Grenada,[75] Guatemala,[76] Guyana,[77] Nicaragua,[78] Panama,[79] Paraguay,[80] Peru,[81] the Dominican Republic,[82] Saint Kitts and Nevis,[83] Saint Vincent and the Grenadines,[84] Saint Lucia,[85] Uruguay[86] and Venezuela;[87] as well as the legislations of Canada[88] and Mexico.[89]

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of Citizens' Participation dated 2 February 2010, Articles 2, paragraph 4, 182 to 186 and 195 to 198 of the Electoral Organic Law and Law of Political Organizations (Code of Democracy) dated 9 April 2009 and the Organic Code of Territorial Organization, Autonomy and Decentralization of Ecuador (Articles 303 and 309). Similarly, the Referendum Act of Canada dated 23 June 1992, Law 834 which establishes the Paraguayan Electoral Code, dated 19 April 1996 (Articles 259-265).

64 Article 47, paragraph 5, clause c) of the Constitution of Antigua and Barbuda of 1981.

65 Article 40 of the National Constitution of the Argentinean Republic of 1994. This Constitution provides popular consultations to approve draft laws or for non-binding consultation of draft laws.

66 Article 54, paragraph 2, clause b) (ii) of the Constitution of the Bahamas of 1973, which circumscribes the use of the referendum for approving laws that reform the Constitution.

67 Articles 11, 259 and 411 of the Constitution of the Plurinational State of Bolivia of 2009.

68 Articles 14 and 49, paragraph XV of the Constitution of the Federative Republic of Brazil of 1988.

69 Article 40 (paragraph 2), 103, 104, 105, 170, 319, 375, 377 and 378 of the Political Constitution of the Republic of Colombia of 1991. Here is established the possibility that the President, governments and town councils will consult the people, with binding effect, on matters of national, departmental and municipal importance, respectively. Another provision is for referendum to be held on draft constitutional reforms, derogation and approval of laws, municipal relations, etc.

70 Article 105 of the Political Constitution of the Republic of Costa Rica of 1949.

71 Article 42, paragraph 3, clause b) of the Constitution of Dominica of 1978, which circumscribes use of the referendum for approving laws to reform the Constitution.

72 Article 441 of the Constitution of the Republic of Ecuador of 2008.

73 Articles 2 and 5 of the Political Constitution of the Republic of Honduras of 1982.

74 Article 49, paragraphs 3, clause d) (ii) and 5 of the Constitution of Jamaica of 1962.

75 Article 39, paragraph 5, clause c) of the Constitution of Grenada of 1973, which circumscribes using the referendum to approve laws to reform the Constitution.

76 Articles 173 and 280 of the Constitution of the Republic of Guatemala of 1985.

77 Article 164, paragraph 2, clause b) of the Constitution of Guyana of 1980, which circumscribes using the referendum to approve laws to reform the Constitution.

78 Article 2 of the Constitution of the Republic of Nicaragua of 1987.

79 Articles 239 and 325 of the Political Constitution of the Republic of Panama of 1972.

80 Articles 121 and 122 of the Political Constitution of the Republic of Paraguay of 1992.

81 Articles 2, paragraph 17, 32 and 190 of the Political Constitution of Peru of 1993. The referendum in this country is provided for total or partial reform of the Constitution, approval of laws and municipal ordinances, matters related to the process of decentralization and integration of two or more adjacent electoral districts to constitute a region.

82 Articles 22 (paragraph 1), 210 and 272 of the Constitution of the Dominican Republic of 2010.

83 Article 38, paragraph 3, clause b) of the Constitution of Saint Kitts and Nevis of 1983, which circumscribes using the referendum to approve laws to reform the Constitution.

84 Article 38, paragraph 3, clause b) of the Constitution of Saint Vincent and the Grenadines of 1979, which circumscribes using the referendum to approve laws to reform the Constitution.

85 Article 41, paragraph 6, clause b) of the Constitution of Saint Lucia of 1978, which circumscribes using the referendum to approve laws to reform the Constitution.

e. The right to participate in plebiscites[90]

Some Constitutions in the region also consecrates the right of citizens to take part in plebiscites, normally in respect to constitutional reform but also to support or reject acts or decisions of the Executive Power, to create, merge or separate provinces or regions, on legislative or administrative matters, of importance for national, federal, regional or municipal public life, as the case may be, among other matters.

In some cases the convocation must be made by the President of the Republic, Head of the Government or by the Congress or Assembly, although some Constitutions provide for the initiative originating in the citizens themselves.[91]

On the legislative level, this mechanism is normally used:

a) Establishing the power of the authorities to analyze the citizens' request for a plebiscite, either to approve, reject or modify it without changing the substance of the consultation;

b) Setting a schedule for the authorities to appraise the citizens' request, after which deadline, in the case of no answer having been delivered, it shall be considered approved;

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[86] Article 79 of the Political Constitution of the Oriental Republic of Uruguay of 1967. Here the referendum is provided to derogate laws in the year they are promulgated. While articles 303 and 304 of the same Constitution provide the referendum so that 1,000 citizens registered in a Department can question decrees passed by the Departmental Board and Resolutions of the Municipal Governors contrary to the Constitution and laws.

[87] Articles 70, 71, 73, 74 and 344 of the Bolivarian Constitution of Venezuela of 1999. These articles consecrate the consultative referendum on important issues, the approbatory and abrogatory referendum of laws, as well as the referendum to reform the Constitution.

[88] See the Referendum Act of Canada dated 23 June 1992.

[89] See the local Constitutions and Laws of Citizens' Participation for the Mexican States of Guanajuato (Decree 130 dated 18 October 2002); Tamaulipas (Decree 426 dated 23 May 2001 altered by Decree 563 dated 8 August 2006); Jalisco (Decree 17369 dated 31 January 1998, Decree 18005 dated 28 September 1999 and Decree 18446 dated 19 September 2000); Morelos (Decree 4095 dated 26 December 2000); Zacatecas (Decree 328 dated 29 August 2001); Coahuila (Decree 177 dated 1 November 2001); Quintana Roo (Decree dated 10 March 2005); Guerrero (Law 684 dated 30 June 2008); Baja California (Decree dated 25 January 2001); Baja California Sur (Decree 1280 dated 27 October 2005); Aguas Calientes (Decree 207 dated 21 November 2001); Colima (Decree 244 dated 15 January 2000); Federal District (Decree dated 30 April 2004). Although there is no uniformity among the Laws as regards how this participation is dealt with, all of them certainly do consecrate the mechanism.

[90] This figure goes back to the *plebiscitum* applied in Roman Public Law, which supposed its use by the authorities to legitimize a decision before the Assembly of Plebeians. See in this regard PRUD'HOMME, Jean-François. **Consulta Popular y Democracia Directa**. México: Instituto Federal Electoral, 2001.
We feel that it is important at this juncture to warn that *popular consultation*, *referendum* and *plebiscite* are terms that are used indistinctly in the different countries that make up the OAS. Although in some of these countries a distinction is made between plebiscite and referendum, such differentiation is certainly diluted among the countries of the Americas. See ZOVATTO, Daniel. **Las Instituciones de la Democracia Directa a Nivel Nacional en América Latina. Balance Comparado: 1978-2007**. En: LISSIDINI, Alicia. *Ob. cit*., p. 256.

[91] This is the case of the Constitution of Honduras, where initiative may come from 6% of citizens registered in the Electoral National Census (Article 5), and the Constitution of Ecuador, which requires 5% of those enrolled in the local electoral register if the consultation is national and 10% local (Article 104), among many others.

c) Regulating the requisites for the citizens' request for a plebiscite (act or norm to be submitted to plebiscite; explanation of the reasons for same, in some cases a favorable decision by the Tribunal or Constitutional Court concerning the questions to be consulted, etc.);

d) Specifying the matters that cannot be subjected to plebiscite (tributary, fiscal, etc.);

e) Underlining the binding nature of the plebiscite;

f) Emphasizing the obligation to announce fairly the options presented to the voters; and

g) Referring the solution of any controversy arising from the plebiscite to the pertinent electoral court or entity.[92]

This mechanism of direct participation is considered in the Constitutions of Brazil,[93] Colombia,[94] Chile,[95] Ecuador,[96] El Salvador,[97] Honduras,[98] Nicaragua,[99] Uruguay,[100] the Dominican Republic[101] and Surinam;[102] as well as the legislations of Canada[103] and Mexico.[104]

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92 See, for example, the Law of Citizens' Participation of the Federal District of Mexico (articles 12 to 22 dated 30 April 2004, altered successively on 28 January 2005, 16 May 2005, 13 July 2005, 15 May 2007 and 30 December 2009). Likewise the Organic Law of Citizens' Participation of Ecuador dated 2 February 2010.

93 Articles 14, 18 and 49, paragraph XV of the Constitution of the Federative Republic of Brazil of 1988, which provides for the plebiscite in order for the States or Federal Territories to sub-divide or merge, or for others to be created, similar to the Municipalities.

94 Articles 40 (paragraph 2), 103 and 376 of the Political Constitution of the Republic of Colombia of 1991.

95 Articles 128 and 129 of the Political Constitution of the Republic of Chile of 1980. This states that if the President of the Republic turns down a draft for constitutional reform that has been approved by both Houses and later on the Houses should insist on their project, the President will be obliged to enact the draft constitutional reform unless he submits the question to citizens' consultation by means of a plebiscite.

96 Article 104 of the Constitution of the Republic of Ecuador of 2008 enables the President, the highest authority of decentralized governments or the citizens to convoke a popular consultation (that is, a plebiscite) on any matter. Likewise, according to Article 444 of the same Constitution, the President of the Republic, the Assembly and 12% of those enrolled in the electoral register can call a Constituent Assembly through direct popular consultation.

97 Article 89 of the Constitution of the Republic of El Salvador of 1983 contemplates popular consultation to approve the project and bases of a possible future union or formation of the Republic of Central America.

98 Articles 2 and 5 of the Political Constitution of the Republic of Honduras of 1982.

99 Article 2 of the Constitution of the Republic of Nicaragua of 1985.

100 Article 331 of the Political Constitution of the Oriental Republic of Uruguay of 1967.

101 Article 203 of the Constitution of the Dominican Republic of 2010.

102 Article 83, paragraph 3, clause f) of the Constitution of Surinam of 1987.

103 See article 12, paragraph 6, clause d) of the Nuclear Fuel Waste Act of 2002, articles 21 and 22 of the Canadian Environmental Assessment Act of 1992, article 28 of the Pest Control Products Act of 2002, article 12, paragraph 1 of the Canada Nacional Parks Act of 2000 and article 15, paragraph 4 of the Canadian Human Rights Act of 1985, among others.

104 See the local Constitutions and the Citizens' Participation Acts for the Mexican States of Guanajuato (Decree 130 dated 18 October 2002); Tamaulipas (Decree 426 dated 23 May 2001, altered by Decree 563 dated 8 August 2006); Jalisco (Decree 17369 dated 31 January 1998, Decree 18005 dated 28 September 1999 and Decree 18446 dated 19 September 2000); Morelos (Decree 4095 dated 26 December 2000); Zacatecas (Decree 328 dated 29 August 2001); Coahuila (Decree 177 dated 1 November 2001); Quintana Roo (Decree dated 10 March 2005); Guerrero (Law 684 dated 30 June 2008); Baja

f. The right of revocation[105]

Some Constitutions in the region allow the citizens to revoke the mandate of certain authorities (national, local, regional, parliamentarian and even judicial if they result from popular elections) in situations expressly defined in the law and after a period of mandate has expired. Normally the right of revocation is conditioned to reach a wide majority.

With regard to the revocatory action, it must be stated that this is not a judicial action that demands the guarantees of due process to the extent that the reasons for which this procedure is started do not involve accusations for alleged illicit behavior on the part of civil servants against *res publica* but rather citizens' appraisal of the performance of the elected authority; in this sense it is really a question of political appraisal.

On the legislative level this mechanism of participation generally entails:

a) Determining the positions that can be revoked;

b) Determining the deadline periods in which revocation can be put into effect;

c) Specifying the number of times this right can be exercised against authorities;

d) Establishing the minimum number of voters that must approve the measure;

e) Defining the authorities who are to assume the position of the revoked authority;

f) Demanding certain requisites for requesting revocation, such as the need for it to be duly backed up by solid arguments; and

g) Specifying the budget items involved in the cost of this measure.[106]

This mechanism is contained in the Constitutions of Bolivia,[107] Ecuador,[108] Colombia,[109] Peru,[110] Surinam[111] and Venezuela.[112]

California (Decree dated 25 January 2001); Baja California Sur (Decree 1280 dated 27 October 2005); Aguas Calientes (Decree 207 dated 21 November 2001); Colima (Decree 244 dated 15 January 2000); Federal District (Decree dated 30 April 2004). Although this participation mechanism is not dealt with in a uniform fashion by the above-mentioned Laws, all of them certainly do consecrate the mechanism.

105 This word comes from the Latin *revocatio*, which means to remove or change. This participation mechanism allows the citizen to exercise his power over the authorities he has elected, and to remove them from office before the end of their mandate, pursuant to a majority proportion being determined. See MIRÓ QUESADA, Francisco. *Ob. cit*., 1990, p. 159.

106 See for example Law Nº 26300 on Citizens' Rights of Participation and Control of Peru (articles 20 to 26); Organic Law of Citizens' Participation dated 2 February 2010 (articles 25 to 28) and Electoral Organic Law and Law of Political Organizations of Ecuador (Code of Democracy) dated 9 April 2009 (articles 2, paragraph 5, 182a, 186 and 199 to 201).

107 Articles 11 and 170 of the Constitution of the Plurinational State of Bolivia of 2009 include the possibility of revoking the mandate of the President of the Republic.

108 Articles 61 and 105 of the Constitution of the Republic of Ecuador of 2008. These articles allow revoking the authorities elected by vote after 1 year of mandate and before the last year of their term. To this end, 10% of the people enrolled in the electoral register is required and 15% in the case of revoking the mandate of the President of the Republic.

109 Articles 40 and 103 of the Political Constitution of the Republic of Colombia of 1991.

110 Articles 2, paragraph 17, 191 and 194 of the Political Constitution of Peru of 1993. These provide for the possibility for citizens to revoke the mandates of the Regional President, Members of the Regional Council, Municipal Mayors and Councilors. Article 139, paragraph 17 in turn contemplates revocation of magistrates.

111 Article 55, paragraph 3 of the Constitution of Surinam of 1987.

112 Articles 6, 70 and 72 of the Bolivarian Constitution of Venezuela of 1999 provide that all positions and magistratures by popular election are revokable, with 20% of the voters qualified to propose a revocatory referendum after half of the period for which the civil servant was elected has transpired.

g. The right to voluntary service or citizen's collaboration

Some internal juridical systems allow for citizens to offer their collaboration on a voluntary solidarity basis with the public offices in carrying out work or lending some collective or community public service by providing economic and material resources or their personal work, with the appreciation and decision left to the authorities as to whether to accept or refuse the collaboration offered, or to propose changes.

This is the case of the legislations of Ecuador[113] and Mexico.[114]

h. The right to participate in public administration

Besides the human right to elect and be elected, enshrined in multiple inter-American and universal human-rights instruments, various constitutional norms of the countries in the region affirm that the State guarantees the participation of citizens in public administration, in conducting public entities (especially in educational, environmental, citizen security and youth institutions) and in the control of public services (but also in municipal and regional governments).

So, on the legislative level, this mechanism is normally implemented:

a) Setting up National Councils made up of representatives of civil society to serve as instances of consultation and dialogue in respect to formulating and executing national development plans, State budget, investment and allocation of public resources, etc.

b) Creating Regional or Municipal Coordination Councils or Committees which include authorities and representatives of civil society elected democratically for a certain period for the purpose of serving as a consultative body on certain matters (budget plan, investment plan, development plan, infrastructure works and public services, strategic guidelines, etc.);

c) Contemplating the formation of Neighborhood Residents' Associations made up of the dwellers of a locality for the purpose of supervising public services, seeing that norms are respected, etc., whether on the initiative of the authorities or the neighbors themselves;

d) Establishing Administrative Committees so that the neighbors can supervise the execution for works and the economic management of the workers and local civil servants;

e) Creating Citizens' Vigilance Committees as an organization of civil society designed to control and carry out social programs and supervise bids and contracts;

f) Permitting the participation of consumers' and users' associations in the organizations that control public services;

g) Guaranteeing the participation of the population in drawing up the budgets of local and regional governments;

h) Creating workshops within the State Powers to attend to and channel the ideas, suggestions, proposals and input of users of the system, professional associations, organized civil society and citizens in general;[115] and

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[113] See articles 37 and 38 of the Organic Law of Citizens' Participation of Ecuador dated 2 February 2010.

[114] See, for example, the Law of Citizens' Participation of the Federal District of Mexico, Articles 46 to 48, dated 30 April 2004, altered successively on 28 January 2005, 16 May 2005, 13 July 2005, 15 May 2007 and 30 December 2009.

[115] See articles 11, 11-A and 11-B of Law Nº 26300 on Citizens' Rights of Participation and Control of Peru, as well as articles 98 to 105, 116 and 117 of Law Nº 27972 – Organic Law of Municipalities, article 17 of Law Nº 27783 – Law of Bases of Decentralization and Law Nº 27795 – Law of Demarcation and Territorial Organization and its Regulations – Supreme Decree Nº 019-2003-PCM. Also, articles 47 to 55 and 67 to 71 of the Organic Law of Citizens' Participation dated 2 February 2010; articles 90 and 91 clause b) of Organic Law of Higher Education dated 15 May 2000 and the Organic Code

i) Establishing mechanisms of citizen participation in educational establishments, formulating environmental policy, etc.[116]

This form of participation can be found in the Constitutions of Argentina,[117] Bolivia,[118] Colombia,[119] Ecuador,[120] Nicaragua,[121] Paraguay,[122] Peru,[123] Surinam[124] and Venezuela,[125] as well as in the legislation of Panama.[126]

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of Territorial Organization, Autonomy and Decentralization of Ecuador, which stimulate citizens to participate in the management of the various levels of government. See too Agreement Nº 1238 of the Supreme Court of the Republic of Panama dated 27 November 2009, which set up the Coordinating Office for Citizens' Participation, together with Agreement Nº 723 dated 21 November 2008, which set up the National System of Community Legal Facilitators.

116 See Law 1264 – General Law of Education of Paraguay, dated 29 May 1998 (article 7); Law 1561, which creates the National System of the Environment of Paraguay, dated 24 July 2000, etc.

117 Article 42 of the National Constitution of the Argentinean Republic of 1994. This article provides for the participation of associations of consumers and users in the organizations that control the public services of national jurisdiction.

118 Articles 83, 241 (I), 242 (II), 343 and 345 of the Constitution of the Plurinational State of Bolivia of 2009. These establish that the people shall participate in drawing up public policies, that civil society shall exercise control of public management on all levels of the State and in public, mixed and private companies and institutions that administrate official resources, that civil society shall exercise quality-control of public services, and that fathers of families shall participate in the educational system through representative organizations on all levels of the State. Finally, these articles establish social control of the planning and management of the environment.

119 Articles 45, 78, 79, 106 and 160 of the Political Constitution of the Republic of Colombia of 1999. These establish active participation of young people in public and private organizations responsible for the protection, education and progress of youth. Also guaranteed is the participation of consumers' and users' organizations in the study of the provisions that concern them and the community in decisions on the environment that might affect them. Finally, these articles consider the right of citizens to elect representatives to the board of directors of the companies that provide public services.

120 Article 95 of the Constitution of the Republic of Ecuador of 2008 provides for citizens to participate in making decisions, planning and management of public affairs and in popular control of institution of the State and society. Article 101 of the same Constitution provides for the participation of a representative of the citizens in the sessions of the decentralized autonomous governments both in debates and in decision-making, while article 83, paragraph 3 of this Constitution guarantees the participation of persons, communities, peoples and nationalities in formulating, executing, evaluating and controlling public policies and services. Likewise, Article 395 guarantees active participation of persons, communities and peoples in planning, executing and controlling any activity that causes environmental impacts, whereas Article 398 provides that the community should be consulted on all decisions taken by the authorities that can have an impact on the environment. Finally, Article 157 of this Constitution establishes a parity participation of representatives of the State and civil society in National Councils on Equality responsible for ensuring compliance with the rights consecrated in the Constitution and the Treaties of Human Rights, as well as evaluating public policies concerning gender, inter-culture, generations, human incapacity and mobility.

121 Article 101 of the Political Constitution of the Republic of Nicaragua of 1987.

122 Articles 56 and 65 of the Political Constitution of the Republic of Paraguay of 1992.

123 Articles 31 and 199 of the Political Constitution of Peru of 1993, which provides for the participation of the population in drawing up the budgets of the local and regional governments as well as direct mechanisms of participation in the municipal government related to neighbors.

i. The right to participate in open town councils and the like[127]

Some American Constitutions also enable citizens to participate in classic mechanisms of direct consultation such as open town councils, assemblies, citizen overseers, public audiences, etc., to be heard and consulted on various themes and to emit opinions with a binding or referential nature.

On the legislative level, this mechanism is generally implemented:

a) Mentioning the authorities qualified to convoke the town councils or assemblies, as well as the number of citizens who can request their being held;

b) Indicating the types of meeting that can be convoked: community assemblies, neighborhood encounters, district assemblies, municipal assemblies,[128] open town councils,[129] public audiences,[130] follow-up committees, citizen overseers,[131] etc.

c) Establishing the purposes of the above (to receive information from the authorities, present complaints or proposals, evaluate the fulfillment of legal or administrative obligations on the part of the authorities, opine on the allocation of public resources, participate in decision-making and in drawing up and establishing budget priorities, be consulted on the functioning and quality of public services or the situation of certain public works, etc.);

d) Regulating the procedure that the convocation has to follow;

e) Specifying the format and duration of the audience, assembly or town council; and

f) Regulating the way to make effective the proposals and decisions made, as well as the authorities responsible for their execution and follow-up.[132]

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124 Article 159 of the Constitution of Surinam of 1987. This establishes that the organization, competence and manner of functioning of the regional governments will be regulated in accordance with the principles of participative democracy.

125 Articles 55, 62 and 184 of the Bolivarian Constitution of Venezuela of 1999. Here, for example, is established citizens' participation in programs of citizens' security and administration of emergencies.

126 See article 25 of Law Nº 6 of the Republic of Panama dated 22 January 2002.

127 The *Concilium*, an Open Council or Town Council, is the oldest form of citizens' participation, normally municipal, whose Roman and Visigoth origin was centered on the small village and initially connected to the most primitive rural or urban structures. Here the neighbors will participate in a public session to debate, pose questions and opine on the themes that affect the community. These matters can be of a binding nature. See ORDUÑA, Enrique. **Democracia Directa Municipal, Concejos y Cabildos Abiertos**. Madrid: Civitas, 1994. p. 22-27.

In this respect, mention should be made of the experience of the *Camachico* in Ancient Peru. This was a system of popular assembly where the women and men of the Ayllu met to debate in public their political, economic and social problems, elect the leader and be consulted. The Camachico was the only institution, together with the German assembly, where women took part in an election or consultation on equal terms with men. See MIRÓ QUESADA, Francisco. *Ob. cit.*, 1990, p. 89.

128 The assemblies in general are usually conformed by the citizens themselves to strengthen their collective capacities, deliberate and collaborate with the authorities.

129 The town council sessions are open to all the citizens, convoked by the authorities, and generally of a local or municipal nature.

130 The audiences are usually authorized by the authorities, *ex oficio* or at the request of the population.

131 The local inspectorships exercise a function of social control, such as for example observing an electoral process, a bid or an instance of public management. They are convoked by the authorities as an example of transparency.

132 See, for example,theLaw of Citizens' Participation of the Federal District of Mexico, articles 63 to 71 and 74 to 85 dated 30 April 2004, altered successively on 28 January 2005, 16 May 2005, 13 July 2005, 15 May 2007 and 30 December 2009. See too Law Nº

These mechanisms of direct participation can be found in the Constitutions of Bolivia,[133] Colombia,[134] Ecuador[135] and Venezuela;[136] as well as in the legislation of Mexico,[137] and Peru.

j. The right to demand providing accounts[138]

Some of the region's legal systems contemplate citizens' rights of control, such as the possibility of demanding that the authorities provide accounts or periodical reports on their administration. The purpose of this mechanism is to equip the citizens with the power to control the management being undertaken by the authorities, which implies the existence of policies of transparency.[139]

On the level of internal legislation:

170-07 which institutes the Municipal Participative Budget, Decree Nº 39-03, Resolution 01/03 and Law Nº 176-07 on the National District and the Municipalities of the Dominican Republic. See also article 119 of Law Nº 27972 – Organic Law of Municipalities of Peru and articles 56 to 66 and 72 to 87 of the Organic Law of Citizens' Participation dated 2 February 2010 and article 2, paragraph 7 of the Electoral Organic Law and Law of Public Organizations of Ecuador (Code of Democracy) dated 9 April 2009. See also Law 3966 of Paraguay, dated 10 February 2010.

133 Article 11 of the Constitution of the Plurinational State of Bolivia of 2009.

134 Articles 103 and 160 of the Political Constitution of the Republic of Colombia of 1991. What is established here is the citizens' participation (social, political, professional and trade-union organizations) in public audiences convoked by Congress to debate statutory draft laws and possibly open councils.

135 Article 100 of the Constitution of the Republic of Ecuador of 2008. This provides for the participation of society in open councils, public audiences, inspectorships, observatories and other instances for the purpose of strengthening democracy with mechanisms of transparency, accountability and social control; drawing up national, local and sectorial plans and policies; promoting the formation of citizens; defining agendas for development; etc. See also their regulations in the Organic Law of Citizens' Participation dated 2 February 2010 and also the Organic Code of Territorial Organization, Autonomy and Decentralization.

136 Article 70 of the Bolivarian Constitution of Venezuela of 1999. This provides for open town councils and assemblies as mechanisms of citizens' participation.

137 See the local Constitutions and the Laws of Citizens' Participation for the Mexican States of Guanajuato (Decree 130 dated 18 October 2002); Tamaulipas (Decree 426 dated 23 2001, altered by Decree 563 dated 8 August 2006); Jalisco (Decree 17369 dated 31 January 1998, Decree 18005 dated 28 September 1999 and Decree 18446 dated 19 September 2000); Morelos (Decree 4095 dated 26 December 2000); Zacatecas (Decree 328 dated 29 August 2001); Coahuila (Decree 177 dated 1 November 2001); Quintana Roo (Decree 10 March 2005); Guerrero (Law 684 dated 30 June 2008); Baja California (Decree dated 25 January 2001); Baja California Sur (Decree 1280 dated 27 October 2005); Aguas Calientes (Decree 207 dated 21 November 2001); Colima (Decree 244 dated 15 January 2000); Federal District (Decree dated 30 April 2004). Although the Laws mentioned show no uniformity as regards the treatment of this participation mechanism, they certainly do consecrate the mechanism.

138 Also known as *social accountability*. See IPPOLITO-O'DONNELL, Gabriela. ***Bajo la sombra de Atenas. Avances y Retrocesos de la Democracia Directa en América Latina***. In: **Democracia Directa en Latinoamérica**. Buenos Aires: Prometeo Libros, 2008. p. 63.

139 In this regard, mention should be made that a large portion of professionals understand that the increase in mechanisms of transparency in public management of the States contributes to the strengthening of democracy. The government and institutional portals on public services, State contracts, structure and level of execution of public budgets, and so on, are just one example of how these mechanisms of transparency contribute for the citizens to exercise their right to control proper use of public funds. See WELP, Yanina. **Participación Ciudadana y Nuevas Tecnologías en América Latina**. In: **Democracia Directa en Latinoamérica**. Buenos Aires: Prometeo Libros, 2008. p. 71-83.

a) Some legislations contemplate in this respect the direct, honorary and voluntary participation of citizens in citizens' control networks that act in coordination with and under the authority and supervision of the General Comptroller of the Republic in order to participate through representatives with voice and vote (prior qualification) in the collegiate bodies formed by the Comptroller's Office, to supervise the fulfillment of laws by the authorities of public administration.[140]

b) Other legislations enable a determined number of citizens to present to the authorities an list of demands concerning their administration, the performance of the budget and the use of own resources, etc., with the authorities being obliged to provide an answer to these demands before a pre-set deadline.[141]

c) Finally, another group of legislations permits citizens to individually or collectively request the public or private institutions that provide public services, manage public resources or engage in activities of public interest, to provide accounts on their administration on a yearly basis; this request should be met by the authorities in the form of a report.[142]

This mechanism of citizens' supervision can be found in the Constitutions of Bolivia,[143] Colombia,[144] Ecuador,[145] Peru,[146] the Dominican Republic[147] and Surinam;[148] as well as in the legislation of Mexico.[149]

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[140] See for example the Law of Citizens' Participation of the Federal District of Mexico, articles 57 to 62 dated 30 April 2004, altered successively on 28 January 2005, 16 May 2005, 13 July 2005, 15 May 2007 and 30 December 2009.

[141] See for example Law Nº 26900 on Rights of Citizens' Participation and Control of Peru.

[142] Articles 88 to 95 of Organic Law of Citizens' Participation dated 2 February 2010, articles 2 paragraph 8 and 182 to 186 of the Electoral Organic Law and Law of Political Organizations (Code of Democracy) dated 9 April 2009 and Organic Law of the Council of Citizens' Participation and Social Control of Ecuador dated 2 September 2009.

[143] Article 26, paragraph II, item 5 of the Constitution of the Plurinational State of Bolivia of 2009. This consecrates the right of citizens to check the acts of public administration.

[144] Article 270 of the Political Constitution of the Republic of Colombia of 1991. This points out that the law will organize the form of citizens' participation to control public administration.

[145] Articles 61, 207 and 208 of the Constitution of the Republic of Ecuador of 2008. These articles provide for the creation of the Council of Citizens' Participation and Social Control for the purpose of promoting the establishment of mechanisms of accountability, investigation of denunciations, vigilance of the transparency of public acts and appointment of superintendents. See also Organic Law of Citizens' Participation dated 2 February 2010 (articles 88 to 95) and on the above-mentioned Council see Organic Law of the Council of Citizens' participation and Social Control dated 2 September 2009.

[146] Article 31 of the Political Constitution of Peru of 1993, which provides as a right of citizens to demand that the authorities render proper accounts.

[147] Article 199 of the Constitution of the Dominican Republic of 2010, which consecrates social control of local administration by the citizens (national district, municipalities and districts).

[148] Article 55, paragraph 3 of the Constitution of Surinam of 1987.

[149] See the local Constitutions and the Laws of Citizens' Participation for the Mexican States of Guanajuato (Decree 130 dated 18 October 2002); Tamaulipas (Decree 426 dated 23 May 2001 altered by Decree 563 dated 8 August 2006); Jalisco (Decree 17369 dated 31 January 1998, Decree 18005 dated 28 September 1999 and Decree 18446 dated 19 September 2000); Morelos (Decree 4095 dated 26 December 2000); Zacatecas (Decree 328 dated 29 August 2001); Coahuila (Decree 177 dated 1 November 2001); Quintana Roo (Decree dated 10 March 2005); Guerrero (Law 684 dated 30 June 2008); Baja California (Decree dated 25 January 2001); Baja California Sur (Decree 1280 dated 27 October 2005); Aguas Calientes (Decree 207 dated 21 November 2001); Colima (Decree 244 dated 15 January 2000); Federal District (Decree dated 30 April 2004). Although this

k. The rights of participation and consultation of indigenous peoples

Some Constitutions (such as Argentina, Bolivia, Colombia, Ecuador, Mexico and Venezuela) and some internal legislations (e.g. Peru) consecrate mechanisms of direct participation for certain specific sectors of the population, as is the case of the indigenous peoples.

In this sense, it is usually established that the participation of the indigenous peoples in managing their natural resources,[150] in drawing up and executing municipal or national development plans,[151] prior consultation on plans for prospection and exploitation of resources located on their lands, as well as participation in the benefits that such projects render,[152] prior consultation before the enactment of laws that can affect their collective rights,[153] among others.

l. The right of participation in land policies

Some Constitutions establish direct and effective participation of citizens (through their associations and professional entities) in the plans, policies and decisions of a determined economic sector, as is the case of the agrarian sector.

This mechanism of participation can be found in the Constitutions of Brazil,[154] Honduras,[155] Nicaragua[156] and Paraguay.[157]

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mechanism of participation is not dealt with in uniform fashion in the above-mentioned Laws, they certainly do consecrate the mechanism.

150 Article 75, paragraph 17 of the National Constitution of the Argentinean Republic of 1994. Also, article 57, paragraph 6 of the Constitution of the Republic of Ecuador of 2008 points out that the indigenous peoples participate in the use, benefits, administration and conservation of the renewable resources found on their lands. See too Article 30, paragraph II, item 15 of the Constitution of the Plurinational State of Bolivia of 2009.

151 Article 2, paragraph IX of the Political Constitution of the Mexican United States of 1917. This also establishes the need to incorporate their recommendations and proposals in the referred plans, should it be necessary, as well as the obligation of the House of Representatives of the Congress, legislators of the federative entities and city councils to establish the respective portions of participation and the forms and procedures to guarantee such participation. Article 57, paragraph 16 of the Constitution of the Republic of Ecuador of 2008 in turn establishes the right of the indigenous communities and peoples to take part in the official bodies that define the public policies that concern them, as well as drawing up any plans and programs related to them.

152 Article 57, paragraph 7 of the Constitution of the Republic of Ecuador of 2008 provides for prior, obligatory, free and informed consultation for the indigenous communities concerning plans and programs for prospection, exploitation and commercialization of non-renewable resources found on their lands, participate in the benefits that these yield and receive indemnization for any damage caused. Also, Article 120 of the Bolivarian Constitution of Venezuela of 1999 and Article 330 of the Political Constitution of the Republic of Colombia of 1991 both provide for the participation of the indigenous communities in the decisions on exploration of natural resources found on their lands. See also Article 30, paragraph II, item 15 of Constitution of the Plurinational State of Bolivia of 2009.

153 Article 57, paragraph 17 of the Constitution of the Republic of Ecuador of 2008. Article 30, paragraph II, item 15 of the Constitution of the Plurinational United States of Bolivia of 2009.

154 Article 187 of the Constitution of the Federative Republic of Brazil of 1988. This includes producers and farmers in planning and executing land reform.

155 Article 348 of the Political Constitution of the Republic of Honduras of 1982, which provides for the participation of organizations of peasants, farmers and ranchers that are legally recognized in the plans for land reform and other decisions of the State on agricultural issues.

156 Article 111 of the Political Constitution of the Republic of Nicaragua of 1987.

m. The right to defense of diffuse interests

Finally, some Constitutions in the region allow all persons to individually or collectively demand the competent authorities to defend diffuse interests such as the environment, public health, the national cultural heritage, consumer interests, and so on.

This is the case of the Constitutions of Bolivia,[158] Colombia,[159] Ecuador[160] and Paraguay.[161]

2.3 Evaluation and Recommendations

The mechanisms of direct participation included in the different internal legal systems of the countries that make up the OAS are quite diverse and their application is highly varied; they all share the common objective of consolidating representative democracy by complementing rather than substituting it.

These mechanisms have been inserted normally in the constitutional texts and then developed more fully by means of laws or secondary-level norms, although in some cases they are regulated only through infra-constitutional norms. While the number and characteristics of such forms of direct participation differ from one country to another, all the American legal systems incorporate them to a greater or lesser extent.

Notwithstanding all the above, the research carried out for this paper has made it possible to identify some problems or limitations that have presented themselves in the implementation or practical application of these mechanisms, as detailed below:

a) The mechanisms of direct participation are in themselves no guarantee of better quality of the democracies in the region, for this depends not only on their being properly applied but also on the political system ensuring a set of additional factors inherent to representative democracy, such as strengthening of political parties, unrestricted freedom of the press, adequately balanced powers, respect for the freedoms and human rights of citizens, effective political pluralism, clear and equal rules in the electoral processes, civilization and political culture of the population, among others. In synthesis, the mechanisms of direct participation contribute to the proper functioning of representative democracy, but are no substitute for it.

b) While the mechanisms of direct participation implemented in the region have served to channel the opinions and even the protests of the population, they have failed to diminish the discontent of certain sectors of the public with the political parties, the parliamentary representatives and politics in general.

c) If abuse of the mechanisms of direct participation (successive consultations) may in some cases accentuate the non-governability or political instability of a country, it can also lead to progressive weakening of the schemes of political representation (political parties, Congress, etc.).

d) The mechanisms of direct participation also present limitations as to their being implemented in eminently technical themes. In this sense, governments have the ineluctable responsibility of ensuring that their citizens enjoy access to all the information they need in order to make informed, responsible decisions.

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[157] Article 115, paragraph 11 of the Political Constitution of the Republic of Paraguay of 1992.

[158] Articles 34 and 135 of the Constitution of the Plurinational State of Bolivia of 2009.

[159] Article 88 of the Political Constitution of the Republic of Colombia of 1991 provides for the law to regulate popular actions to protect collective rights and interests related to patrimony, space, security, public health, administrative rectitude, environment, free economic competition and the like.

[160] Article 71 of the Constitution of the Republic of Ecuador of 2008. This enables any person, community or people to demand that the public authorities fulfill the rights of nature.

[161] Article 38 of the Political Constitution of the Republic of Paraguay of 1992.

e) Most American democracies have concentrated the mechanisms of direct democracy in the local or municipal and even regional sphere, and only a few countries have incorporated such mechanisms on the national level.

f) In practice, the mechanisms of direct participation most used in the region have been popular consultations, promoted mostly by the authorities themselves rather than by the population. In some cases these consultations have been used to affirm the position of the governing power or consolidate processes of constitutional reform or refounding of the State by polarizing and fragmenting the population. This confirms the importance of vigilating so that these mechanisms of direct participation are used properly and for democratic purposes.

g) The States must be especially careful about the legislative development of these mechanisms of direct participation so that they respect the letter and spirit of the constitutional text from which they derive. The States must also guarantee jurisdictional control of these mechanisms so as to prevent their being used to jeopardize or curb citizens' rights, freedoms or guarantees.

h) In conclusion, it is necessary to accompany these citizen's rights to direct participation, as well as the procedural mechanisms (administrative and judicial) necessary to ensure that they are respected and fully satisfied.

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3. Freedom of Thought and Expression

Documents

CJI/RES. 179 (LXXXIX-O/11)	Freedom of though and expression
Annex: CJI/doc.385/11 rev.1	Inter-American report on freedom of though and expression

During the 75th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August, 2009), Dr. Dante Negro explained that the mandate originated in General Assembly resolution AG/RES. 2515 (XXIX-O/09), which requested the Juridical Committee "to conduct a study on the importance of guaranteeing the right of freedom of thought and expression of citizens, in light of the fact that free and independent media carry out their activities guided by ethical standards, which can in no case be imposed by the state, consistent with applicable principles of international law."

The Chair recalled the importance of the topic and mentioned that both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights had pronounced on the matter in the sense of linking the words ethical and responsibility with respect to freedom of expression. Considerable jurisprudence had been developed on that subject. In the countries of the Americas, attempts had been made to repress the media with the argument that they were not responsible or were unethical. Attempts had even been made to establish various kinds of press tribunals or to have the press exercise self-control. Such attempts had a bearing on the topic of access to information.

Dr. Hubert asked about the advisability of linking the subject of freedom of thought and expression with that of access to information, for which there was currently no mandate. On that, Dr. Negro reported that the Member States had preferred to keep the two topics separate, for technical reasons.

The Committee Chair recalled that the 10 principles had been issued and disseminated and that currently the General Assembly had entrusted the Secretariat for Legal Affairs with the preparation of a model law, with participation by the Juridical Committee.

Dr. Fernández de Soto offered to be the rapporteur, a proposal approved by the other members.

At the 76th Regular Session of the Inter-American Juridical Committee (Lima, Peru, March 2010), the Chairman spoke in his capacity as rapporteur for the topic. He recalled the terms of the General Assembly mandate of 2009 set out in resolution AG/RES. 2515 (XXIX-O/09) for conducting an analysis of its importance in guaranteeing the public the right to freedom of thought and expression.

The rapporteur then described the strategy he would follow in his first approach to the topic, dealing with the state of the art from three points of view: first, in accordance with the terms of the American Convention on Human Rights; then, a series of comparisons with decisions and other instruments, such as the International Covenant of Civil and Political Rights; finally, a series of pointers from inter-American jurisprudence, particularly from different rulings by the Inter-American Commission and the Inter-American Court of Human Rights, including, most recently, the IACHR's Rapporteurship on Freedom of Expression, and, in addition, decisions from the Council of Europe and the restrictions that are enforced in connection with it.

The rapporteur went on to say that freedom of expression was distinct from freedom of thought, and that it was not an absolute right. Both the American Convention on Human Rights and the International Covenant regulate the conditions whereby the exercise of freedom of expression may be restricted. He also referred to a number of instances from inter-American jurisprudence, including an Advisory Opinion issued by the Inter-American Court of Human Rights in 1985 dealing with compulsory membership in an association prescribed by law for the practice of

journalism. That opinion emphasized two dimensions of the right of free expression: the individual dimension as the right to seek, receive, and impart ideas of all kinds, and the collective right to receive and hear expressions of other people's thoughts. Those two dimensions must be guaranteed simultaneously: in other words, it would not be licit to invoke the right of society to be truthfully informed as grounds for a regime of prior censorship intended to suppress information deemed false in the censor's opinion. Neither would it be permissible, with the aim of disseminating information and ideas, to establish public or private media monopolies to attempt to mold public opinion in line with a single point of view. In the recent case of *Herrera Ulloa v. Costa Rica*, the Court said that the expression and dissemination of ideas and information are indivisible, so that a restriction of the possibilities of dissemination directly represents a limit to the right to free expression. In the Opinion cited above, the Court also stated that freedom of expression was an essential element on which the existence of a democratic society was based, and that it was indispensable for the formation of public opinion; consequently, a society that is not well informed is not truly free.

In a comparative analysis, the rapporteur said that the jurisprudence of the European Court on democracy had emphasized the importance of freedom of expression within a democratic society, and that it had to be assured as regards the transmission of both information that is favorably received and that which is deemed offensive. Thus, any restriction on the right must be in proportion to the legitimate goal sought.

He also spoke of the indispensable elements for the full enjoyment of democracy set out in the Inter-American Democratic Charter, such as transparency in government activities, probity, the responsibility of governments in public administration, respect for social rights, and the freedom of expression and of the press.

In addition, with respect to applicable restrictions, the rapporteur referred to Article 13 of the American Convention on Human Rights, which states that the subsequent imposition of liability is to be applied to the abusive exercise of this right, rather than favoring the implementation of forms of prior censorship. The Court's established precedents have set three requirements applicable to restrictions. First of all, they must be expressly established in law; second, they must be intended to protect the rights or reputations of others, or to protect national security, public order, or public morals; and third, they must be necessary in a democratic society. Another ruling from the European Court stated that the acceptable limits of criticism were broader with respect to a politician than a private citizen.

The rapporteur then examined the jurisprudence of the Inter-American Court of Human Rights and the country reports indicating important concepts in this area. He added that the Inter-American Commission and the Rapporteurship had consistently promoted the principles of pluralism in communications processes, particularly as regards policies for the inclusion of groups traditionally excluded from public debate. The Commission has ruled that the imposition of sanctions for abuses of freedom of expression must be unequivocally based on the assumption that the person was not simply expressing an opinion, regardless of how harsh, unfair, or distributing it may have been, but did have the clear intent to commit a crime and a real possibility of attaining his objectives. Democracy is strengthened by public debate, and not by its suppression; consequently, judicial venues must be used to establish the responsibilities and sanctions that might be necessary for attaining that purpose.

Finally, the rapporteur offered a series of recommendations by the Inter-American Commission and Inter-American Court of Human Rights regarding the duty of states to uphold the utmost impartiality and due process in all administrative and judicial procedures for enforcing the law. He concluded that the initiation of proceedings and the imposition of sanctions must be the task of impartial and independent agencies, be regulated by legal provisions, and abide by the terms of the conventions, and that in no instance should the editorial line of a media outlet be a factor of relevance in pursuing sanctions in this area.

Dr. Baena Soares congratulated the rapporteur for his robust presentation. He noted his agreement with the idea that the Committee's discussions should be targeted at strengthening democracy; for that reason, he thought the study of the topic should not focus exclusively on the three branches of government, but also, and chiefly, on the media. They, together with the states, should uphold the following three basic principles: transparency, ethics, and balance. He also suggested that the draft take new technologies into account, such as the internet, blogs, Twitter, etc., and that the report not be limited to the press and radio. Given the challenges posed by these new manifestations of technology, he thought it was important that they be addressed in a future discussion.

Dr. Herdocia, assisting the rapporteur, indicated that in the case of *Claude Reyes et al. v. Chile*, the Court developed notions that could serve to guide this endeavor. He said that the key focus of the Committee's draft should be based on the fact that the consolidation and development of democracy depends on freedom of expression, which is a fundamental right in any democratic society. Regarding the "ethical conducts" referred to in resolution 2515, he stressed that states cannot attempt to impose patterns of conduct that are not the result of broad dialogue with the media, and that statements in that sense had been issued by the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the European courts. The report must support freedom of expression carried out ethically and with transparency and balance, as Dr. Baena Soares said, but he would add the term "responsible." In connection with codes of ethics, he noted his concern at any attempt to impose inappropriate limitations on the right of free expression. He also stressed the media's social function in providing scrutiny of public officials. He then spoke of protecting the reputation of public officials, guaranteed by civil sanctions, and of the importance of verifying cases involving the dissemination of false information or in which the search for truth failed. In addition, he supported the condemnation of *desacato* laws – those intended to punish "offensive" statements – when the information aims at revealing acts of corruption. Finally, he seconded the proposal to include internet-related issues in the draft, as a method that can spread information to thousands of people without limitations and where the publisher cannot be sued for offensive information.

Dr. Freddy Castillo agreed with the comments made by the members in favor of focusing the discussion on the mandate of the General Assembly, which was to ensure the right of free expression of the public and the media in accordance with the challenge of ethics. He added that journalists have been issuing their own rules for years, many of which they did not themselves observe. Recently, the media have created the figure of readers' defenders out of a concern for those media outlets' exercise of the right of free expression, respect the rights of others to be informed truthfully, as also established by the American Convention on Human Rights. This guarantee is not imposed by states: instead, it is self-imposed by journalists' associations, and that represents an important source for research into judgments on self-imposed codes of ethics.

Dr. Elizabeth Villalta agreed with the comments made and emphasized the balance acquired by freedom of expression, which is often out of proportion to people's reputation.

Following a fruitful debate among the members, the Chairman thanked them for their comments, which would be taken on board in the next report to be presented in August.

At the fortieth regular session of the OAS General Assembly (Lima, June 2010), the Committee was asked to report on progress "made on the study on the importance of guaranteeing the right of freedom of thought and expression of citizens, in light of the fact that free and independent media carry out their activities guided by ethical standards" AG/RES. 2611 (XL-O/10).

At the 77th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, August 2010), Dr. Fernández de Soto, rapporteur for the topic, presented his report CJI/doc.359/10. In his address he recalled that the mandate had arisen at the June 2009 session of the General Assembly, which had asked the Committee to conduct "a study on the importance of guaranteeing

the right of freedom of thought and expression of citizens, in light of the fact that free and independent media carry out their activities guided by ethical standards, which can in no case be imposed by the state, consistent with applicable principles of international law."

At the Lima meeting, the rapporteur had presented guidelines from studies carried out by the Inter-American Commission on Human Rights and from rulings by the Court, with statements in favor of associating the terms *ethics* and *responsibility* when talking about freedom of expression. Freedom of expression is a fundamental human right, enshrined in the legal systems of the Americas and Europe, and with a close relationship to democracy. He also spoke of different statements on the matter, including those made by the Committee itself in adopting its resolution on the Inter-American Democratic Charter, identifying the right to information as one of the pillars of democracy. However, he added that it was not an absolute right and that both the American Convention on Human Rights and the International Covenant on Civil and Political Rights subjected it to restrictions in order to preserve the rights or reputations of other people. He also referred to rulings from international agencies prohibiting prior censorship, except as regards entertainments for minors, and to restrictions relating to private persons and those applicable when public figures are involved. He said that in the inter-American system, the legitimacy of such restrictions depends on three conditions: 1) they must be established by formal, specific laws; 2) they must be intended to protect individuals' rights or reputations or public order; and 3) they must be necessary in a democratic society in order to protect a public interest. In his view, freedom of expression is limited by other fundamental rights, with the right of privacy as the essential legal reference point for conducting such an assessment. And, as such, it is the responsibility not only of journalists and the media, but of everyone who exercises the right, under the American Convention, to ensure respect for the reputations of other people.

The rapporteur also spoke of the sanctions used to punish illicit acts, through the criminalization of slander, libel, and defamation in criminal law, and, in the civil arena, through such mechanisms as the right of rectification when the right is abused beyond the legitimate expression of an opinion or criticism. He then addressed the problems that had arisen with the use of new information technologies, which lacked global regulations.

Finally, in accordance with the Assembly's mandate, he spoke of a number of IACHR recommendations on ethical principles for journalism, which had also been adopted by professional bodies in the Americas and Europe. Based on the remarks made, he proposed that the Committee draw up a code of ethics or set of guiding ethical principles to provide guidance for the journalism profession in the Member States.

In beginning the discussion, the members congratulated the rapporteur on his robust, far-reaching report and offered the comments described below.

Dr. João Clemente Baena Soares stated that the major factor missing from the topic's debate was economic power, which was a major element in distorting or hindering opinions or the transmission of factual information. In second place, he stressed the problems posed by technologies that are still not regulated, with the resultant abuses of publication, even of secret documents, by those who are supposed to safeguard them. Finally, he seconded the rapporteur's proposal for the drafting of a model code, albeit not one targeted at the states, since they were unable to impose ethical conduct; at the same time, however, he said that states could not be remiss in their duties.

Dr. Freddy Castillo noted the existence of monopolies and oligopolies in the field of communications, which revealed how power groups dominate the media. This was an enormous problem in all societies, and it should be included in the Committee's discussions.

Dr. Hyacinth Lindsay noted that freedom of expression could not be unconditional, as the rapporteur had correctly noted, but that it had to respect the reputations of others. Regarding item 7 of the principles adopted by the International Federation of Journalists, she asked whether it

included the payment of gratifications for suppressing information because, in the real world, both situations could arise: gratifications for including information or for suppressing it.

Dr. Mauricio Herdocia stressed the principle of the right to information as a fundamental right for the existence of democracy. The first comment arising was, therefore, that codes cannot be imposed: they must be freely adopted in the pursuit of the journalistic profession. However, he emphasized the care that was needed in proposing partial regulations. He reminded the meeting that in some countries, some media outlets were controlled by the state and not only by business owners, and that situation warranted thought on how freedom of expression was to be exercised. He therefore suggested that attention also be given to the new technologies of the internet, which allow the publication of any statement affecting people's privacy or reputations and for which there are no regulations of responsibility. Who assumes responsibility for publication if e-mail is anonymous? In addition, he agreed with the rapporteur's proposal for progressing with drafting a model code.

Dr. Fernández de Soto, in concluding the discussions, proposed including the comments in the next report on the topic.

During the 78th regular session of the Inter-American Juridical Committee held in Rio de Janeiro in March 2011, Dr. Guillermo Fernández de Soto presented a document that includes the observations on the original document.

On Wednesday 23 March, a telephone conference was held between the Committee gathered in plenary assembly and Dr. Catalina Botero, OAS Special Rapporteur on freedom of thought and expression to the Inter-American Commission on Human Rights.

The following comments feature among those presented by the members of the Committee during the conference. For the Committee, the topic of freedom of thought and expression is an essential element of democracy. In relation to the ethical conduct that should guide journalists, the Committee has reflected on a document to serve as a model rather than a code. Among the antecedents, the Committee has used the Declaration of Principles drawn up by the ICHR in 2010. Another element that has been emphasized is the influence of new technologies as instruments to convoke and organize political action, but mention was also made of their negative aspect when used to attack the honor of individual people. All of the above includes considerations related to the liberties, limits and protection of people, including national security. One of the major challenges is to tip the balance in order to potentialize the Internet as an instrument used to promote democracy. There has also been some concern with regard to the place of ethics required of the media vis-à-vis freedom of expression.

Dr. Botero considered the teleconference as a beneficial meeting for both instances, the ICHR and the Committee. She explained the mandate of the rapporteurship as regards vigilance over the power of the State. She also stated that not much progress has been made in the area of ethical protection. Then she took up the topic of the limits imposed on the State by article 13.2 of the American Convention on Human Rights, noting that this is a law with peculiar limits. Important reflections on ethics involved in freedom of thought and expression have been made by the media rather than the States. Limits to such freedom should be imposed by means of a law rather than by some administrative decision. Furthermore, such a law must be precise without leaving any room for ambiguity, and it must be proportional. In respect to jurisprudence, the laws relating to contempt and protection of the honor of public persons without legitimate finality, such as the laws to protect national or public security during dictatorships, have been considered illicit. In addition, the rapporteur claimed that a distinction must be made in respect to the person who causes the damage. When the State causes damage to a private person, reparation must be made by criminal law, whereas civil law intervenes whenever the damage is caused by the media. There is also the possibility of proceeding to a rectification of said information, based on equal terms.

As regards ethical limits, the ICHR has built an important doctrine that is applied to the exercise of the profession in relation to the ways that news is covered, access to the various sources of information, and protection of said sources, among other aspects. In many countries the media are equipped with self-regulating institutions, such as the figure of the *ombudsman*, aimed at monitoring respect for ethics. She also underlined the importance of civil society or associations that supervise the media, such as the watches in various areas (gender, the struggle against racism and integration, etc.).

With regard to new technologies, Dr. Botero described the publication by the OAS and ONU rapporteurs containing ten challenges, one of which is imposed by new technologies. In the case of the hemisphere, the State must respect the criteria described in article 13.2 of the American Convention on Human Rights. At the same time, she pointed up the importance of internal self-regulation on the matter.

Dr. Freddy Castillo Castellanos spoke of the difficulty of the Committee's mandate. In his mind, the element of self-regulation is essential. Using two illustrations on opinions expressed by journalists in Spain, he showed how exercising "opinion journalism" involves situations where what is offered is not news but opinion that might very well be false.

Dr. Botero explained that the idea in liberal law is not to punish opinions, but when reference is made to facts rather than simple appreciations, then the situation is different. Opinions should be ruled by respecting self-regulation, but in a context of pluralism in the media. This concluded the teleconference and the Committee continued its discussions.

Dr. Stewart asked to discuss the theme of defamation in a foreign country ("libel tourism"). In this respect, he explained the case entered by a Saudi citizen in England for defamation against the American author of the book "*Funding Evil*", Rachel Ehrenfeld. The book, which criticized the Saudi citizen, was not published outside of the United States, but someone downloaded it on the Internet. The author's defense refuted the jurisdiction of the English court that decided against her, and asked the tribunals in New York for a declaration of non-application of the decision of the courts in England, but this request was refused for lack of competence over the Saudi citizen. Then the legislature of New York State unanimously approved a law called "Law of protection against defamation by terrorism" which offers New York citizens protection against decisions for defamation in countries whose laws are inconsistent with the freedom of expression guaranteed by the Constitution of the United States. Analogous laws have been adopted in several other States.

He also described the case against Professor Joseph H. Weiler of the New York University Law School, who in 2007 was the chief editor of the European Journal of International Law, for publishing a text written by the German professor Thomas Weigend containing a negative view of the work of the French professor Karin N. Calvo-Goller. In this instance, the French professor entered a criminal suit in France for defamation against the head editor of the Journal, Professor Weiler, asking also that it not be published. The decision in France discarded the suit on the grounds of inappropriate jurisdiction and academic freedom. In short, it is important to distinguish facts from opinions.

Dr. Baena Soares called attention to the absence of intermediaries as regards the new technologies that can be used positively as well as negatively. In the latter case, it is necessary to protect the dignity of people. He considered that the figure of the ombudsman appears as a dignified example of how ethical norms can be applied.

The President commented on the Forum held in New York by the Ford Foundation, which paid special attention to the importance of freedom of information obtained through networks and the responsibility of States, organizations and individuals for ensuring that the information is true. Digital tools do not replace but rather complement political action or the information of the media. In this context, the more information there is available over the networks, the less chance of people

controlling these media, which imposes challenges as regards self-regulation. In short, the President committed himself to complement his report.

Dr. Hubert asked whether the mandate of the Committee should make a statement on the entities that typically criticize governments or individuals. On his part, Ambassador Baena Soares explained that there should be some complementary material on the norms of conduct that the media ought to follow. This is not imposing some code but rather equipping the media with norms for it to regulate itself.

Dr. Herdocia Sacasa proposed distinguishing the elements that are liable to codes of ethics from those that correspond to the limits imposed by law, besides separating the public sphere from the private. He described new situations that one sees in the editorial pages and the value of freedom of the press in the light of the Pact of Civil and Political Rights of the American Convention on Human Rights. Finally, he urged emphasizing the democratic value in the Committee's analysis.

The President closed by considering the difficulties of imposing self-regulating codes on the new technologies.

During the 41st regular session of the OAS General Assembly held in El Salvador in June 2011, the Inter-American Juridical Committee "was asked to report on the progress in the analysis of the importance, for guaranteeing citizens' right to freedom of thought and expression, of free and independent media in the exercise of journalistic activities, which should be guided by ethical conduct that in no case can be imposed by the States, in keeping with the principles of applicable international law" AG/RES. 2671 (XLI-O/11).

During the 79th regular session of the Inter-American Juridical Committee held in Rio de Janeiro, Brazil in August 2011, the rapporteur of the theme presented his new report, document CJI/doc.385/11, which contains the antecedents and includes the proposals and suggestions made by the Committee members, the following among them:

Explain within the framework of democracy;

No restriction of freedom of expression;

Refer to different illustrations in the digital world;

No economic influences.

He also informed the meeting that he had examined the various international organizations, including the doctrine and jurisprudence on the exercise of this right, besides the references to the works of the rapporteurs on Freedom of Expression of the Inter-American Committee on Human Rights. He went on to highlight certain elements of his report regarding the dimensions of the right, its restrictions and the sanctions for abuse. The document also contains elements for the exercise of journalism with regard to ethics and truth, and ends with guideline criteria such as the importance of differentiating information from opinion, applying similar postulates both for traditional and digital media, and so on. The rapporteur closed his presentation by inviting the members to consider this mandate terminated.

Dr. Baena Soares referred to ethics by alluding to the scandals in England involving illegal telephone-bugging, carried out by a newspaper, both of public and private individuals. In this sense he proposed including some reference to promoting criteria of ethical discipline without limiting the rights of third parties to use the social networks on the Internet.

Dr. Gómez Mont acknowledged the seriousness and efforts of the rapporteur of a complex theme involving democracy and the exercise of fundamental liberties. He agreed with Dr. Baena Soares on the role of self-regulation. He also considered it necessary to regulate the situation of oligopolies or concentration of means of communication in the light of the State's inability to guarantee the exercise of diversity. In this context, the State should possess the power to oblige such media to generate a space for response for whoever feels jeopardized, so that they can answer

the allegation being made against them and so establish some balance between the respective opinions. The State has to guarantee the right to rectification of allegations that affect the right to honor through some efficient mechanism or at least through the actual media. Dr. Novak thanked the rapporteur for presenting his document. He went on to request that the report should include the elements relating to rectification and the citizen's right to rebuttal, even though it may be repetitive.

Dr. Stewart thanked the rapporteur for his report. With regard to the limits of the State, he proposed including a formula that enables seeking the best way to protect manifestations of freedom of expression. He also requested that restrictions to freedom be identified as "limited" and that a specific reference to abuse of minors be included, such as child pornography or acts that violate the moral code. He explained that in the United States it is very difficult to limit the freedom of expression, and proposed including a footnote on the matter.

Dr. Herdocia, pointing out the double aspect of certain codes of ethics that contain purely ethical elements but also refer to legislations, urged the inclusion of a reference to the law as a limit to self-regulation. He also supported Dr. Gómez Mont's proposal on rectification, and asked for the inclusion of a reference to article 14 of the American Convention on Human Rights. In addition, he commented on the vacuum on the Internet in respect to people who post their anonymous comments, information that is often not filtered by the media, and urged the rapporteur to include this in his document. As for crimes of calumny, defamation and contempt, he remarked on the need to differentiate the situation of citizens and employees. Dr. Novak also shared these proposals and asked the rapporteur to include them in order to ensure that the participation of citizens is done within a determined framework where the media are responsible, besides some verification of the person giving his opinion. The Chairman explained that in many countries the State guarantees the right to rebuttal and promised to include a reference to the form of request.

Dr. Castillo remarked on the difficulty of the mandate and thanked the rapporteur for his work and fine interpretation. He stressed the responsibility of non-State entities to keep a special watch on responsible observance of autonomy. He expressed his agreement with the guiding criteria and asked the rapporteur to mention the training of journalists as an essential element to achieve professional excellence. In respect to opportune right to rebuttal, such protection should be provided both at the State level, through those who defend human rights, and the journalist's professional associations themselves, and sanctions should apply to both cases. Finally, he agreed with the other members as regards limiting restrictions exclusively to what the law establishes.

Dr. Hubert explained that the serious media in his country ask the people who want to take part in discussion forums their name, address and e-mail. At the same time he expressed his concern about the irresponsibility of the social networks.

Dr. Villalta shared the concern as regards social networks and comments in the press, and asked the rapporteur to include the criterion established in the American Convention on Human Rights. The rapporteur gave his thanks for the comments presented, which he would include in the report for final approval.

On 26 August the Chairman of the IJC sent to the Permanent Council of the Organization of the American States the resolution "Libertad de pensamiento y expresión", CJI/RES. 179 (LXXIX-O/11), explaining that the document presented is in compliance with the mandate of the General Assembly to "prepare an analysis on the importance of guaranteeing the citizen's right to freedom of thought and expression", AG/RES. 2671 (XLI-O/11).

Following this came the transcription of the resolution adopted by the Inter-American Juridical Committee, "Libertad de pensamiento y expresión", CJI/RES. 179 (LXXIX-O/11), which contains the document CJI/doc.385/11 rev.1 "Inter-American Juridical Committee report on freedom of thought and expression" attached to this resolution.

CJI/RES. 179 (LXXIX-O/11)

FREEDOM OF THOUGHT AND EXPRESSION

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that resolution AG/RES. 2671 (XLI-O/11) requested the Inter-American Juridical Committee to report on the progress involving the analysis of the importance of guaranteeing the citizens´ right to freedom of thought and expression, in light of the fact that free and independent media, in exercising journalistic activities, be guided by ethical standards which in no case can be imposed by the states, in keeping with applicable principles of international law.

BEARING IN MIND the study presented by the rapporteur Dr. Guillermo Fernández de Soto on "Freedom of thought and expression", in document CJI/doc.385/11 rev.1,

RESOLVES:

1. To express its gratitude to Dr. Guillermo Fernández de Soto for his report.

2. To approve document CJI/doc.385/11 rev.1, "Inter-American Juridical Committee report on freedom of thought and expression", which is attached to this resolution.

3. To send this resolution to the OAS Permanent Council for consideration.

This resolution was unanimously approved at the session held on 5 August, 2011, by the following members: Drs. João Clemente Baena Soares, Hyacinth E. Lindsay, Jean-Paul Hubert, Fernando Gómez Mont Urueta, David P. Stewart, Ana Elizabeth Villalta Vizcarra, Fabián Novak Talavera, Guillermo Fernández de Soto, Mauricio Herdocia Sacasa and Freddy Castillo Castellanos.

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CJI/doc. 385/11 rev.1

REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE ON FREEDOM OF THOUGHT AND EXPRESSION

1. ANTECEDENTS

Resolution AG/RES. 2515 (XXXIX-O/09) of the General Assembly of the OAS asked the Inter-American Juridical Committee to "conduct a study on the importance of guaranteeing the right of freedom of thought and expression of citizens, in light of the fact that free and independent media carry out their activities guided by ethical standards, which in no case can be imposed by the state, consistent with applicable principles of international law".

Pursuant to this mandate, at its 75th 76th, 77th and 78th regular sessions the Inter-American Juridical Committee has been analyzing the matter, gathering experiences and examining papers and documents from different organizations.

Particular attention has been paid to the pronouncements of the IACHR[1], especially the reports of the Special Rapporteurship of the OAS for Freedom of Expression and the Jurisprudence contained in decisions of the Inter-American Court of Human Rights.

Also examined was the Inter-American Declaration of Principles on Freedom of Expression approved by the IACHR in 2000, as well as the work that the Committee on Human Rights of the Pact of Civil and Political Rights has been carrying out, plus the comments made on article 19 of the same Pact showing the debate now being held on the world level.

Likewise, the Committee has evaluated Resolution 1.003 on the Ethics of Thought of the Council of Europe of 1993; the practice in the European Union, the pronouncements of the European Court of Human Rights, and the Declaration approved by the General Conference of Unesco in 1983, one of the most important documents on the ethics of information.

The above-mentioned antecedents and the discussions held in their regard enable the Committee to formulate this report, not without first of all agreeing with the IACHR and the Court that the sense of the protection enshrined in article 13 of the American Convention on Human Rights is "to strengthen the functioning of the pluralist, deliberating democratic systems by protecting and fostering free circulation of information, ideas and expressions of all sorts" and that "the existence of a democratic society is based on the cornerstone of the right to freedom of expression"[2].

The Committee, in resolution XXX of 12 August 2009, stated that "the democratic regime is not depleted in the electoral processes, but is also expressed in the legitimate exercise of power within the framework of the Rule of Law, which includes respect for the elements and attributes of democracy…" defined in the Inter-American Democratic Charter.

Part of the debate has been on the need to bear in mind the problem of the new technologies in the Internet that facilitate spreading any news in real time, and which can affect the honor or reputation of individuals.

These platforms have an extraordinary summoning capacity to demand political or social changes, and they have proved themselves to be an efficacious instrument for claiming freedom and respect for human rights.

The big question that emerges from these new manifestations is how to determine the best way to protect the freedom of thought and expression without turning into a new form of direct or indirect censorship that restricts the true dimension of this right.

In respect to the work of the Committee of the International Covenant on Civil and Political Rights, and in particular the comments on article 19, paragraph 45, it points out that any restriction to the use of websites, blogs and other means of electronic communication

[1] Inter-American Commission of Human Rights.

[2] 2009 Annual Report of the Special Rapporteurship for Freedom of Expression of the Inter-American Commission of Human Rights, p. 225.

offered by the Internet service providers must be compatible with what is set down in paragraph 3 of article 19 of the Pact, which states that: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions[3], but these shall only be such as are provided by law and are necessary:

1. For respect of the rights or reputations of others;
2. For the protection of national security or of public order (ordre public), or of public health or morals."

It is added that general prohibitions in the operating or functioning of some of these systems are not compatible with paragraph 3. It is also incompatible to prohibit publishing material with the sole argument that it is critical of the government or the political regime in effect.

Recently a meeting was held in New York under the auspices of the Ford Foundation to bring together the leading figures of this digital age.

The core theme of the discussion revolved around how to tip the balance of the Internet in favor of social change. The answers generated considerable duality between the optimistic and imaginative spirit of those who grew up in front of a computer screen and those who formulated doubts concerning the threats of the democratizing potential of technology.

One conclusion is that the Internet plays a democratizing role if it is not controlled by companies or governments and when it functions as a decentralized system that allows equal access to everyone. When the system is controlled and centralized it can become a system at the service of oppression and/or authoritarian regimes. According to Bernes-Lee, the inventor of the Internet, the only way is "to make sure that when someone connects to the Internet they have the right to connect to any legal web page without anyone preventing them from entering on political or commercial grounds." He added that "much has been said in the last few years about the need for people to download information on the net, for governments to share information through this medium, and that NGOs do the same, and companies and investigators too. In this way we shall all be able to understand better this world that we live in."

And yet there are countries that have laws or practices that selectively impede virtual freedom. In the latter case there is not necessarily any ideological or political discrimination. This practice is becoming all the more frequent. Some conflict is sure to arise from the historical discussion about the validity of the reasons for national security to control or restrict the new forms of freedom of expression reflected in the latest technologies.

Another significant consensus in this meeting in New York was to agree that digital tools do not replace but rather complement the means of communication and traditional political strategies. Virtual political activism operates, as has been made evident in recent months, only if it is backed up by street mobilization, where the risks and challenges are no different from what they used to be. People who use virtual networks for political convocation are not only persecuted by government hackers but also by military and police agents attached to the regime in power.

Finally, Juliana Rotich, who set up *Ushahidi*, the Internet platform that allowed the electoral violence in Kenya to be accompanied via text messages, affirmed in respect to what is happening in North Africa that "the first lesson is that there are risks and challenges. When the Egyptian government managed to delete the Internet, how did the information continue to appear? Many people around the world are working on technical solutions for this type of problem. But what happened reminds us that one cannot assume that the Internet infrastructure is always available, because it can easily be removed from us. The other lesson with regard to the social networks is that the young people are very familiar with the technology and use it to organize and protest. So the genie is out of the magic lamp and there

[3] In the United States, for instance, the first amendment to the Constitution contains more protection than what is provided here.

is no way of bottling it up again. When we have free access to information and to the rest of the world, authoritarianism has its days counted."

In conclusion, since the right of access to information is a vital component of the freedom of expression and a critical tool for democratic participation, guaranteeing it is a necessary condition to prevent authoritarian systems taking root. That is why the Internet has grown into a challenge for democracy.

It is in this framework that the Inter-American Juridical Committee presents its report.

2. FREEDOM OF EXPRESSION

Freedom of thought and expression is a fundamental human right that is important because of the close relation it has with democracy, a relation qualified by the Inter-American system as indissoluble and essential.

So there is some coincidence between the different regional systems for protection of human rights and the universal system as far as **the essential role of freedom of expression in consolidating and making democratic society dynamic** is concerned. Without effective freedom of expression, materialized in all its terms, democracy grows weak, pluralism and tolerance begin to crumble, the mechanisms of citizen control and denunciation prove useless, and the field is made fertile for authoritarian systems to take root in society.

The IACHR in turn has explained that a functional democracy is the maximum guarantee of public order and that the existence of a democratic society is based on the cornerstone of the right to freedom of expression"[4]. The guarantee of free circulation of information, opinions and ideas, as well as access to same, prevents society from growing paralytic and prepares it to endure the tensions that lead to the destruction of civilizations. So it will be feasible to speak of a free society when it allows "openly holding a public, rigorous debate on itself"[5].

The Inter-American Court, in its consultative opinion OC-5/85, also mentioned the relation between democracy and freedom of thought and expression when it claims that:

> […] the freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free[6].

Similarly, the European Court of Human Rights pointed out that:

> […] the freedom of expression constitutes one of the essential pillars of a democratic society and a fundamental condition for its progress and the personal development of each individual. Such freedom must be guaranteed not only with regard to diffusion of information or ideas that are received favorably or considered as harmless or indifferent, but also as regards information that offends, hurts or disturbs the State or any sector of the population. Such are the demands of pluralism, tolerance and open spirit without which a democratic society does not exist. […] This means that […] any formality, condition, restriction or sanction imposed on the matter must be in keeping with the desired legitimate end[7].

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[4] 2009 Annual Report of the Special Rapporteurship for Freedom of Expression of the Inter-American Commission of Human Rights, p. 249.

[5] Ibid. p. 226.

[6] Cfr. La Colegiación Obligatoria de Periodistas, see No. 85 above, paragraph 70.

[7] Cfr. Case of Ivcher Bronstein, supra nota 85, párr. 152; Case of "La Última Tentación de Cristo" (Olmedo Bustos y otros), supra nota 85, parr. 69; Eur. Court H.R., Case of Scharsach and News Verlagsgesellschaft v. Austria, Judgement of 13 February, 2004, para. 29; Eur. Court H. R., Case of Perna v. Italy, Judgment of 6 May, 2003, para. 39; Eur. Court H.R., Case of Dichand and others v. Austria, Judgment of 26 February, 2002, para. 37; Eur. Court. H.R., Case of Lehideux and Isorni v. France, Judgment of 23 September, 1998, para. 55; Eur. Court

Freedom of the press offers public opinion one of the best ways to know and judge the ideas and attitudes of political leaders. In more general terms, freedom of political controversies belongs to the very heart of the concept of democratic society[8]. In short, "jurisprudence has emphasized that the democratic function of freedom of expression makes it a necessary condition to prevent the appearance of authoritarian systems, facilitate personal and collective self-determination, and make the mechanisms of citizen control and denunciation effective"[9].

3. CHARACTERISTICS

In accordance with the provision of Article 13 of the American Convention, the freedom of thought and expression is a right that must be assured to everybody, under equal and non-discriminatory conditions, regardless of any further consideration; it "includes freedom to seek, receive, and impart information and ideas of all kinds...". That is to say, whoever has the protection of the Convention has not only the right and liberty to express their own thoughts, but also the right and freedom to seek, receive and disseminate all kinds of information and ideas. In this order of ideas, by illegally restricting the freedom of thought and expression of an individual, not only the right of that same individual is being infringed, but also the rights of all the others to "receive" information and ideas, and this unveils both dimensions, i.e. the individual and the collective, that the law protects.

In this regard, the Inter-American Court has repeatedly decided that in its **individual dimension**, freedom of thought and expression is not limited to the recognition of the abstract right to free speech or writing, but that it also inseparably comprises the right to disseminate speeches through the means chosen to communicate them, so that they may reach the largest possible audience[10]. The Convention, by proclaiming that the freedom of thought and expression, includes the right to disseminate information and ideas "through any ….procedure", is underlining that the expression and dissemination of thoughts and information are indivisible, and therefore a restriction on the possibilities to disseminate or disclose them represents a direct limitation to the right of free expression. In this regard, the States are in charge of protecting the enforcement of the right to free speech or writing, as well as preventing limitations on their dissemination through disproportionate regulations or prohibitions.

In its **social dimension,** freedom of expression is a means for the exchange of ideas and information and for mass communication among human beings. While it comprises the right of each person to try to communicate to others his/her own viewpoints, it also implies the right of everybody to know opinions and news. For the common citizen, the knowledge of others´ opinions or of the information which others possess is as important as the right he/she has to disseminate his/her own.[11]

H.R., Case of Otto-Preminger-Institut v. Austria, Judgment of 20 September, 1994, Series A no. 295-A, para. 49; Eur. Court H. R. Case of Castells v Spain, Judgment of 23 April, 1992, Serie A. No. 236, para. 42; Eur. Court H. R. Case of Oberschlick v. Austria, Judgment of 25 April, 1991, para. 57; Eur. Court H. R., Case of Müller and Others v. Switzerland, Judgment of 24 May, 1988, Series A no. 133, para. 33; Eur. Court H. R., Case of Lingens v. Austria, Judgment of 8 July, 1986, Series A no. 103, para. 41; Eur. Court H.R., Case of Barthold v. Germany, Judgment of 25 March, 1985, Series A no. 90, para. 58; Eur. Court H. R., Case of The Sunday Times v. United Kingdom, Judgment of 29 March, 1979, Series A no. 30, para. 65; y Eur. Court H. R., Case of Handyside v. United Kingdom, Judgment of 7 December, 1976, Series A No. 24, para. 49.

Cfr. African Commission on Human and Peoples' Rights, Media Rights, Agenda and Constitutional Rights Project v. Nigeria, Communication Nos. 105/93, 128/94, 130/94 and 152/96, Decision of 31 October, 1998, para 54.

[8] Case of Lingens v. Austria, supra note 91, para. 42.

[9] 2009 Annual Report of the Special Rapporteurship on Freedom of Expression of the Inter-American Comission on Human Rights, p. 225. [Spanish version]

[10] Ibid. p. 230.

[11] Ibid. p. 227.

Taking into consideration that the two dimensions mentioned on freedom of expression are inseparable and therefore must be simultaneously assured, it would not be possible, in the name of protecting the right of the society to be truthfully informed, to eliminate pieces of information deemed false by the censor, because by doing so, a regime of "previous censorship" would be implemented, which is something that the IACHR views as a limitation incompatible with the American Convention[12]. Neither would it be admissible, on the grounds of the right to disseminate information and ideas, to set up public or private monopolies on the communication media in an attempt to mold public opinion according to a single viewpoint.

4. LIMITATIONS TO THE RIGHT

Freedom of thought and expression – unlike the freedom of opinion – is not an absolute right. In this sense, the International Covenant on Civil and Political Rights and the American Convention on Human Rights have both regulated situations in which the enforcement of the rights is restricted, in Articles 19.3 y 13.2, respectively. On one hand, the International Covenant establishes that the limitations to this freedom must be "expressly determined by law and be necessary to …. ensure the respect the rights or reputation of others" or for "the protection of national security, public order or public health or morals". On the other hand, Article 13.2 bans previous censorship, the sole exception being censorship in the case of public shows which are inadequate for minors, and paragraph 3 of Article 13, which prohibits any restriction on this freedom through "indirect ways and means".

In order to be able to monitor legitimacy of the other responsibilities, these have to comply with three requirements, i.e.: 1) they should be precisely and clearly defined through formal and material legislation; 2) their purpose should be to protect either the rights or reputation of others, or the protection of national security, the public or the public health or morals (these being urgent purposes authorized by the American Convention); and 3) they should be necessary in a democratic society, being strictly proportional to the purposes sought and suitable enough to achieve the desired goals.

The need for and legal status of the limitations to the rights of expression based on Article 13.2 of the American Convention, will depend on their orientation to satisfy an urgent public interest. That is to say, when there are several options for that purpose, the one to be chosen is that which least restricts the right being protected. Taking this into consideration, it is not enough to demonstrate, for example, that the law fulfills a useful or timely purpose; to be in harmony with the Convention, limitations must be justified according to collective purposes which, depending on their importance, clearly prevail over the social need to fully enjoy the right and are restrictive only to the extent needed to ensure full enforcement of the right established in the aforementioned provision[13].

In this regard, limitations must be strictly proportional to the legitimate interest that justifies them, and must be properly adapted to achieve its purpose, interfering as little as possible in the legitimate enforcement of the right to freedom of expression[14]. In order to determine that the limitation is proportional, it is necessary to evaluate these three factors: "(1) the degree to which the opposite right is affected, i.e. seriously, to an intermediate degree, or moderate; (2) the importance of fulfilling the opposite right; and (3) whether the fulfillment of the opposite right justifies the limitation to the freedom of expression"[15].

In no case may limitations to the right represent previous censorship, or be discriminatory or imposed through indirect mechanisms - i.e. through abuse of official or private controls – and these limitations must be used only in exceptional cases.

In cases where the discourse enjoys reinforced protection, such as political discourse and discourse on matters of public interest; discourse on public employees exercising their

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[12] Ibid. p. 251.

[13] Cfr. La colegiación obligatoria de periodistas, above note No. 85, para. 46; see ambient Eur. Court H. R., Case of The Sunday Times v. United Kingdom, above note 91, para. 59; and Eur. Court H. R., Case of Barthold v. Germany, supra nota 91, para. 59.

[14] 2009 Annual Report of the Special Rapporteurship for Freedom of Expression of the Inter-American Comission on Human Rights, p. 250. [Spanish version]

[15] Ibid., p. 251.

functions or candidates exercising public offices; and discourse that expresses an essential element of personal dignity; the standards of control must be applied more strictly.

In this regard, the European Court of Human Rights has consistently held that as far as **the permissible limitations of freedom of expression** is concerned, a distinction must be made between the restrictions that are applicable when the object of expression refers to a private person, and on the other hand when it is a public person, such as a politician.

The Court states that:

The limits of acceptable criticism are therefore respect for a politician, broader limits than in the case of a private party. Unlike the latter, the former inevitably and consciously submits to the rigorous scrutiny of each and every word and action by newspaper men and the public opinion, so he must show a greater degree of tolerance. Without doubt, article 10, paragraph 2 (Art.10-2) permits protection of the reputation of others – that is, all people – and this protection also includes politicians, even when they are not acting as private citizens, but in these cases the requirements of this protection have to be weighed against the interests of an open debate on political questions[16].

The Inter-American Court thus considers that to foster public deliberation, it is important at the moment to analyze the legitimacy of a restriction that takes into account the fact that public employees voluntarily expose themselves to social scrutiny and that they have better conditions to respond to the acts in which they are involved[17].

5. IMPOSING SANCTIONS FOR ABUSE OF RIGHT

As already mentioned, the right to freedom of thought and expression is liable to restrictions through ulterior responsibilities, under the parameters analyzed above. As a result, the exercise of the right is limited by other fundamental rights, among which the **right to honor** appears as the essential juridical reference for such a ponderation. This right is expressly protected by the Convention in the same article 13 by stipulating that the exercise of the right to freedom of thought and expression must *"assure respect for the rights or reputation of others"* (article 13.2). Then, as the right to expression not only corresponds to journalists or the media, all those who exercise the right are obliged by the Convention to guarantee respect for the rights or reputation of others, especially the right to honor.

According to this order of ideas, since the State is the guarantor of the set of fundamental rights enshrined in the Convention, it has to establish the responsibilities and sanctions that are deemed necessary.

The IACHR and the Court have repeatedly pointed out in jurisprudence that Criminal Law is the most restrictive and severe way to establish responsibilities regarding illicit conduct. Broad typification of crimes of calumny, injury, defamation or disobedience can contradict the principle of minimum intervention and *ultima ratio* of criminal law. In a democratic society, punitive power can only be exercised to a strictly necessary degree in order to protect the fundamental juridical assets from serious attacks that damage or endanger them. In these cases, the measure taken would be disproportionate and unnecessary. The opposite would lead to abusive exercise of the punitive power on the part of the State.[18]

In exercising its role as guarantor, the state must opt for the least costly means of freedom of expression. In the first place, it must appeal to the right to rectification and in cases in which this is insufficient to repair the damage, it may resort to imposing civil juridical responsibilities on whoever has abused the right. In this sense it is necessary that the damage is certain and serious and that it has infringed the rights of other people or juridical assets specially protected by the Convention.

Bearing in mind the considerations formulated so far regarding due protection of freedom of thought and expression, the reasonable conciliation of the demands of protection

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[16] Cfr. Eur. Court H.R., Case of Dichand and others v. Austria, note No. 91, para. 39; Eur. Court H.R, Case of Lingens v. Austria, Note 91, para. 42.

[17] 2009 Annual Report of the Special Rapporteurship for Freedom of Expression of the Inter-American Comission on Human Rights, p. 256. [Spanish version]

[18] Cfr. Ricardo Canece Case, Note No. 44, para. 104, and Palmara Iribarne Case, Note No. 12, para. 79.

of that right, on the one hand, and of honor on the other hand, and the principle of minimum penal intervention characteristic of a democratic society, the employment of penal measures must correspond to the need to protect fundamental juridical assets from conduct that implies serious damage to such assets and must be proportionate to the damage inflicted. The penal typification of a conduct must be clear and precise, as determined by the jurisprudence of this Tribunal in examining article 9 of the American Convention.

This topic is increasingly relevant in societies where the rights of individuals are at times affected by the factual power of the media in a context of asymmetry in which, as mentioned by the Court, the State must seek a sense of balance. In order for the State to be able to guarantee the right to honor, in a democratic society paths can be used that the administration of justice offers – including penal responsibilities – within the appropriate framework of proportionality and reasonability, and the democratic and respectful exercise of the set of human rights.

Consequently, everyone is liable to the responsibilities derived from impacting on the rights of third parties. Everyone, journalists or not, must assume their responsibilities. As for the State, it has to guarantee that all its citizens respect the rights of others by limiting any conduct that can jeopardize public guarantees.

Therefore, the right to honor must be a matter of protection. In particular, so-called "objective honor" that has to do with the value that the others attribute to the person in question, to the extent that this affects the good reputation or good fame that that person enjoys in the social environment in which he or she lives. In this sense, within the juridical framework of the application of the right to honor, freedom of thought and expression as a fundamental right neither sustains nor legitimizes manifestly injurious phrases and terms that go beyond the legitimate exercise of the right to opine or the exercise of criticism.

As to the use of penal mechanisms as sanctions on questions of general interest, or on employees or candidates to fill public or political positions, the IACHR considers that in themselves these violate article 13 of the Convention, given the non-existence of any imperative social interest that justifies it[19].

Likewise, the Inter-American Commission on Human Rights observes with concern that the ambiguity of the legal suppositions compromises the principle of legality, which obliges the States to define in an express, precise and clear manner each one of the conducts that may be liable to sanction.

It should be recalled that in no case can the freedom of thought and expression be limited by invoking mere conjectures on eventual impact on order or hypothetical circumstances derived from subjective interpretations by the authorities in the face of acts that do not clearly present an actual risk that is certain and objective and suggests imminent grave disturbances or anarchistic violence.

6. A JOURNALISM OF EXCELLENCE: ETHICS AND TRUTH

The importance of practicing journalism of excellence, where good practices, truth as an essential element, rigorous compliance with its social function and economic independence all contribute to building values and moral and intellectual principles that are indispensable in any society.

The speed of technological transformation has led to integration of the traditional schemes of written journalism with the Internet, in a race to change as fast as public opinion does. This reality has a common origin, namely the human need for intellectual parameters that allow us to understand today's world better.

The IACHR has sustained that "because of its social and politic transcendence, journalism has duties inherent to its exercise and is liable to responsibilities in the terms set forth in this report. It must be borne in mind that as far as journalists are concerned, requiring responsibilities must heed what is expressed in article 13.2 of the American Convention - in particular the requisites of legality, legitimate objective and the necessity of limitations – and

[19] 2009 Annual Report of the Special Rapporteurship for Freedom of Expression of the Inter-American Comission on Human Rights, p. 261 and 262. [Spanish version]

in any case this must attend to the characteristics of the performance of this profession, which is directly connected to the exercise of a right defined and protected by the American Convention. In any case, given the importance of the function carried out by the media in a democratic society, principle 6 of the Declaration of Principles (approved by the IACHR in 2000) establishes that journalistic activity must be guided by ethical conduct which in no case whatsoever can be imposed by the States" [20].

Journalistic ethics is a polemical concept, with multiple views that require constant, dynamic and obligatory review in order to satisfy the social responsibility inherent to the exercise.

Journalists bear an enormous influence on creating principles and values and on forming the opinion of modern society. That is why access to reliable, timely and censor-free information, applying individual and collective rights, has a transforming effect on the quality of people's lives.

The communication of truth is inseparably linked to the common good and to good practices of informing.

Journalist and expert on the matter, Javier Darío Restrepo claims that "in the professional work of communication, as in all other work, there is a confrontation between what is and what ought to be, between the factual and the utopian, between established routines and the impulse to renew that encourages the passion for excellence. That is where ethics appears as a reference of excellence that makes everything that is done relative and improvable"[21]; he adds that "in the task of communicating, the value that guides the communicator is the truth, so this should be the reference for examining the attitudes of the media (…)"[22]; then he concludes that "(…) the truth brings with it the demand for veracity, that is, coherence and unity between what is said and what is done (…)"[23].

In this sense, the journalist's life must be ruled by another ethical consideration: the common good prevails over the individual good. This maxim is a principle that most journalists defend when they evaluate the actions of civil servants or political leaders, or the excesses of government and - in a general sense - of those who exercise power.

Without exception, the role of the media is to make it clear that the common good comes first and that journalists are society's servants. An illustrative example are those cases where in situations of conflict or risk they put their lives in danger for the purpose of telling the truth.

In this direction, codes of ethics not imposed but rather the fruit of self-regulation take on an exceptional role in order to fully understand the power of the media and the capacity and/or possibility that this power has to produce benefit or damage. It can therefore not be considered that "informing" is an attribute for the exclusive interest of the medium that conveys the news, its owners, or representatives of economic conglomerates or of some institution. And even less so that journalism should be practiced with discriminatory slants that affect people's rights. Its objective has a destination, which is society as a whole, "the reader, agent, tele-viewer or cybernaut"[24]. This so elementary criterion is primordial for journalists in general to be able to valorize their sources of information and their reports, and to decide whether or not to publish the news. It is not just using the instruments won through technological innovation. This is the real exercise of social responsibility, achieving through good practices quality journalism, which eventually makes it easier to improve standards and allows, through shared experiences, successes and mistakes, practicing journalism with truth, independence and excellence.

The professor quoted above goes on to comment that:

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[20] Ibid. p. 281- para. 173.
[21] JAVIER DARÍO RESTREPO. La Niebla y La Brújula. Editorial Debate. Colombia, 2008. p. 63.
[22] Ibid. p. 64.
[23] Ibid. p. 65.
[24] Ibid. p. 66.

"Ethics is different because nobody imposes it, it is not born of some outside pressure but is rather a self-imposition that comes from an inside pressure that Kant described when he spoke of the metaphor of a code or vital key written in the human heart"[25].

"As a sovereign exercise of his freedom, the journalist who decides that it is good to be able to offer journalism of excellence adopts ethical values and principles that are characteristic of his profession. Converted into his own legislator, he takes over the control of his professional life and follows the path that is written not in laws or regulations but in his nature and in the nature of his profession"[26].

"Regulations, codes and laws in general are transitory and refer to specific and changing situations. They are dispensable elements. Multiplying ethical norms degrades ethics because this likens it to the language of police codes and regulations. On the other hand, ethical values are as permanent as human nature, but they are not static. Each one of these values is a reference of man's possibilities. The law points out mistakes, possible flaws, infractions or crimes. Ethics indicates the possibilities of every man"[27].

"The members of the Forum of Argentinean Journalists (Fopea)[28], which last November convoked colleagues from all over the country to gather for a national congress, set the objective of this meeting to be to proclaim and adopt a code of ethics that they had worked on for three years, based on a workshop on ethics that showed the differences between some legal regulations and norms and a code of ethics. A preliminary draft with norms written from a negative approach was corrected upon concluding that ethics is a proposal and not a prohibition, a sum and not a remainder, it opens paths rather than closes them"[29].

"The confusion between ethical and police codes or any other regulations stands as a solid obstacle *to the ethical and technical development of journalists* because the ethical appears as transitory and relative as the legal; the ethical loses its universal, permanent character and the conception grows that, like laws, the ethical can be derogated, replaced or substituted by other codes and regulations, which should only be done when there is some pressure from or in the presence of an authority.

"Consequently, ethical norms appear as avoidable as any traffic law or tax regulations that if not urged on and imposed by some outside action of an authority, may remain unknown. The difference being that those authorities who impose the law can be identified, whereas no analogous authority is known or recognized for enforcing the ethical.

"The confusion also gives rise to the peripheral idea that ethics restricts or suppresses the freedom of journalists, since the norms that prohibit, for instance, violating the intimacy of others, or that rule on investigative rigor or the plurality and diversity of sources, restrict themes, publications or treatment of news of events and personalities. The confusion prevents seeing journalistic ethics as the utmost exercise of freedom. (…)

"This confusion achieves such a radical suppression of the contents of what is ethical that it explains the accessory and dispensable character that ethics has in the eyes of the media and journalists and the urgency of answering the challenge of reclaiming the contents of what is ethical. It also becomes logical to complain about ethics being ineffective. Codes do not stop abuses, nor is it their function to

[25] Ibid. p. 209.
[26] RESTREPO, Op. Cit., p. 209.
[27] Ibid. p. 210.
[28] See *Código de Fopea: Primer Congreso Nacional de Ética Periodística*, Buenos Aires, November 25, 2006.
[29] RESTREPO, Op. Cit., p. 210.

dissuade abusers, but they do strengthen and accompany as guides those who are honest and those who want to become so"[30].

In this context, ethical codes become an act of freedom, a personal and institutional pledge that the Inter-American Juridical Committee recommends in the framework of its mandate.

7. GOOD PRACTICES

Exercising journalism has always been a challenging job. The traditional challenges are complemented by global changes; political and economic as crises; regional conflicts; the new challenges of the use of technology; the model of journalism; in a word, numerous aspects that imply renovating and updating practices and contents in order to preserve its legitimacy and readers' confidence. Reviewing these dynamics has led different organizations to suggest criteria designed to put into place new working schemes which, although they may condition journalistic work, should continue moving positively towards self-regulation so as to offer better information, as demanded by the society of knowledge.

Numerous situations arise in this analysis. For example, one is the view of the ethics of the directors or editorial heads of a medium, and another the ethics to which field journalists may subscribe. Not necessarily does the fact reported coincide with what should be published. Certainly, sensibilities and views must be made compatible in the face of these conceptual lapses.

How, within licit bounds, to present the reality of a happening without falling into sensationalism, the spectacular, or damaging the honor of people or institutions? How to preserve transparency and relations with sources of information in the face of so many occasions of aggressive mechanisms outside the media designed to condition contents or prevent diffusion of a piece of news of public interest?

The Inter-American Juridical Committee (IJC) has no intention of solving the underlying questions of this polemic, nor is that its mandate.

8. GUIDING CRITERIA

The Committee wishes to suggest some guiding criteria for the purpose of respecting the right to freedom of expression, to valorize ethical criteria in its exercise, to always remember its function and social responsibility, and to improve daily the quality of journalism. Some proposals that have been debated and that the Inter-American Juridical Committee would like to emphasize are presented below:

- The juridical framework described in the first part of this opinion, especially that established in the American Convention and in the pronouncements of the Commission and the Inter-American Court of Human Rights, the Rapporteurship for the Freedom of Expression and other International Organizations, is the one that best enables the means of communication of the hemisphere to find the most transparent and efficacious path to incorporate good practices into its laudable task of providing truthful information to the citizens of the continent.
- The clear separation between information and opinion facilitates obtaining journalism with quality.
- The speed and mass information that exist today thanks to the digital era leads us to the need for a more analytical and interpretative journalism. Conciliating speed and rigor is a pressing need already being worked on by numerous media to facilitate the right to be truthfully informed.
- Journalism of excellence is convenient for society as a whole. Good journalism:
  - has a commitment to the truth;
  - is independent before all public, political and economic powers, which ensures that it provides impartial information;

[30] RESTREPO, Op. Cit., p. 211-212.

- has the self-critical capacity to recognize its mistakes, this being an unmistakable sign of its pledge to provide the truth;
- is well informed, that is, it presents all the different angles of the happenings;
- is well written and technically edited to facilitate better understanding;
- has the capacity to publish good news;
- has the capacity to conciliate internal divergences, no matter how difficult, by always clarifying and defining the contents and scope of the news[31].

- Numerous newspapers that have changed the criterion of good journalism into an essential proposal have had to revise their internal organizing structure by dismounting traditional, vertical and authoritarian schemes in favor of a more participative, horizontal scheme for their editorial staff. This has facilitated optimizing the human potential, making the newspapers more creative and less imposing.
- What could be called team journalism offers a better elaborated product that has more rigorous contents that favor the use of ethical criteria and certainly improves good journalistic practices.
- In addition, with this process of entrepreneurial re-engineering, newspapers are using two very healthy figures, namely the reader's defender and interactivity with the audience, however this is defined.
- The reader's defender analyzes complaints about an apparent or real violation of rights, representing him in reclaiming these rights, or achieving due reparation when this violation is proved in an impartial procedure with the parties. This function contributes positively to receiving truthful information.
- Also, establishing mechanisms of participation of readers with instruments to channel their complaints and suggestions is an excellent practice that facilitates improving the quality of the information, thereby observing deontological norms in the journalistic profession by breaking dogmatisms and introducing a critical view that is of great use in renewing the content of the news.
- In turn, self-criticism allows us to understand reality better, favors ethical dialogue in the editorial rooms in the quest for truth, and makes journalists sensitive to ethical criteria, thereby advancing the objective of achieving a journalism of excellence.
- The Committee reiterates that the best way to guarantee freedom of expression is the ethical practice of good journalism. The only limit is imposed by self-regulation. Otherwise there is a serious risk of direct or indirect violation by some form of government, whatever its ideology.
- Self-regulation should be a permanent, organized and collective activity through analysis prior to the decision to publish some news. Authentic self-regulation is the result of the express wish to comply with ethical codes that valorize the contents of information by attending to its function and social responsibility and not to some other type of commercial or discriminatory interests.
- The Committee agrees with what the IACHR expresses in principle 12 of the Declaration of Principles when it states that "the monopolies or oligopolies in the property and control of the media should be liable to antimonopoly laws for conspiring against democracy by restricting the plurality and diversity that ensures the full exercise of the citizen's right to information. In no case should these laws

[31] The Director of the Journalism School of the University of Kentucky, Edmon Lambeth, summarized his view on good journalist practice as follows: "committed and humanly truthful journalism, ready to report unfair situations, respectful of its own independence and that of others; is seriously committed to freedom of expression and seeks the best ways to inform people and to form a community that ensures its survival within a free society".

be exclusive to the media. Radio and television assignations must consider democratic criteria that guarantee equality of opportunity for all individuals to access same"[32].

- Furthermore, the Committee agrees with the Inter-American Court that "neither would it be admissible that on the basis of the right to diffuse information and ideas, public or private monopolies were constituted in the media in an attempt to mold public opinion according to a single point of view."[33]
- The Committee considers it advisable that the State should guarantee the right to rectification in the medium itself, and in conditions similar to what is published, in cases where false accusations have been made that affect the right to honor. In this context it is convenient for procedural mechanisms to be made available that ensure this right. In this respect the Committee recalls the content of article 14 of the American Convention of Human Rights:

  Article 14. The Right to Rectification or Response.
  1. Anyone affected by inexact or aggravating information transmitted to jeopartize them through legally regulated means of communication and directed to the public in general has the right to use the same broadcasting organ for rectification or response according to the conditions set down by law.

  2. In no case will be rectification or response be applicable to the other legal liabilities that may have been incurred.

  3. *For the effective protection of honor and reputation, all publications or companies involved in newspapers, cinema, radio or television will have an accountable employee who is not protected by immunities or any special jurisdiccition.*
- The Committee considers that the technical advances made in communications should be used for the benefit of the ethical exercise of freedom of expression and expression. There are certainly complex challenges to gain effective control, especially in spreading abusive material that damages public health, morals or order. But it is clear that any restriction to the use of the digital era must be compatible with the criteria defined in the pronouncements analyzed in this opinion and emitted by the Committee and the Inter-American Court of Human Rights and the Special Rapporteurship for Freedom of Expression in application of the American Convention.

  In this respect the Committee would like to stress that on the 1st June 2011 the Special Rapporteurs on Freedom of Thought of the Americas, Europe, Africa and the United Nations signed a significant joint statement on the need to protect and promote the Internet and the limits of the State when regulating this medium. Given its transcendence, the Committee includes it as an attachment to this report[34]. Emphasis should be made on some of the criteria and principles enounced in the following terms:
- The transforming nature of the Internet deserves emphasizing, being a medium that enables thousands of millions of people across the world to express their opinions by significantly increasing their capacity to access information and in this way foster pluralism and the spreading of information;

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[32] Court I.D.H., *Caso Rios y otros Vs. Venezuela*. Excepciones Preliminares, Fondo, Reparaciones y Costas. Decision of January 20, 2009, Series C No. 194, para. 105. Court I.D.H., *Caso Perozo y Otros Vs. Venezuela*. Excepciones Preliminares, Fondo, Reparaciones y Costas. Decision of January 28, 2009, Series C No. 195, para. 116.

[33] Court I.D.H., *La Colegiación Obligatoria de Periodistas.* (Arts. 13 y 29 Convención Americana sobre Derechos Humanos). Consultive Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 33.

[34] *Libertad de expresión e internet*. Joint Declaration of Human Rights Rapporteurs. July 1, 2011.

- It points to the potential of the Internet to promote the realization of other rights and public participation, as well as to facilitate access to goods and services;
- Some governments are admitted to have acted by adopting measures specifically designed to restrict freedom of expression on the Internet, which goes counter to international law;
- Exercising the right to freedom of expression may be liable to those limited restrictions set down by law that are acknowledged to be necessary, for example for the prevention of crime and protection of the fundamental rights of others, including minors, but underscoring that such restrictions must be balanced and comply with the international norms with regard to the right to freedom of expression;
- Concern arises because even when carried out in good faith, many government initiatives in response to the above-mentioned need fail to take into account the special characteristics of the Internet and as a result unduly restrict the freedom of expression.

The following general principles are adopted:

- The freedom of expression applies to the Internet in the same way as to all the other media. The restrictions to freedom of expression on the Internet are only acceptable when they comply with the international standards that among other matters declare that they should be provided for in the law, pursue some legitimate objective recognized by international law, and be necessary to reach such an objective (the "tripartite" test).
- On evaluating the proportionality of a restriction to freedom of expression on the Internet, one should consider the impact that such a restriction could have on the capacity of the Internet to guarantee and promote freedom of expression, as opposed to the benefits that the restriction would offer for the protection of other interests.
- The focus of regulation developed for other media, such as telephony or radio and television, cannot be simply transferred to the Internet, it has to be designed specifically for this medium and attend its particular characteristics.
- In response to illicit contents, greater relevance should be assigned to the development of alternative and specific approaches that adapt to the peculiar characteristics of the Internet, and which in turn recognize that no special restrictions should be established against the content of the material that is diffused over the Internet.
- Self-regulation can be an effective tool to deal with harmful expressions, and as such should be promoted.
- Educational and awareness-raising measures should be sponsored to promote the capacity of all people to make autonomous, independent and responsible use of the Internet ("digital literacy").

Other comments refer to the responsibility of intermediaries for acts of third parties; to obligatory filtering and blocking as an outside measure; to criminal and civil responsibility; to the neutrality of the net; to access to Internet; and finally the suggestion that the States should adopt detailed long-term action plans that include standards of transparency, presentation of public reports and monitoring systems.

In the juridical framework exposed with the general criteria pointed out above, the Inter-American Juridical Committee considers the mandate of the General Assembly of the OAS fulfilled. It trusts that these reflections will serve as a contribution to good journalistic practices, to achieve each and every day a better quality of journalism, and that the profession will be exercised in accordance with ethical criteria that satisfy its social accountability.

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APPENDIX

Freedom of expression and the Internet.
Joint statement of rapporteurs on human rights

[CEPPDI]. 1 June 2011. The special rapporteurs on freedom of expression of the Americas, Europe, Africa and the United Nations emitted a joint statement on the need to protect and promote the Internet and the limits of the State when regulating on this medium.

"*The States have the obligation to promote universal access to the Internet in order to guarantee effective compliance with the right to freedom of expression. Access to the Internet is also necessary to ensure respect for other rights, such as the right to education, attention to health and work, the right of meeting and association, and the right to free elections.*"

Joint statement on freedom of expression and the Internet

The Special Rapporteur of the United Nations (UN) for the Right to Opinion and Expression, the Representative for Freedom of Means of Communication of the Organization for Security and Cooperation in Europe (OSCE), the Special Rapporteur of the Organization of America States (OAS) for Freedom of Expression, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission of Human Rights and the Rights of Peoples (CADHP).

Having analyzed these questions in conjunction with article 19, Global Campaign for Free Expression, and the Centre for Law and Democracy;

Recalling and reaffirming our Joint Statements of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009 and 3 February 2010;

Emphasizing, once more, the fundamental importance of freedom of expression — including the principles of independence and diversity — both in itself and as an essential tool for the defense of all the other rights, as a fundamental element of democracy and for advancing the objectives of development;

Paying special attention to the transforming nature of the Internet as a medium that enables thousands of millions of people across the world to express their opinions by significantly increasing their capacity to access information and thus foster pluralism and the spreading of information;

Attentive to the potential of the Internet to promote the realization of other rights and public participation, as well as to facilitate access to goods and services;

Celebrating the notable growth of access to the Internet in almost all countries and regions worldwide, and observing in turn that thousands of millions of people still do not enjoy access to the Internet or rely on access of poorer quality;

Warning that some governments have acted or adopted measures for the specific purpose of unduly restricting freedom of expression on the Internet, against international law;

Recognizing that exercising freedom of expression may be liable to those limited restrictions established in law and that are necessary, for example to prevent crime and protect the fundamental rights of others, including minors, but recalling that such rights that such restrictions must be balanced and comply with the international norms with regard to the right to freedom of expression;

Concerned because even when carried out in good faith, many government initiatives in response to the above-mentioned need fail to take into account the special characteristics of the Internet and as a result unduly restrict the freedom of expression;

Considering the mechanisms of the multi-sectorial focus of the United Nations Forum for Governance of the Internet;

Aware of the broad spectrum of actors who participate as intermediaries of the Internet — and offer services such as access to and interconnection with the Internet, transmission, processing and forwarding traffic on the Internet, storing and accessing material published by third parties, referencing contents or searching for material on the Internet, financial transactions and facilitating social networks — and the attempts of some States to make these actors responsible for damaging or illicit contents;

On 1 June 2011 we adopted the following Joint Statement on Freedom of Expression and the Internet:

1. General principles

a. Freedom of expression applies to the Internet in the same way as to all the other media. The restrictions to freedom of expression on the Internet are only acceptable when they comply with the international standards that among other matters declare that they should be provided for in the law, pursue some legitimate objective recognized by international law, and be necessary to reach such an objective (the "tripartite" test).

b. On evaluating the proportionality of a restriction to freedom of expression on the Internet, one should consider the impact that such a restriction could have on the capacity of the Internet to guarantee and promote freedom of expression, as opposed to the benefits that the restriction would offer for the protection of other interests.

c. The focus of regulation developed for other media, such as telephony or radio and television, cannot be simply transferred to the Internet, it has to be designed specifically for this medium and attend its particular characteristics.

d. In response to illicit contents, a greater relevance should be assigned to the development of alternative and specific approaches that adapt to the peculiar characteristics of the Internet, and which in turn recognize that no special restrictions should be established against the content of the material that is diffused over the Internet.

e. Self-regulation can be an effective tool to deal with harmful expressions, and as such should be promoted.

f. Educational and awareness-raising measures should be sponsored to promote the capacity of all people to make autonomous, independent and responsible use of the Internet ("digital literacy").

2. Responsibility of intermediaries

a. No person who offers only technical Internet services such as access, searching and keeping information in the hidden memory should be held responsible for contents generated by third parties and spread through such services, as long as they do not intervene specifically in such contents or refuse to comply with a court order that demands that such contents be eliminated when they are in conditions to do so ("principle of mere transmission").

b. Consideration must be given to the possibility of protecting other intermediaries completely, including those mentioned in the preamble, with regard to any responsibility for the contents generated by third parties in the same conditions set forth in paragraph 2(a). At least the intermediaries should not be required to control the content generated by users, nor should they be made liable to extrajudicial norms on canceling contents that do not offer sufficient protection to freedom of expression (as happens with many of the norms on "notification and withdrawal" that are currently applied.)

3. Filtering and blocking

a. Obligatory blocking of entire web sites, IP addresses, ports, network protocols or certain types of uses (such as social networks) constitutes an extreme measure — analogous to prohibiting a newspaper or a radio station or television channel — that can only be justified according to international standards, for example when it is necessary to protect minors from sexual abuse.

b. The systems of filtering contents imposed by governments or providers of commercial services that are not controlled by the final user constitute a form of previous censorship and do not represent a justified restriction of the freedom of expression.

c. It should be required that the products meant to facilitate filtering by final users be accompanied by clear information directed to these users concerning the way they work and the possible disadvantages if the filtering should prove excessive.

4. Criminal and civil responsibility

a. Competence as regards causes connected to Internet contents should correspond exclusively to the States with which such causes present the closest contacts, normally due to the fact that the author lives in that State, the content was published there and/or this is directed specific ally to the State in question. Private parties should only be allowed to start legal action in a jurisdiction where they can show that they underwent substantial loss (this norm is designed to prevent what is known as "libel tourism").

b. The norms of responsibility in civil procedures (including exclusions from responsibility) should bear in mind the general interest of the public in protecting both expression and the jurisdiction in which it is pronounced (that is to say, the need to preserve the function of "public meeting-place" that the Internet fulfills).

c. In the case of contents that have been published basically with the same format and in the same place, the terms for interposing judicial actions should be computed from the first time they were published and should only allow one single action for damage to be presented in respect to these contents, and when applicable, only one single reparation for damage suffered in all the jurisdictions (rule of "single publication").

5. Neutrality of the network

a. The treatment of Internet data and traffic should not be the object of any type of discrimination because of factors such as devices, content, author, origin and/or destination of the material, service or application.

b. Transparency should be required of Internet intermediaries as regards the practices they use to administrate traffic or information, and any relevant information on such practices should be made available to the public in a format that is accessible to all those interested.

6. Access to the Internet

a. The States are obliged to promote universal access to the Internet in order to ensure effective benefit of the right to freedom of expression. Access to the Internet is also necessary to ensure respect for other rights, such as the right to education, attention to health and work, the right of meeting and association, and the right to free elections.

b. Interrupting access to the Internet or to part of it, applied to whole populations or to determined segments of the public (cancellation of the Internet) can by no means be justified, not even for reasons of public order or national security. The same applies to measures of reduced browsing speed on the Internet or parts of it.

c. Denying the right of access to the Internet by way of sanction constitutes an extreme measure that can only be justified when there are no other less restrictive measures and whenever ordered by the Justice department, bearing in mind the impact on the exercise of human rights.

d. Other measures that limit access to the Internet, such as imposing obligations to register or other requirements of service providers are only legitimate if they satisfy the test established by international law for restrictions of freedom of expression.

e. The States have the positive obligation to facilitate universal access to the Internet. At least the States should:

i. Establish regulatory mechanisms that contemplate price regimes, requirements of universal service and licensing agreements – to foster broader access to the Internet, including poor sectors and distant rural zones.

ii. Lend direct support to facilitate access, including setting up community centers of information and communications technologies (ICT) and other points of public access.

iii. Generate awareness of the proper use of the Internet and the benefits this can bring, especially among poor sectors, children and the elderly, and distant rural populations.

iv. Adopt special measures that ensure egalitarian access to the Internet for persons with handicaps and the less favored segments of the population.

f. In order to implement the above measures, the States should adopt detailed long-term action plans to expand access to the Internet, including clear and specific objectives as well as standards of transparency, presentation of public reports and monitoring systems.

RAPPORTEURS:

Frank LaRue
Special United Nations Rapporteur for Freedom of Expression and Opinion.

Dunja Mijatović
Representative of the OSCE for the Freedom of the Media.

Catalina Botero Marino
Special OAS Rapporteur for Freedom of Expression.

Faith Pansy Tlakula
Special CADHP Rapporteur on Freedom of Expression and Access to Information.

CHAPTER III

OTHER ACTIVITIES

ACTIVITIES CARRIED OUT BY THE INTER-AMERICAN JURIDICAL COMMITTEE DURING 2011

A. Presentation of the Annual Report of the Inter-American Juridical Committee

	Documents
CJI/doc.379/11	Presentation of the annual report of the Inter-American Juridical Committee for 2010 to the forthy-first regular session of the General Assembly of the OAS (7 June, San Salvador, El Salvador) (presented by Dr. Ana Elizabeth Villalta Vizcarra)
CJI/doc.384/11	Presentation of the annual report of the Inter-American Juridical Committee to the International Law Commission of othe United Nations (July 19, 2011) (presented by Dr. Hyacinth Evadne Lindsay)

During the 79th regular session (Rio de Janeiro, Brazil, August 2011), the Chairman of the Inter-American Juridical Committee, Dr. Guillermo Fernández de Soto, gave a verbal report on his attendance at the meeting of the Committee on Juridical and Political Affairs on Thursday, April 7, 2011, emphasizing the activities carried out by the Committee during 2010 at its 76th and 77th periods of sessions, in accordance with the Annual Report of the Inter-American Juridical Committee, classified as document (CP/doc.4547/11). He also reported the conclusion of the mandates related to the topic of strengthening the consultative competence of the Inter-American Juridical Committee and to the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. In addition, he spoke of the two new initiatives established by the General Assembly held in Lima, Peru, in June 2010: a study on mechanisms for participatory democracy and citizen participation, and a comparative analysis of the inter-American system's main legal instruments dealing with peace, security, and cooperation. At the end of his presentation, the Chairman shared with the delegates a series of concerns that arose at the March 2011 session. First of all, the Chairman explained that due to budgetary constraints, during that period of sessions the Juridical Committee was unable to meet for the traditional two-week period, and instead worked for only six days in order to conserve resources for August, when the session would not be able to last two weeks. Aware of the budget cuts that have affected the organs, agencies, and entities of the OAS, including the General Secretariat, the Chairman requested that the minutes record the concern expressed regarding the availability of funds to allow the Committee's members to hold their meetings which, in recent years, have totaled two regular sessions of ten working days, which allows it to discharge its duties appropriately. In this context, he noted his thanks and respectfully asked the member states to review this delicate situation and to try and increase the CJI's budget. In addressing other topics, the Chairman spoke of the lack of precision in many of the mandates placed before the General Assembly and he made himself available to the states to facilitate the initiatives proposed to the General Assembly. Finally, he urged the delegations to reply to questionnaires and notifications prepared by the Committee and intended to fulfill mandates entailing the states' participation.

With regard to the General Assembly held in June of this year in San Salvador, the Chairman explained that for health reasons he was unable to attend but that Dr. Elizabeth Villalta participated in his stead. Dr. Villalta then reported on her participation, with a report very similar to what the Chairman had said to the CAJP. She also noted the warm welcome with which the member states received the Committee on that occasion. Comments were made by Brazil, Colombia, and Peru. The report is contained in the document CJI/doc.379/11 and CJI/doc.384/11 by Dr. Hyacinth Evadne Lindsey, as Observer of the Inter-American Juridical Committee to the United Nations Committee on International Law.

CJI/doc. 379/11

PRESENTATION OF THE ANNUAL REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE FOR 2010 TO THE FORTY-FIRST REGULAR SESSION OF THE GENERAL ASSEMBLY OF THE OAS
(7 June, San Salvador, El Salvador)

(presented by Dr. Ana Elizabeth Villalta Vizcarra

It is an honor for me to present the annual report of the Inter-American Juridical Committee on behalf of its President, Dr. Guillermo Fernández de Soto, who for health reasons is unable to attend this meeting.

1. Period covered by the report

The period covered by this report corresponds to the activities performed by Inter-American Juridical Committee during 2010, which includes the session held on 15-24 March 2010 in Lima, Peru (the 76th regular session) and the session held on 2-13 August at the head office in Rio de Janeiro, Brazil (the 77th regular session).

This presentation is based on the annual report, document CP/doc.4547 distributed on 1 March 2011.

2. Members of the Inter-American Juridical Committee

A new member joined the Committee in this session, Dr. Miguel Aníbal Pichardo Olivier, from the Dominican Republic, who was elected for four years at the 39th regular session of the General Assembly held in June 2009. It should also be mentioned that both I and Dr. Freddy Castillo Castellanos from Venezuela were re-elected.

On 6 August 2010 was held the election of the officers of the Committee. Dr. Guillermo Fernández de Soto from Colombia and Dr. João Clemente Baena Soares from Brazil were elected President and Vice-President for a period of two years.

I would like to take the opportunity to express our regret that Dr. Jorge Palacios resigned for health reasons in March of this year. The States have already appointed Dr. Fernando Gómez Mont Urueta from Mexico to act as his substitute.

3. Regular session held in Lima:

The Inter-American Juridical Committee (IJC) celebrated its 76th regular session in Lima, Peru on 15-24 March 2010, the venue being kindly offered by the government of Peru.

At this regular session, the Committee approved two final reports, namely: a proposal with comments entitled “Comments on the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance” (CJI/doc. 339/09 rev.2) and a report that clarifies the consultative capacity of the Committee, these being distributed on 8 April 2010 (CJI/doc.340/09 rev.1).

The former document includes ten comments on various aspects of the Draft Convention concerning particular provisions and follow-up mechanisms. The second document analyzes the competences of the Juridical Committee as regards consultations and fulfilling mandates that take into account three different juridical instruments: the OAS Charter, the Statute and Rules of Procedures of the Committee, and the actual practice of the Committee.

The remittance of these reports enabled the Juridical Committee to fulfill faithfully the mandates requested by the General Assembly.

In the framework of the activities developed during the stay in Lima, the members of the IJC held a series of meetings with Peruvian governmental representatives, including the Vice-Minister of Foreign Affairs, Ambassador Néstor Francisco Popolizio Bardales; the Sub-secretary for Multilateral Affairs of the Peruvian Chancellery, Luzmila Zanabria; the President of the Committee for Justice and Human Rights of the Congress of the Republic, Víctor Rolando Sousa Huanambal; the Attorney General of the Nation, Gladys Margot Echaíz Ramos; and the President of the Constitutional Tribunal, Juan Vergara Gotelli. Meetings were

also held with academic authorities and students of the Catholic Pontifical University of Peru and the San Martín de Porres University. In addition, the members of the IJC held meetings with representatives of international governmental and non-governmental organizations based in Lima.

Besides thanking the government and people of Peru for the invitation made to the Committee, we place ourselves at the disposal of the States that wish to hold forthcoming sessions of the Committee in their countries. These sessions that are organized in locations other than the headquarters allow the Committee to maintain direct contact with governments, to foster closer rapport with academic bodies, and in this way to diffuse the work of the Committee.

4. Work carried out

a) Resolutions and reports

During 2010, the Juridical Committee adopted one resolution and several reports pursuant to the mandates contemplated in its agenda.

In addressing migration themes, the Committee adopted the resolution "Protecting the Rights of Migrants" CJI/RES. 170 (LXXVII-O/10) in respect to the adoption in Arizona of Law SB 1070. Without going into the affairs that are the exclusive competence of the States, the Committee urged observance of the human rights and fundamental liberties of migrants.

With regard to the reports presented:

- Democracy. In 2010 the document entitled "Promoting and Strengthening Democracy" (CJI/doc.355/10 corr.1) was presented, containing an analysis of the alarm mechanisms of the Inter-American Democratic Charter, in addition to addressing the relation between democracy and development.

- International Criminal Court. The three mandates requested of the Juridical Committee have been fulfilled. In the last year a guide or suggestion was presented to the States with regard to model texts for crimes contemplated in the Rome Statute; training was promoted despite lack of funds; and national legislation has been driven ahead based on the Inter-American Juridical Committee's guide of principles (CJI/doc.360/10 rev.1).

During the last session of the Committee, this mandate was considered to be fulfilled, although the theme will continue on the Committee agenda in order to accompany the Special Sessions and any new developments that this General Assembly requests of us. Finally, it is crucial that you be informed that skill-building activities have never received any external financing; the Project created by the Department of International Law has received no support, despite the efforts made to obtain funds.

- Humanitarian International Law. The Committee adopted three documents, among which a report on "War Crimes in Humanitarian International Law" (CJI/doc.328/09 rev.1), and another on "International Criminal Tribunals" (CJI/doc.349/10 and CJI/doc.357/10). This mandate was also terminated during the last session of the Committee.

- Refugees. Two conceptual documents analyze the antecedents and the definition of Refuge and Asylum (CJI/doc.346/10 and CJI/doc.356/10). It should be noted that in the session held in March of this year, an opinion was presented that establishes the differences between Asylum and Refuge (CJI/RES. 175 (LXXVIII-O/11 dated 28 March). With the adoption of this resolution, the Committee has fulfilled its mandate.

- Cultural diversity. Two documents were presented: a general one containing the juridical bases identified by the Rapporteur (CJI/doc.351/10), and another on recommendations that complements the former (CJI/doc.364/10).

- Innovative forms of access to justice. Two documents were presented, one on the "Integral training of judges: a necessity of justice" (CJI/doc.353/10) and another on "Innovative forms of access to justice" (CJI/doc.361/10).

- Freedom of thought and expression. A preliminary document deals with the importance of ethical conduct in the right to freedom of thought and expression on the part of free and independent means of communication (CJI/doc.359/10). Mention should be made of

the telephone conference held between the Committee gathered in plenary session in Rio de Janeiro with Dr. Catalina Botero, Special Rapporteur on the Right to Freedom of Expression.

- Themes of Private International Law. One document addressed the development of the "Seventh Inter-American Specialized Conference on Private International Law" (CJI/doc.347/10).

As for the theme "Inter-American Jurisdiction of Justice", this has been incorporated in the work carried out on "Peace, security and cooperation".

b) New mandates

The Juridical Committee received two new mandates from the General Assembly held in Lima, Peru in June 2010. The mandate on "Participative Democracy" requests a juridical study of the internal constitutions and legislations that contain mechanisms of participative democracy and citizen participation. In turn, the mandate on "Peace, Security and Cooperation" calls for a comparative analysis of the main juridical instruments of the inter-American system relating to peace, security and cooperation.

5. Course on International Law

Between 2 and 20 August 2010, the 37th Course on International Law took place, with the participation of 19 professors from different countries of America and Europe, 33 OAS scholarship-holders and 7 students who paid their own fees.

Among the scholarship-holders were four persons of African descent who participated thanks to the support of funds from CIDA/Canada. The core theme of the course was "International Law and Changes in Today's World".

It should be pointed out that for the third year running the course lasted for three weeks because of limited budget resources. As you will know, the financing of the course, from the regular Fund, has not increased proportionally to the cost of living in Rio de Janeiro.

I take this opportunity to thank the governments of France and Switzerland, as well as the United Nations High Commission for Refugees (UNHCR), for assuming the financial support to ensure the participation of a professor of international law.

6. Seventy-eighth regular session of the Committee

As announced at the beginning of my presentation, the verbal report that I am presenting to you deals with the developments carried out during the two regular sessions held in 2010. However, it is significant to mention some matters agreed upon during the 78th regular session of the Committee held this year in Rio de Janeiro between 21 March and 1 April.

On this occasion the Committee was confronted with the harsh reality concerning the precarious budget situation that prevented it from meeting for the traditional period of two weeks, meaning that work could only be carried out for six days in order to guarantee some reserves for the month of August, when again the session will not be able to extend further than six days. We understand that this is no exception and that there have been budget cuts affecting the bodies, agencies and entities of the OAS, including the General Secretariat. However, it is necessary to register our concern with regard to the availability of funds to allow members of the Committee to hold meetings. As you all know, over the last few years these meetings have amounted to two regular sessions of ten weekdays to allow for the work to be properly performed.

The Juridical Committee thanks and respectfully asks the Member States to review this delicate situation and to try as far as is possible, within the limitations of which we are all fully aware, to increase the budget allocated to the IJC.

In this context it is important to stress the determined intention of the Committee members to continue working and proceeding with the mandates requested by the General Assembly.

Finally, our work cannot make any progress without the determined support of the States, in particular when dealing with resolutions that involve their participation in respect to answering questionnaires or notifying information that contributes to the work requested of the Committee.

The next regular session of the Inter-American Juridical Committee will be held at its headquarters in Rio de Janeiro, Brazil, starting on 1 August 2011, when the 38th edition of the Course on International Law will take place, the key theme being "International Law and Democracy".

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CJI/doc. 384/11

PRESENTATION OF THE ANNUAL REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE TO THE INTERNATIONAL LAW COMMISSION OF THE UNITED NATIONS (July 19, 2011)

(presented by Dr. Hyacinth E. Lindsay)

Mr. Chairman ,

It is an honour for me to present the Annual Report of the Inter-American Juridical Committee to the International Law Commission of the United Nations.

1. Period covered by the report

This Report concerns the Committee's activities during 2010 which includes the 76th regular session held on 15-24 March 2010, in Lima, Peru, and the 77th regular session held on 2- 13 August at the head office in Rio de Janeiro, Brazil .

This presentation is based on the annual report, document CP/doc.4547/11, dated 1 March, 2011.

2. Members of the Inter-American Juridical Committee

A new member joined the Committee, namely Dr. Miguel Anibal Pichardo Olivier, of the Dominican Republic, who was elected for four years at the 39th regular session of the General Assembly held in June 2009.

On August 6, 2010 the election of officers of the Committee was held and Dr. Guillermo Fernandez de Soto from Colombia and Dr. João Clemente Baena Soares from Brazil were elected President and Vice-President, respectively, for a period of two years.

The members of the Committee expressed regret at the resignation of Dr. Jorge Palacios Treviño for health reasons. Dr. Fernando Gomez Mont Urueta of Mexico has been appointed in place of Dr. Palacios.

During 2010, the Inter-American Juridical Committee held two regular sessions. At the invitation of the Government of Peru, the 76th regular session was held in Lima, on the 15th to 24th March,

On both occasions, the Juridical Committee's agenda included the following topics:

- Innovating Forms of access to justice in the Americas
- International Criminal Court
- Consideration on an Inter-American Jurisdiction of Justice
- Promotion and strengthening of democracy
- Cultural Diversity in the development of International law
- Migratory Topics
- Asylum
- Freedom of thought and expression
- Topics on Private International Law
- Proposal of the Inter-American Juridical Committee to the Inter-American Specialized Conference on Private International Law (CIDIP)
- Draft Inter-American Convention against Racism and all Forms of Discrimination and Intolerance

The following new topics were also proposed:

- Peace, Security and Co-operation

- Simplified stock companies
- Participatory democracy and citizen participation

The following mandates were deemed concluded, namely, Strengthening the Consultative function of the Inter-American Juridical Committee and the draft Inter-American Convention against Racism and all forms of Discrimination and Intolerance.

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 the period covered in this Annual Report. The second chapter considers the issues that the Inter-American Juridical Committee discussed at the regular sessions in 2010 and contains the texts of the resolutions adopted at both regular sessions and related documents. Lastly, the third chapter concerns the Juridical Committee's other activities and other resolutions adopted by it. Budgetary matters are also discussed. Annexed to the Annual Report are lists of the resolutions and documents adopted, as well as thematic and key word indexes to help the reader locate documents in this Report.

Dr. Guillermo Fernández de Soto, Chair of the Inter-American Juridical Committee, approved the language of this Annual Report.

The 76th regular session was held in Lima, Peru, on the invitation of the Government of Peru. The Committee welcomed a new member, Dr. Miguel Aníbal Pichardo Olivier of the Dominican Republic who was elected at the 39th regular session of the General Assembly. The Committee paid homage to:

- Dr. Jaime Aparicio Otero, a former chairman of the Committee who attended on the last day of the session, having taught a class at the 37th Course on International Law, 2010. The text of the tribute to Dr. Aparicio is included at pages 10-11 of this Report ; and
- The memory of Dr. Tatiana R. de Maekelt, a Venezuelan Jurist and professor of International Law, who served as Assistant Secretary for Legal Affairs at the OAS General Secretariat. The text of this tribute is included at page 11 of the Report.

The decisions of the Committee on the above mentioned topics are as follows:

Innovating forms of access to justice in the Americas.

The rapporteur of this topic presented a document entitled "Access to Justice-Preliminary Considerations".

The Committee decided that the most important issue was to approach access to justice in innovative ways and to expand the channels of access to justice. The Committee's role would be to approve general guidelines to promote access to justice. A report entitled "Comprehensive Training of Judges: A need in the Administration of Justice" was prepared on the basis of guiding principles presented and the discussions that took place at the previous session. Emphasis was placed on:

- greater rigor in the training of Judges and the importance of judicial independence, its modernization and accessibility to all communities with equality, timeliness and proportionality.
- training of workers in the justice system and
- the availability of resources to encourage the simplification of judicial proceedings.

Dr. Javier La Rosa of Peru's Legal Defence Institute addressed the Committee on this topic and stressed the importance of access to justice in the region and the actions undertaken in each country to overcome geographical barriers and linguistic, economic and cultural obstacles. He also noted that guidelines would strengthen declarations and provisions intended to protect sectors that traditionally were denied access to justice.

International Criminal Court

The Committee adopted CJI/RES. 105 (LXVIII-O/06) entitled "Promotion of the International Criminal Court", to be forwarded by the General Secretariat to the Permanent Council for conveyance to the General Assembly at the 36th Regular Session.

A request was also made via the General Secretariat to Member States which have not yet replied to the Committee's questionnaire to complete it. States Parties to the ICC Statute which have adopted laws and implemented Parts IX to X of the Rome Statute would be required to report any other amendments that facilitate co-operation with the ICC.

The Committee decided to keep the topic Promotion of the ICC in the topics under consideration and requested the rapporteur to submit an updated report to the Committee at the next regular session, based on fresh information from OAS Member States on those issues. See also document CJI/doc. 348/10 on pages 42 – 47 and CJI/doc.349/10 entitled "International Criminal Court".

Considerations on an inter-american jurisdiction of justice

This topic was introduced at the 71st regular session of the Juridical Committee and a decision was taken at the 76th regular session to postpone the study of this topic.

Promotion and strengthening of democracy

At the 77th regular session in August 2010, the Rapporteur presented a report (CJI/doc.355/10) entitled "Promotion and Strengthening of Democracy" and offered an analysis, stressing two relevant points which are related to the preventive issue and instrumental in nature.

The preventive issue refers to the initial alarm mechanisms of the Inter-American Democratic Charter in cases of threatened breakdown of the democratic regime, highlighting shortcomings in the preventive actions available to the Permanent Council for remedying such situations.

The instrumental aspects dealt with the relationship between democracy and development and the scant usage made of the provisions of the OAS Charter in terms of measures for increasing economic and social development.

A working group comprising five members of the Committee was established to review the draft resolution. A revised version of the original proposal was approved, entitled "The Essential and Fundamental Elements of Representative Democracy and their Relation to Collective Action within the framework of the Inter-American Democratic Charter" CJI/RES. 159 (LXXV-O/9). The Committee decided to prepare a briefer text for distribution to the press and for publication on the OAS web page.

International Humanitarian Law in OAS Member States

The Committee adopted three documents, including a report on "War Crimes in Humanitarian International Law".

The Committee was visited by Dr. Anton Camen of the International Committee of the Red Cross. Dr. Camen referred to the work of the ICRC in conjunction with other organizations in drafting model laws on Anti-personnel mines, the use of biological weapons and the implementation of the Geneva Conventions on humanitarian law. He gave a summary of the progress to date in the implementation of international humanitarian law treaties by individual countries and made recommendations for actions by States in relation to international humanitarian law, including adopting various juridical measures such as signing, adhering to and ratifying the international instruments on the subject, approving proper legislation and regulation and diffusing and teaching their content so as to ensure respect for their principles and norms.

Cultural Diversity in the Development of International Law

During the 74th regular session, the Committee decided to include this topic on the agenda. The following recommendations were proposed in relation to this topic:

- Recognition of diversity as a cultural heritage;
- Promotion of different cultural expressions;
- Consideration of cultural goods as spiritual assets and not merely merchandise
- Development of educational spaces to consolidate collective awareness about cultural diversity, and
- Promotion of public and private initiatives to reflect on problems caused by the recognition of diversity and its impact in the field of international law.

Migratory Topics

This includes migrant rights, the rights of refugees and asylum. The report recognizes different types of migration and the causes of migration. These are described as multiple, complex and heterogeneous, including the economic factor, differences in development between the country of origin and the country of destination, the divergence between work markets and the natural aspiration to overcome poverty and inequality.

The report examines the positive and negative consequences of migration, including illicit traffic of migrants, actions taken to facilitate illegal entry and trafficking in people for the purpose of exploiting forced labour. Pages 166-168 contain an analysis of this law. The Committee adopted unanimously the resolution entitled "Protection of the Rights of Migrants". Two other documents, entitled "Refugees", and "Refugees [Assylum]", respectively are included on pages 172-183 of this report.

Freedom of Thought and Expression

The mandate for this topic originated in General Assembly resolution which requested the Juridical Committee to conduct a study on the importance of guaranteeing the right of freedom of thought and expression of citizens, in light of the fact that free and independent media carry out their activities guided by ethical standards which can in no case be imposed by the state, consistent with applicable principles of international law.

The distinction between freedom of expression and freedom of thought was recognized and the fact that the right was not an absolute. In this regard both the American Convention on Human Rights and the International Covenant regulate the conditions whereby the exercise of freedom of expression may be restricted. Reference was made to the series of recommendations by the Inter-American Commission and the Inter-American Court of Human Rights regarding the duty of states to uphold the utmost impartiality and due process in all administrative and judicial procedures for enforcing the law. The study concluded that the initiation of proceedings and imposition of sanctions must be the task of impartial and independent agencies, be regulated by legal provisions and abide by the terms of the conventions and that in no instance would the editorial line of a media outlet be a factor of relevance in pursuing sanctions in this area.

Topics on Private International Law

Pages 201 to 205 of this Report recount the actions taken in relation to this topic since the adoption of the relevant resolution AG/RES. 2065(XXXV-O/05). During the 75th regular session, the Juridical Committee elected Dr. David Stewart as co-Rapporteur with Dr. Elizabeth Villalta on the subject. Dr. Villalta reported that negotiations for CIDIP-VII's two topics, namely consumer protection and secured transactions, were progressing separately. The Committee also approved the proposal for the inclusion of alternative dispute solving methods on the Committee's agenda with a view to the upcoming CIDIP. The report also takes note of the fact that at the fortieth regular session of the OAS General Assembly June 2010, the member States failed to reach consensus on the proposals related to CIDIP VII and there were no discussions at the 77th regular session of the IAJC in August 2010. The relevant document, CJI/doc.347/10 entitled "Seventh Inter-American Specialized Conference of Private International Law - CIDIP-VII", presented by Dr. Ana Elizabeth Villalta Vizcarra, is included on pages 207-210 of this Report.

New Topics

1. Participatory Democracy and Citizen Participation

At the fortieth regular session of the OAS General Assembly, the Inter American Juridical Committee was asked to conduct a legal study on the mechanisms for participatory democracy and citizen participation provided for in the laws of some of the region's countries and a comparative analysis of the principal legal instruments of the Inter-American system related to peace, security and cooperation.

As noted by the Chairman, consensus existed on the following:

1) the topic should be addressed using a restrictive interpretation;

2) it should be kept separate from the topic on strengthening of democracy;

3) the aim should not be to discuss participatory democracy but to identify citizen participation mechanisms for making representative democracy more effective.

The Chairman asked the Secretariat to prepare a note to be sent to the delegations of the OAS Member States requesting the information necessary for progressing with the topic.

2. **Peace, Security and Cooperation**

At the fortieth regular session of the OAS General Assembly in 2010, the IAJC was asked to conduct a comparative analysis of the principal legal instruments of the Inter-American system related to peace, security and cooperation. The opinions of members on this topic are set out on page 212 of this report, including the following observations:

a) there are new concepts of security not solely restricted to the use of weapons or war related activities but also covering topics related to human security and poverty;

b) starting with an analysis of the treaties in force within the OAS regulatory framework, consideration should be given to the concept of democratic security, including multidimensional security as set out in the 2003 Declaration of Mexico;

c) Security is no longer seen as a merely legal or territorial issue but the concept has been expanded to include human security and multidimensional security.

A decision was taken to return to the topic at a later date and Dr. Herdocia was chosen to serve as rapporteur.

3. Simplified Stock Companies (SAS)

Having regard to the strictness of the applicable regulations, the aim of this exercise is to increase the flexibility of the administration and capital of commercial companies to make them practical and useful. A document entitled "Draft model law on simplified stock companies" was presented by a group of Colombian lawyers who undertook to give a personal presentation of the rationale behind the model law for analysis by the Committee. The members agreed to receive the group and since this topic is one of private international law, some members requested that it be included under the private international law topics.

4. Concluded Topics

During the period covered by this report, the Committee concluded the following mandates and approved the relevant documents:

1. "Strengthening the consultative function of the Inter-American Juridical Committee"; (CJI/doc. 340/09 rev.1) and

2. "Comments on the Draft Inter-American Convention against Racism and all Forms of Discrimination and Intolerance". (CJI/doc.339/09 rev.2)

The next regular session of the Inter-American Juridical Committee will be held at its headquarters in Rio de Janeiro, staring on August 1, 2011.

Mr. President, distinguished members of the Commission, I thank you for your attention.

* * *

Annex

The Inter-American Juridical Committee annual Reports are available on internet, on the following site of the Organization of American States:

http://www.oas.org/cji/informes_cji.htm (in Spanish)

http://www.oas.org/cji/eng/reports_annualreport_iajc.htm (in English)

* * *

B. Course of International Law

The 38th Course of International Law was held on August 1 to 19, 2011, and was attended by 21 lecturers from various countries of the Americas and Europe, 18 OAS scholarship recipients, and around 12 students who covered their own attendance costs. The central topic of

the course was "international law and democracy," in commemoration of the 10th anniversary of the Inter-American Democratic Charter.

The inaugural session was addressed by the Chairman of the Juridical Committee, Dr. Guillermo Fernández de Soto, and the Secretary for Legal Affairs, Dr. Jean-Michel Arrighi. The traditional homage was given by Inter-American Juridical Committee member Dr. Freddy Castillo Castellanos, who dedicated it to Dr. Tatiana B. de Maekelt.

The Course timetable was as follows:

XXXVIII Curso de Derecho Internacional
"International Law and Democracy"
Rio de Janeiro, Brazil, August 1 – 19, 2011
Organized by the Inter-American Juridical Committee and the Department of International of the Secretariat for Legal Affairs of the Organization of American States

Week One

Monday 1	
9:00 – 10:00	**ACCREDITATION**
10:00 – 11:30	**INAUGURATION** **Dr. Guillermo Fernández de Soto,** Chairman of the Inter-American Juridical Committee *Opening address* **Dr. Jean-Michel Arrighi,** OAS Secretary for Legal Affairs **Dr.Freddy Castillo Castellanos,** Member of the Inter-American Juridical Committee *Homage to Dr. Tatiana B. de Maekelt* Short message from Course coordinators
5:00 – 7:30	Special event: "La Organización de los Estados Americanos y la Defensa de la Democracia: orígenes y evolución" (*The Organization of the American States and the Defense of Democracy*: *origins and evolution)*
7:30 – 9:00	Cocktail
Tuesday 2	
9:00 – 10:50	**Antonio Augusto Cançado Trindade,** Magistrate of the International Court of Justice *La evolución de la jurisdicción obligatoria de la Corte Internacional de Justicia: la aplicación de la cláusula facultativa y de las cláusulas compromisorias en las últimas décadas (The evolution of the obligatory jurisdiction of the International Court of Justice: application of the facultative and arbitration clauses over the last few decades)*
11:10 – 1:00	**Joe Verhoeven,** University Pantheón-Assas (Paris 2), France *Le juge international: "savoir", "pouvoir" et "collaborer" (The international judge: "knowledge", "power" and "collaboration")*
2:30 – 4:30	**Jean-Paul Hubert,** Member of the Inter-American Juridical Committee *Aspectos jurídicos de la interdependencia entre democracia y desarrollo económico y social (Juridical aspects of the interdependence between democracy and economic and social development)*
Wednesday 3	
9:00 – 10:50	**Antonio Augusto Cançado Trindade** *La evolución de la jurisdicción obligatoria de la Corte Internacional de Justicia: la aplicación de la cláusula facultativa y de las cláusulas compromisorias en las últimas décadas (The evolution of obligatory jurisdiction of the International Court of Justice: application of the facultative and arbitration clauses over the last few decades)*

11:10 – 1:00	**Joe Verhoeven** *Le juge international: "savoir", "pouvoir" et "collaborer" (The international judge: "knowledge", "power" and "collaboration")*
2:30 – 4:30	**David Stewart,** Member of the Inter-American Juridical Committee *Rule of Law, Democracy, Private International Law, and Economic Development*
Thursday 4	
9:00 – 10:50	**Elizabeth Villalta,** Member of the Inter-American Juridical Committee *The Inter-American Democratic Charter and the Framework Treaty on Democratic Security in Central America*
11:10 – 1:00	**Joe Verhoeven** *Le juge international: "savoir", "pouvoir" et "collaborer" (The international judge: "knowledge", "power" and "collaboration")*
2:30 – 4:30	**Hugo Caminos,** Judge of the International Tribunal for the Law of the Sea *El Tribunal Internacional del Derecho del Mar. Su creación como organismo judicial especializado. Competencia y jurisprudencia (The International Tribunal for the Law of the Sea. Its creation as a specialized judicial organism. Competence and jurisprudence)*
Friday 5	
9:00 – 10:50	**Jean-Michel Arrighi,** OAS Secretary for Legal Affairs *La OEA y la defensa de la democracia (The OAS and the defense of democracy)*
11:10 – 1:00	**Hugo Caminos** *El Tribunal Internacional del Derecho del Mar. Su creación como organismo judicial especializado. Competencia y jurisprudencia (The International Tribunal for the Law of the Sea. Its creation as a specialized judicial organism. Competence and jurisprudence)*
2:30 – 4:30	**Mauricio Herdocia Sacasa,** Member of the Inter-American Juridical Committee *El Derecho Internacional de la Democracia ¿Existe? (Does International Law of Democracy exist?)*
	Week two
Monday 8	
9:00 – 10:50	**Claude Emanuelli,** Professor, University of Ottawa *Some legal problems raised by the fight against transnational terrorism*
11:10 – 1:00	**Jean-Michel Arrighi** *La OEA y la defensa de la democracia (The OAS and the defense of democracy)*
2:30 – 4:30	**Guillermo Fernández de Soto,** Chairman of the Inter-American Juridical Committee *El Comité Jurídico Interamericano. Su historia y realizaciones (The Inter-American Juridical Committee. Its history and achievements)*
Tuesday 9	
9:00 – 10:50	**Claude Emanuelli** *Some legal problems raised by the fight against transnational terrorism*
11:10 – 1:00	**Jean-Michel Arrighi** *La solución pacífica de controversias en el Sistema Interamericano (Peaceful settlement of disputes in the Inter-American System)*
2:30 – 4:30	**Garth Schofield,** Legal Counsel, Permanent Court of Arbitration *International Arbitration in the Contemporary Legal Order*

Wednesday 10

9:00 – 10:50 **Dante Negro,** Director of the Department of International Law
Introducción a la estructura y los mecanismos de la OEA (Introducing the structure and mechanisms of the OAS)

11:10 – 1:00 **Diego Moreno, OAS** Department of International Law
Grupos en situación de vulnerabilidad, discriminación y democracia. El rol de la OEA. (Groups in situations of vulnerability, discrimination and democracy. The role of the OAS)

2:30 – 4:30 **Garth Schofield,** Permanent Court of Arbitration
International Arbitration in the Contemporary Legal Order

Thursday 11

9:00 – 10:50 **Diego P. Fernández Arroyo,** Professor from the Institut d'études politiques de París (Sciences Po) and from the University Complutense from Madrid
La elaboración del derecho en las organizaciones internacionales. El creciente protagonismo de los actores privados (Elaborating law in international organizations. The growing protagonism of private actors)

11:10 – 1:00 **Juan Carlos Murillo,** Regional Juridical Advisor, **UNHCR**, Costa Rica
Democracia y protección internacional de refugiados: el caso del Continente Americano (Democracy and protection of refugees: the case of the American Continent)

Friday 12

9:00 – 10:50 **Diego P. Fernández Arroyo**
La elaboración del derecho en las organizaciones internacionales. El creciente protagonismo de los actores privados (Elaborating law in international organizations. The growing protagonism of private actors)

11:10 – 1:00 **Juan Carlos Murillo**
Sistema Interamericano de protección de derechos humanos y protección internacional de refugiados (The Inter-American System of protection of human rights and international protection of refugees)

Week Three

Monday 15

9:00 – 10:50 **Martina Caroni,** Professor of Public International Law, University of Lucerne, Switzerland
International Law and Democracy: An Ambivalent Relationship?

11:10 – 1:00 **Claudio A. Pinho,** Member of the Inter-American Federation of Lawyers
Estado de derecho, democracia y fortalecimiento de las instituciones. Análisis necesarios para el siglo XXI (Rule of law, democracy and strengthening institutions. Necessary analyses for the 21st century)

Tuesday 16

9:00 – 10:50 **Martina Caroni**
International Law and Democracy: An Ambivalent Relationship?

11:10 – 1:00 **Claudio A. Pinho**
Estado de derecho, democracia y fortalecimiento de las instituciones. Análisis necesarios para el siglo XXI (Rule of law, democracy and strengthening institutions. Necessary analyses for the 21st century)

2:30 – 4:30 **Pablo Gutiérrez,** Director of the Department of Cooperation and Electoral Observation, OAS
El rol de las observaciones electorales de la OEA en el fortalecimiento de la democracia en América Latina y el Caribe (The role of electoral

observations of the OAS in strengthening democracy in Latin America and the Caribbean)

Wednesday 17

9:00 – 10:50 **Valesca Raizer Borges Moschen,** Professor of the Federal University of Espírito Santo (UFES), Brazil
De la inmunidad a la jurisdicción: tensiones democráticas del Estado democrático de derecho (On immunity to jurisdiction: democratic tensions of the democratic rule of law)

11:10 – 1:00 **Romaric Ferraro,** Asesor Legal Advisor to the International Committee of the Red Cross (ICRC), Colombia
Introducción general al derecho internacional humanitario. Definición de conflicto armado (General introduction to international humanitarian law. Definition of armed conflict)

Thursday 18

9:00 – 10:50 **Valesca Raizer Borges Moschen**
De la inmunidad a la jurisdicción: tensiones democráticas del Estado democrático de derecho (On immunity to jurisdiction: democratic tensions of the democratic rule of law)

11:10 – 1:00 **Romaric Ferraro**
Introducción general al derecho internacional humanitario. Estudio del CICR sobre el fortalecimiento de la protección legal para las víctimas de los conflictos armadas (General introduction to international humanitarian law. ICRC study on strengthening legal protection for the victims of armed conflicts)

Friday 19

10:00 **CLOSING CERIMONY AND PRESENTATION OF CERTIFICATES**

C. Panel session on "The Organization of American States and the Defense of Democracy: Origin and Evolution"

As part of the celebrations for the tenth anniversary of the Inter-American Democratic Charter, the Department of International Law and the Inter-American Juridical Committee organized, on Monday, August 1, 2011, a panel session on "The Organization of American States and the Defense of Democracy: Origin and Evolution." The event was supported by the Ministry of Foreign Affairs of Brazil and took place at the Itamaraty Palace in Rio de Janeiro, Brazil.

The panel session was chaired by Dr. Guillermo Fernández de Soto, Chairman of the Inter-American Juridical Committee; also in attendance were several authorities who have played key roles in promoting and defending democracy within the inter-American system, including Ambassador João Clemente Baena Soares, Vice Chairman of the CJI and former Secretary General of the OAS, Ambassador Jean-Paul Hubert, CJI member and Canada's first ambassador to the OAS, and–through a pre-recorded video message–Ambassador Luigi Einaudi, former OAS Assistant Secretary General. The Organization's Secretary for Legal Affairs, Dr. Jean-Michel Arrighi, served as the session's moderator. In addition, Minister Carlos Henrique Moojen de Abreu e Silva, Director of the Department for the United States of America, Canada, and Inter-American Affairs of the Brazilian Ministry of Foreign Affairs, gave the event's closing address.

In addition to reviewing the main documents adopted by the Committee over the years, the panelists shared their personal experiences in the implementation of mechanisms for strengthening democracy in the OAS, such as the electoral observation missions that began when Ambassador Baena Soares was Secretary General, and the creation of the Unit for the Promotion of Democracy following a proposal made by Canada during Ambassador Hubert's term as that country's representative to the OAS. In turn, the Chairman of the Juridical Committee pointed out that the inter-American system's contributions to democracy date back to the earliest days of that

consultative body, and that its most recent manifestation states that "democracy does not consist only of electoral processes (…) Perpetuation in power, or the exercise of power without a fixed term and with the manifest intent of perpetuation, is incompatible with the effective exercise of democracy."

The event was filmed and the panel sessions may be seen at the following link:
http://www.oas.org/dil/esp/Panel_OEA_defensa_democracia_origenes_evolucion.htm.

In that context, the Inter-American Juridical Committee adopted a resolution to thank the Government of the Federative Republic of Brazil for holding the event, CJI/RES. 180 (LXXIX-O/11), "Vote of thanks to the Government of Brazil."

CJI/RES. 180 (LXXIX-O/11)

THANKS TO THE BRAZILIAN GOVERNMENT

THE INTER-AMERICAN JURIDICAL COMMITTEE,

IN ACKNOWLEDGEMENT of the support received from the Government of the Federative Republic of Brazil to hold the event "The Organization of the American States and the Defense of Democracy: origins and evolution",

RESOLVES:

1. To express its gratitude to the Government of the Federative Republic of Brazil on behalf of its Ministry of Foreign Affairs for the significant support offered to the Inter-American Juridical Committee in relation to the event "The Organization of the American States and the Defense of Democracy: origins and evolution", which took place in the Itamaraty Palace on 1 August 2011, on which occasion the book entitled "La Democracia en los Trabajos del Comité Jurídico Interamericano (1946-2010)" (*Democracy in the work of the Inter-American Juridical Committee [1946-2010])* was presented to a distinguished assembly.

2. Transmit this resolution to the Government of the Federative Republic of Brazil.

This resolution was approved unanimously at the session held on 5 August 2011 by the following members: Drs. João Clemente Baena Soares, Hyacinth E. Lindsay, Jean-Paul Hubert, Fernando Gómez Mont Urueta, David P. Stewart, Ana Elizabeth Villalta Vizcarra, Fabián Novak Talavera, Guillermo Fernández de Soto, Mauricio Herdocia Sacasa and Freddy Castillo Castellanos.

* * *

D. Relations and Cooperation with other Inter-American bodies and with Similar Regional and Global Organizations

Participation of members of the Inter-American Juridical Committee as Observer to or Guest of different organizations and lectures in 2011

Committee on Judicial and Political Affairs of the OAS (CJPA)
Washington, 7 April 2011
Participation of the Chairman of the IJC, Dr. Guillermo Fernández de Soto.

Round table on the Permanent Court of International Arbitration
Washington, D.C. 8 April 2011
Participation of the Chairman of the Inter-American Juridical Committee, Dr. Guillermo Fernández de Soto.

Symposium on "Challenges to the application of the Inter-American Democratic Charter in the Hemisphere"
San Salvador, El Salvador, 11 April 2011
Participation of Dr. Ana Elizabeth Villalta Vizcarra (CJI/doc.381/11)

General Assembly of the OAS
San Salvador, 7 June 2011
Participation of Dr. Elizabeth Villalta (CJI/doc.379/11)

United Nations Commission on International Law
Geneva, 19 July 2011
Participation of Dr. Hyacinth Evadne Lindsay (CJI/doc. 384/11)

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 2010:

- **During the 78th regular session held in Rio de Janeiro, Brazil**

1) On 23 March 2011, the Committee held a telephone lecture with Dr. Catalina Botero, Rapporteur on Freedom of Expression of the Inter-American Committee on Human Rights (IACHR). On this occasion the rapporteur explained the mandate of the Rapporteurship, referred to the advances made in the area of ethical protection and addressed the limits imposed on the State by article 13.2 of the American Convention of Human Rights, self-regulation institutions, and new technologies, among other matters. A fruitful dialogue was enjoyed between the Committee members and the IACHR rapporteur.

2) On 25 March 2011, the IJC received the visit of Ambassador Valter Pecly Moreira, Head of the Brazilian Ministry of Foreign Affairs Bureau of Representation in Rio de Janeiro, who expressed his full support and disposal as regards using the premises for the regular sessions of the Committee and the event programmed for the month of August.

3) On 25 March 2011, the IJC received the visit of Professor Cláudia Lima Marques, President of the American Association of Private International Law (ASADIP) and renowned Professor of International Law in Brazil. Professor Lima Marques explained the work of the ASADIP and offered the support of the organization in facing the challenges posed for contemporary International Private Law.

- **During the 79th regular session held in Rio de Janeiro, Brazil:**

1) On 4 August 2011, the IJC received the visit of Professors Joe Verhoeven and Hugo Caminos, who participated in the 38th Course in International Law. Professor Joe Verhoeven, Chairman at the Panthéon-Assas University (Paris 2), commented on the role of international judges. Professor Caminos, judge of the International Tribunal for the Law of the Sea and Professor Emeritus at the University of Buenos Aires, as well as former Under-secretary of Juridical Affairs at the OAS, talked about the International Tribunal for the Law of the Sea and certain recent preoccupations concerning human rights.

2) On 5 August 2011, the IJC received the visit of Professor Francisco Reyes Villamar, one of the authors of the Law of Companies by Limited Partnership (SAS) adopted in Colombia; he has had a brilliant public career in his country as professor and lawyer. Professor Reyes gave a detailed explanation of the Law of Societies by Simplified Shares.

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