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

ORGANIZAÇÃO DOS ESTADOS AMERICANOS

CJI/SO/I/doc.3/96 rev.1
1 February 1996
Original: Spanish

ANNUAL REPORT

OF THE INTER-AMERICAN JURIDICAL COMMITTEE

TO THE GENERAL ASSEMBLY

1995
(Approved at the regular session held on 2 February 1996)

Rio de Janeiro

1996

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TO THE GENERAL ASSEMBLY

EXPLANATORY NOTE

This Annual Report was prepared in accordance with the instructions in the Note signed by the Assistant Secretary General, Ambassador Christopher Thomas, dated 6 December 1995, limiting the number of pages thereof. The Documents in Part III are available at the Secretariat of the Inter-American Juridical Committee in Rio de Janeiro and the Secretariat for Legal Affairs of the General Secretariat of the OAS in Washington D.C.

INTRODUCTION AND GENERAL COMMENTS ON THE PRINCIPAL TOPICS COVERED

This Annual Report, which reflects the work of the Inter-American Juridical Committee during the 1995 calendar year, was prepared in conformity with Article 53 (f) of the Charter of the Organization.

During this period, in addition to continuing on with its efforts focused on the topics on its Agenda as described in this Report, the Committee exceptionally held one of its regular sessions periods in Washington D.C., constituting a unique opportunity to develop closer relationships with other Agencies within the Organization. Particularly noteworthy among these organs are the Working Group on the Administration of Justice, the Working Group on Probity and Public Ethics, the Trade Unit and the Commission for Juridical and Political Affairs.

During its 1995 regular sessions periods, the Committee paid special attention to the following topics:

1. Probity and Public Ethics (Draft Inter-American Convention Against Corruption);
2. Juridical Aspects of Integration and Foreign Trade;
3. Democracy in the Inter-American System;
4. International Law Course;
5. II Joint Meeting with Juridical Advisors of the Ministries of Foreign Affairs of the Member-States of the O.A.S.

During the period covered by this Report, the Committee also studied other topics such as Improving the Administration of Justice in the Americas, Enhancing Effective Securities Regulation in the Hemisphere; International Juridical Effects of Insolvency; Right to Information; Environmental Law; Pacific Settlement of Disputes; Inter-American Cooperation to Confront Terrorism; and Juridical Aspects of Foreign Debt.

With regard to the first topic, the General Assembly assigned the Committee the task of analyzing - and presenting its conclusions - on a Draft Inter-American Convention Against Corruption prepared by the Chairman of the Working Group on Probity and Public Ethics, taking into account a proposal submitted by the Government of Venezuela. During its August 1995 Meeting, as the outcome of an individual analysis of each clause of the Convention, the Committee adopted a set of Alternative Articles with detailed comments on this matter, in order to provide the Working Group with the juridical bases that would usher in an improvement in international cooperation to combat corruption through extradition, mutual legal assistance and blocking of assets. The Draft Articles and Comments were forwarded to the Working Group on Probity and Public Ethics after the August 1995 Meeting of the Committee. The Committee retained this topic on its Agenda and will consider further work thereon during its January 1996 Meeting, in the light of the progress made by the Working Group.

In the area of economic integration and international trade, having examined the systems for the settlement of disputes of North American Free Trade Agreement (NAFTA), Latin American Integration Association (LAIA), including the systems adopted under bilateral supplementary economic agreements, the Central American Integration System (CAIS), the Group of 3 (G-3), the Caribbean Community (CARICOM) and the Southern Cone Common Market (MERCOSUR), during its March 1995 Meeting the Committee adopted various conclusions with regard to this topic. Acknowledging that the Member-States of the Organization share the same objective of achieving greater integration at the Hemisphere level, the Committee observed that despite the

process of trade liberalization and integration at the Hemisphere level, the Committee observed that although the process of trade liberalization and integration at the sub-regional level is closely linked to the specific needs and circumstances of each region, the liberalization of trade in the Americas, the entry into effect of the World Trade Organization, and the free enterprise trade agreements among countries within and outside the region are all facts that contribute to achieving this objective.

With regard to the methods for the settlement of disputes, the Committee resolved that the mechanisms and processes for the settlement of disputes in each system should be shaped to the specific agreements. In keeping with this, the Committee also decided that it is not possible to outline in an abstract manner the a system for the settlement of disputes independent of the concrete constraints stipulated in an agreement. Nevertheless, the Committee resolved that the systems for the settlement of disputes should be clearly structured and include rules on the relationship between such procedures and those of the GATT/WTO, as well as the consequences of the decisions taken with regard to non-signatory parties. Thus, if the area of investment is subject to constraints, the system should consider whether or not it wishes to include provisions for arbitration between investors and the State. Additionally, the Committee suggested that more thought should be given to effective measures for protecting the rights of private individuals adversely affected by challengeable measures taken by any Signatory State to an integration or free trade agreement, including possible direct access by such persons to supranational procedures or institutions. The complete Report of the Committee, including the Reports of the Rapporteurs on the various Agreements, and an Introductory Note summarizing the conclusions of the Committee, were forwarded to the Trade Unit of the Organization, as well as the Special Commission on Trade and its Advisory Committee prior to the II Meeting of the Special Commission. During its August 1995 Meeting, the Committee adopted an additional Report on the settlement of disputes under the Treaty of Cartagena (Andean Pact) and an updated Report on the settlement of disputes presented by the Central American Court of Justice. The Committee intends to keep this study up-to-date, in view of the activities under way under the aegis of the various agreements, working closely with the Trade Unit and the Special Commission on Trade to this end.

During its August 1995 Meeting, the Committee started work on the most-favored nation principle, under the framework of both the GATT/WTO as well as integration and free trade agreements, as required by the General Assembly. It will hear a Report on this issue during its August 1996 Meeting.

During its March 1995 Meeting, and having taken under consideration an exhaustive study of *Democracy in the Inter-American System*, the Committee adopted a Resolution on the issue of Democracy that, in the light of a clear precedent, outlines the democratic practices in the Hemisphere and the norms and standards adopted by the Organization. The Resolution:

a) states that, in compliance with the Charter of the O.A.S. and the Resolutions of its Organs, the Organizations and its Member-States have observed the following principles and norms with regard to the effective exercise of Representative Democracy: One. Every State in the Inter-American System has the obligation to effectively exercise Representative Democracy in its political organization and system. This obligation exists with regard to the Organization of American States, and to comply therewith, every State in the Inter-American System has the right to choose the means and forms that it deems appropriate. Two: the principle of non-intervention and the right of each State in the Inter-American System to elect its political, economic and social system with no outside intervention and to organize itself in the manner most convenient thereto may not include any violation of the

obligation to effectively exercise Representative Democracy in the above-mentioned system and organization. Three: the Organization of American States is competent to promote and consolidate Representative Democracy in each and every one of the Member-States. In particular, the Organization is responsible, through the *Ad Hoc* Meeting of Ministers of Foreign Affairs or the General Assembly sitting in an Extraordinary Sessions period, to decide under the terms of the Resolution on Representative Democracy [AG/RES.1080(XXI-091)], whether one of its Member-States has violated or ceased to comply with the obligation to effectively exercise Representative Democracy. Four: The abrupt or irregular interruption of the democratic institutional political process or the legitimate exercise of power by a democratically-constituted government within the Inter-American System shall constitute non-compliance with the obligation to effectively exercise Representative Democracy. Five: Any State in the Inter-American System that fails to comply with the obligation to effectively exercise Representative Democracy acquires the obligation to re-establish the effective exercise thereof. The Resolutions that Organization of American States may adopt under such circumstances should be designed to bring about such re-establishment;

b) proposes that the other agencies in the Organization should adopt a series of measures designed to foster the effective progressive development of advances in international law in this field;

c) commits the Committee to continue studying this topic, stressing the identification and typification of activities that could constitute internationally illegal acts, acts against the effective exercise of Representative Democracy, and the resulting responsibility of States and individuals, the relationship between the effective exercise of Representative Democracy, international peace and security, human rights and the juridical system, as well as other measures that could be adopted by the Organization with regard to re-establishing democracy wherever it may have been suppressed;

d) proposes international coordination through studies, seminars and other means for analyzing the experience and positions of the Organization, as well as other international organizations in this area; and

e) establishes that its Report and Resolution on this topic shall be distributed to the Member-States in order to provide law schools and political science departments with the necessary observations and comments on the issue.

The XXII International Law Course was held in Rio de Janeiro from 31 July through 25 August 1995, with 38 students taking part therein representing the Member-States. The Working Groups carried out detailed surveys of economic integration and free trade agreements, as well as human rights in the Inter-American System. During its August 1995 Meeting, the Committee recommended a series of measures to enhance the Course and its administration, including the adoption of a core theme, with the theme selected for 1996 being *Justice and International Law,* the provision of better installations for the library and seminars, guarantees that reference material is distributed in advance, and wider dissemination of information on the Course in Law Schools throughout the Americas.

On 3 and 4 August 1995, the Committee sponsored the II Joint Meeting of Juridical Advisors of the Ministries of Foreign Affairs of the Member-States of the O.A.S., in conformity with its Resolution CJI/RES.II-14/94 at the *Palácio Itamaraty*, Rio de Janeiro.

This Annual Report includes a complete list of the various topics taken under consideration during the regular sessions periods, as well as the texts of the Resolutions approved during 1995.

The Reports presented by the Members, as well as the Annotated Agenda prepared by the Secretariat for Legal Affairs through the Department of Development and Codification of International Law (OEA/Sec.Gral/CJI/doc.2/94 rev.1, 6 July 1995) are available for consultation at the head offices of the Inter-American Juridical Committee and the Secretariat for Legal Affairs.

This Report was unanimously approved at a regular session held on 2 February 1996, with those present being Drs. José Luis Siqueiros, Alberto Zelada Castedo, Olmedo Sanjur, Ramiro Saraiva Guerreiro, Mauricio Gutiérrez Castro, Eduardo Vío Grossi, Miguel Ángel Espeche Gil, and Keith Highet.

PART I

ACTIVITIES

PART I

ACTIVITIES

1. Membership of the Committee

During the period covered by this Report, the Inter-American Juridical Committee consisted of the following Members: Ramiro Saraiva Guerreiro, Jonathan T.Fried, Luis Herrera Marcano, Alberto Zelada Castedo, Miguel Ángel Espeche Gil, Galo Leoro Franco, Mauricio Gutiérrez Castro, Eduardo Vío Grossi, José Luis Siqueiros, Philip Telford Georges, and Roberto Alemán.

On 12 June 1995, Dr. Roberto Alemán resigned as a Member of the Inter-American Juridical Committee, for personal reasons.

2. Chairman and Deputy Chairman of the Committee

The Chair of the Inter-American Juridical Committee was held by Dr. Ramiro Saraiva Guerreiro, with Dr. Jonathan T.Fried as its Deputy Chairman.

3. Secretariat of the Committee

The Secretariat of the Committee was administered by Dr. Manoel Tolomei Pereira Gomes Moletta.

4. Activities of the Chairman between the Regular Sessions Periods

During the inaugural sessions of each period, the Chairman presented a detailed verbal report of his participation in the April meetings of the Permanent Council, and outlines the activities carried out during the recess, particularly with regard to progress in the program of cooperative relationships between the Committee and various international juridical organizations dedicated to the study and development of international law. Outstanding among the various institutions with which the Committee launched a drive to enhance its cooperative relationships are: *United Nations Commission on International Trade Law* (UNCITRAL); *International Institute for the Unification of Private Law* (UNIDROIT); *Hispano-Luso-American Institute of International Law* (IHLADI); *Asian-African Legal Consultative Committee*; *Brazilian Bar Association / Rio de Janeiro Chapter* (OAB/RJ); and the *International Law and Relations Institute, University of São Paulo*.

Also particularly noteworthy are the talks launched with the *Santa Ursula University*, the *Rio de Janeiro Pontifical Catholic University* and the *University of São Paulo*, leading up to the signature of the cultural and scientific cooperation and exchange agreements in the field of international law.

5. Election of Committee Member

On 1 November 1995, the Permanent Council elected Dr. Olmedo Sanjur G. (Panama) to the seat left vacant by the resignation of Dr. Roberto Alemán, for a period of three years, running from 1 November 1995 through to 31 December 1998.

6. March 1995 regular sessions period

The first regular sessions period of the Inter-American Juridical Committee in 1995 was held from 13 -24 March in Washington D.C., at the head offices of the Organization of American States, chaired by Dr. Ramiro Saraiva Guerreiro, with the following Members present: Drs. Jonathan T.Fried (Deputy Chairman), Luis Herrera Marcano, Philip Telford Georges, Alberto Zelada Castedo, José Luis Siqueiros, Mauricio Gutiérrez Castro, Roberto Alemán, Miguel Ángel Espeche Gil, Eduardo Vío Grossi, Galo Leoro Franco and Seymour Rubin (Honorary Member Emeritus).

During its opening session, the Inter-American Juridical Committee was honored by the visit of the Secretary-General of the Organization of American States, Dr. César Gavíria, who welcomed the Members of the Inter-American Juridical Committee.

This Meeting was also attended by O.A.S. representatives Drs. William M. Berenson, Director of the General Juridical Services Department, and Temporary Under-Secretary of Juridical Affairs; Enrique Lagos, Director of the International Law Development and Codification Department; and Jean-Michel Arrighi, Principal Juridical Officer of this Department.

6.1. Agenda

The Agenda (CJI/RES.II-22/94) was covered during this Meeting, approving the Resolutions and Decision listed below, the texts of which are set out in Part III of this Report.

.	CJI/RES.I-1/95 -	Juridical Dimension of Integration and International Trade
.	CJI/RES.I-2/95 -	Ban on Transborder Kidnapping
.	CJI/RES.I-3/95 -	Democracy in the Inter-American System
	CJI/RES.I-4/95 -	Improvement of the Administration of Justice in the Americas
.	CJI/RES.I-5/95 -	Juridical Aspects of Foreign Debt
.	CJI/RES.I-6/95 -	Inter-American Cooperation to confront International Terrorism
.	CJI/RES.I-7/95 -	International Cooperation to Repress Corruption
.	CJI/RES.I-8/95 -	Right to Information
.	CJI/DI.I-1/95 -	International Law Course

6.2 Relationships with other institutions in the field of International Law

During the sessions, the Committee had the opportunity to firm up contacts and expand relationships with the following people:

. Dr. Enrique Iglesias, Chairman, Inter-American Development Bank

. Mr. Douglas Webb, Head of Unit, Juridical Reform and Development for the Private Sector, World Bank;
Topic: Securities Market;

. Mr. Malcolm Rowat, Head, Public Sector Modernization Division, World Bank;
Topic: Securities Market;

. Ms. Lucinda Low, Representative, American Bar Association;

. Ambassador Julio César Jaureguy, Permanent Representative of Uruguay to the

O.A.S.;
Topic: Improvement of the Administration of Justice;

. Ambassadress Beatriz Ramacciotti, Permanent Representative of Peru to the O.A.S.;
Topic: Inter-American Cooperation to confront International Terrorism;

. Mr. Miguel Rodríguez, Head, Trade Unit, Secretary-General, O.A.S.;
Topic: Coordination of the activities between the Special Trade Commission and the Inter-American Juridical Committee

. Dr. Luigi Ferrari Bravo, Chairman of UNIDROIT
Topic: Cooperation between the O.A.S. and UNIDROIT;

. Professor Claudio Grossman. Dean, International Law Program, American University;
Topic: Possibility of Inter-American Cooperation Programs between the Inter-American Juridical Committee and the American University;

. Mr. Phillip McLean, Under-Secretary for Administration, Secretary-General, O.A.S.;
Topic: Budget - Inter-American Juridical Committee;

. Mr. Antonio Parra, ICADI - International Center for the Arrangement of Differences Over Investments, World Bank;
Topic: settlement of disputes between recipient States and foreign investors.

. Mr. Fernando Carillo, Representative, Inter-American Development Bank;
Topic: Improvement of the Administration of Justice;

. Ambassador Sebastián Allegrett, Permanent Representative of Venezuela to the O.A.S.;
Topic: Probity and Public Ethics;

. Ambassador Edmundo Vargas Carreño, Permanent Representative of Chile to the O.A.S.;
Topic: Probity and Public Ethics;

The Committee met with the Commission on Juridical and Political Affairs of the O.A.S., chaired by Ambassador Dean R. Lindo, Permanent Representative of Belize, to discuss matters of mutual interest to both organs. This Meeting made quite clear the warm receptivity of the Permanent Representatives of the Member-States with regard to the activities of the Committee.

The Committee resolved to appoint the following Members as Observers:

. Dr. Philip Telford Georges, to the XXV sessions period of the General Assembly held in Haiti;

. Dr. Alberto Zelada Castedo, to the Conference of the Special Commission on Trade to be held in Montevideo;

. Dr. Eduardo Vío Grossi, to the International Law Commission of the United Nations, to be held in Geneva;

. Dr. José Luis Siqueiros, to the Conference on International Private Law in The Hague.

7. Regular sessions period, August 1995

The second regular sessions period of the Inter-American Juridical Committee in 1995 was held from 31 July through 24 August a its head offices in Rio de Janeiro, chaired by Dr. Ramiro Saraiva Guerreiro and with the following Members present: Drs. Jonathan T.Fried (Deputy Chairman), Alberto Zelada Castedo, Philip Telford Georges, Miguel Ángel Espeche Gil, Galo Leoro Franco, José Luis Siqueiros, Luis Herrera Marcano and Mauricio Gutiérrez Castro.

Also present at this Meeting were O.A.S. representatives Drs. Jorge Garcia González, Aide to the Secretary-General; William M. Berenson, Temporary Under-Secretary for Juridical Affairs; Enrique Lagos, Director, International Law Development and Codification Department; and Jean-Michel Arrighi, Juridical Advisor to this Department.

Also present as Observers to the Inter-American Juridical Committee were Dr. John de Saram, from the International Law Commission of the United Nations, and Dr. Alicia Fernanda Quijano, representative of the Ministry of Justice, Colombia.

7.1 Agenda

During this sessions period, the topics on the Agenda (CJI/SO/II/doc.25./95) were taken under consideration, approving the Resolutions and Decisions listed below, the texts of which are given in Part II of this Report:

CJI/RES.II-9/95 -	Right to Information;
CJI/RES.II-10/95-	Enhancing Effective Securities Regulation in the Hemisphere;
CJI/RES.II-11/95-	International Juridical Effects of Insolvency;
CJI/RES.II-12/95-	Improving the Administration of Justice in the Americas;
CJI/RES.II-13/95-	International Cooperation to Repress Corruption in the Americas; Report and Comments of the Inter-American Juridical Committee on the Draft Inter-American Convention Against Corruption (CJI/SO/II/doc.39/95rev.2); Reasoned Votes: Drs. Alberto Zelada Castedo, Miguel Ángel Espeche Gil, Ramiro Saraiva Guerreiro, José Luis Siqueiros and Jonathan T.Fried;
CJI/RES.II-14/95-	Juridical Dimension of Integration and International Trade;
CJI/RES.II-15/95-	Homage to Dr. Philip Telford Georges;
CJI/RES.II-16/95-	Budget - 1996-1997;
CJI/RES.II-17/95-	Juridical Aspects of Foreign Debt;
CJI/RES.II-18/95-	XXIII International Law Course;
CJI/RES.II-19/95-	Inter-American Cooperation to confront International Terrorism;
CJI/DI.II-2/95 -	Library of the Inter-American Juridical Committee;
CJI/DI.II-3/95 -	Reorganization of the Head Offices of the Inter-American Juridical

Committee

CJI/DI.II-4/95 - Printing, Publishing and Distribution of Inter-American Juridical Committee publications;

CJI/DI.II-5/95 - Medical Aid and Life Assurance for the Members of the Inter-American Juridical Committee.

7.2 Relationships with other institutions in the field of International Law

During the course of these sessions, the Committee was visited by eminent lecturers from the XXII International Law Course, which offered the opportunity to establish contact and strengthen relationships with the following:

. Ambassador Edmundo Vargas Carreño, Permanent Representative of Chile to the O.A.S. and Chairman of the Working Group on Integrity and Public Morals, set up by the Permanent Council;

. Ambassadress Beatriz Ramacciotti, Permanent Representative of Peru to the O.A.S. and Chairman of the Working Group on Terrorism, set up by the Permanent Council;

. Ambassador Brian Dickson, Permanent Representative of Canada to the O.A.S.;

. Professor Douglas Cassel, Professor, DePaul University;

. Dr. Jean-Pierre Puissochet, Judge, European Communities Court of Justice;

. Professor Friederich K. Juenger, University of California at Davis;

. Professor William C. Graham, Chairman of the Standing Committee of the House of Commons on Foreign Affairs and International Trade, Canada;

. Ambassador Julio Lacarte Muró, Minister of Foreign Affairs, Uruguay;

. Professor Vicente Marotta Rangel, Director, Law School, University of São Paulo;

. Dr. Alejandro Montiel Argüello, Judge, Inter-American Human Rights Court;

. Dr. Antonio Boggiano, Justice, Supreme Court, Argentina.

On this occasion, the Committee took under consideration the Reports presented by its Observers at the following meetings:

. Dr. Eduardo Vío Grossi, United National International Law Commission, Geneva (CJI/SO/II/doc.19/95);

. Dr. Alberto Zelada Castedo, II Meeting, Special Trade Commission of the O.A.S., Montevideo (CJI/SO/II/doc.21/95);

. Dr. Philip T. Georges, XXV regular sessions period of the General Assembly, O.A.S., held in Montrouis (CJI/SO/II/doc.24/95).

8. XXII International Law Course

The Inter-American Juridical Committee hosted the August 1995 XXII International Law Course at the head offices of the Getúlio Vargas Foundation, Rio de Janeiro, Brazil.

The lecturers, all outstanding experts from the Americas and Europe, covered juridical issues important on today□s scene, stressing the study of topics related to human rights and methods for the settlement of disputes in integration and free trade agreements, both regional and sub-regional. This Course was attended by fellows from various O.A.S. Member-States.

Following the established practice, the Inter-American Juridical Committee received visits from the following lecturers taking part in this Course in order to exchange ideas and opinions on their respective specialties, at the same time as they carried out an appraisal of the level of the Course for possible future upgrading and updating thereof:

. Dr. Douglas W. Cassel, Professor, DePaul University;

. Ambassador Brian Dickson, Permanent Representative of Canada to the O.A.S.;

. Dr. Jean-Pierre Puissochet, State Judge, Court of the European Communities;

. Dr. Friedrich K. Juenger, Professor, University of California;

. Ambassador Julio Lacarte Muró, Advisor, Ministry of Foreign Affairs, Uruguay;

Dr. Alejandro Montiel Argüello, Justice, Inter-American Human Rights Court;

. Ambassadress Beatriz Ramacciotti, Permanent Representative of Peru at the O.A.S.;

. Dr. Vicente Marotta Rangel, Professor, University of São Paulo;

. Dr. Antonio Boggiano, representative of UNIDROIT.

In compliance with its Decision CJI/DI-1.95 dated 23 March 1995, the Working Group charged with the organization of the International Law Course will discuss the agendas and guidelines that will shape the program of the next Course. During the August regular sessions period, Resolution N□. CJI/RES.II-18.95 was approved, based on the draft presented by Dr. Eduardo Vío Grossi regarding the organization of the Agenda and Topics of the XXIII International Law Course.

9. II Joint-Meeting of Juridical Advisors to the Ministries of Foreign Affairs of the Member States of the O.A.S.

In compliance with its resolution CJI/RES.II-14/95, on 3 and 4 August 1995 the Committee held the II Joint Meeting with Juridical Advisors at the Itamaraty Palace, Rio de Janeiro, in which the following advisors participated:

. Dr. Susana Calderón - Bolivia;
. Dr. Cristina Linale de Aparicio - Bolivia;
. Minister Rubem Amaral Jr. - Brazil;
. Ambassador Brian Dickson - Canada;
. Ambassador Fernando Córdoba Bossano - Ecuador;

. Dr. Berta Feder - Uruguay;
. Dr. Ernesto Kleber - Venezuela;
. Ambassador Carlos Augusto Saldívar - Paraguay.

Ambassador Paulo Monteiro de Lima, Head of the Regional Office of the Brazilian Ministry of Foreign Affairs, welcomed the participants, reiterating the pleasure of Itamaraty in once again hosting an event of this importance.

During the course of these sessions, the members of the Inter-American Juridical Committee and the advisors present approached the study and discussion of the effective application of inter-American convention norms and standards, as well as difficulties occurring in the ratification process of international juridical instruments in general. Within this framework, they exchanged opinions and analyzed the ratification mechanisms stipulated in the various constitutional legislations, assessing possible solutions to problems arising therefrom.

They then compared the structures and functional models of the juridical advisory bodies and the Sub-Secretariat for Juridical Affairs of the O.A.S., discussing requirements inherent in the role of juridical advisors within the current context of the development of International Law.

Ambassador Edmundo Vargas Carreño, Permanent Representative of Chile to the O.A.S. and Chairman of the Working Group on Probity and Public Ethics, set up by the Permanent Council, attended as a guest, and presented his *Draft Inter-American Convention Against Corruption*, explaining some of the principal elements of this document and its background.

The Advisors then stressed the importance of international cooperation in combating money-laundering, as a result of illicit activities.

The Venezuelan representative announced that his country formally offered to host the next International Conference on Mercantile Hiring, organized by UNIDROIT.

In closing this event, the advisors reaffirmed the basic importance of continuing with this event for the development and codification of international law, as well for exchanging experiences among its participants, which would enhance and upgrade the legal structures of Ministries of Foreign Affairs.

10. Acknowledgment of Dr. Philip Telford Georges

As the term of office of the Member from Dominica, Dr. Philip Telford Georges, ended on 31 December 1995, a Resolution was approved honoring his valuable contributions during the four years that he served on the Committee (see Part II. CJI/RES.II-15/95).

11. Acknowledgment of the Under-Secretary of Juridical Affairs OAS

The Inter-American Juridical Committee expressed its acknowledgment and thanks to Drs. William M. Berenson and Enrique Lagos, who acted as the Under-Secretary of Juridical Affairs on a temporary basis, for their dedicated and invaluable cooperation in the work of the Committee during the period covered by this Report.

12. Acknowledgment of the Secretariat of the Inter-American Juridical Committee

The Inter-American Juridical Committee passed a vote of applause for its Secretary, Dr. Manoel Pereira Gomes Tolomei Moletta, which was extended to the entire Secretariat for the dedication, enthusiasm and efficiency shown in the performance of its tasks and duties.

13. Administrative Matters

Due to the importance of taking various administrative matters under consideration, directly related to the enhancement its functional structure, and in order to effectively fulfill the mandates of the O.A.S. Charter, the General Assembly and the Permanent Council, as well as complying with the purposes established in its Charter and Regulations, the Inter-American Juridical Committee approved resolutions and decisions related to the Library of the Committee, the reorganization of its head offices, a medical aid for its Members (on the basis of the drafts presented by Dr. Eduardo Vío Grossi) and the editing, printing and distribution of its publications.

PART II

RESOLUTIONS ADOPTED

CJI/RES.I-1/95

JURIDICAL DIMENSION OF INTEGRATION AND INTERNATIONAL TRADE

Methods of dispute settlement in regional and sub-regional schemes of integration and free trade

(Resolution adopted during the Regular Session held on 15 March 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

IN VIEW OF its Resolution CJI/RES.II-13/94, whose Paragraph 4 covers the establishment of the Drafting Group consisting of all the Rapporteurs who have provided input on this topic, coordinated by Dr. José Luis Siqueiros, who was to draft an Introductory Note to the volume containing the compilation of the Reports presented;

TAKING INTO ACCOUNT the fact that its Coordinator, Dr. José Luis Siqueiros, submitted to the consideration of the Committee during this regular sessions period the above-mentioned Introductory Note and that this incorporates comments forwarded thereto by some of the Rapporteurs;

WHEREAS this Note outlines concisely and appropriately the various schemes for the settlement of disputes at the regional and sub-regional levels in the Hemisphere, and that the final point of this above-mentioned document suggests certain conclusions to be adopted in this context;

WHEREAS, when discussing the text submitted by the Coordinator, the Committee expressed its approval thereof, with certain adjustments with regard to the conclusions contained in Paragraph 10 of this text;

RESOLVES:

1. To adopt the text of Paragraphs 1 through 9 of the Introductory Note prepared by the Coordinator of the Drafting Group.

2. To adopt the following conclusions:

2.1. The development of the processes of integration and free trade is associated with the needs and circumstances particular to each region and sub-region. The existence of different paces in these processes is acknowledged, and it is desirable that the experiences acquired in each one should be taken under consideration by the others. The final objective is the quest for more extensive integration at the continental level. It stressed that in many cases negotiations with economic blocs outside the continent under the aegis of the World Trade Organization - WTO as well as bilateral talks (bloc to bloc) are under way in the various Latin American and Caribbean schemes, and the final objective of these efforts will gradually lead to a point of convergence;

2.2. The mechanisms and procedures for the settlement of disputes studied comply

with the needs of each scheme, showing that systems of this type cannot be set up in the abstract but must be adapted to ensure effective discipline as agreed under the specific scheme;

2.3. It would be advisable for the mechanism selected for the integration agreement to be neatly structured, meaning it clearly outlines its sphere of application and procedural norms;

2.4. In the various schemes for the settlement of disputes, it is appropriate to reflect on effective procedures for the protection of the rights of individuals affected by violatory measures adopted by a Member-State, including possible access by such persons to law courts or community tribunals;

2.5. In free trade instruments that set up a system for the settlement of disputes, it would be convenient to stipulate if they are optional *vis-à-vis* those established to cover disputes under the GATT/WTO, or if - as alternatives - one automatically falls away once the other is exercised. In negotiating a free trade agreement, when the Parties thereto are also members of the GATT/WTO, it would be prudent to cover the exercise of such option;

2.6. It would desirable to clearly establish the competent forum and the law applicable for cases in which disputes arise between Member-States in a sub-regional scheme and nations that are not part thereof, but belong to a different system, or simultaneously belong to more than one system. The future framework of convergent systems should contain solutions to these situations, when not covered in the instruments in effect;

2.7. When an integration treaty includes a Chapter on investment, or this issue is covered in a Protocol attached thereto, the manner of settling disputes that may arise between the investor (individual or corporate) and the Recipient State should be determined. To this end, consideration should be given to the convenience of submitting such cases to arbitration procedures, such as that of the International Center for the Arrangement of Differences Over Investments (ICADI), the Supplementary Mechanism thereof, or the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), all without adversely affecting other ways of settling such dispute.

3. To bring these conclusions, as well as the reflections contained in the Introductory Note and the Reports attached thereto to the knowledge of the Special Trade Commission, and remain available to this agency for cooperating with the above-mentioned Commission in the various aspects of the juridical dimension of integration, in addition to coordinating its efforts in additional or later analyses of this topic.

This Resolution was approved during the session held on 15 March 1995 by the following Members: Drs. Ramiro Saraiva Guerreiro, Jonathan T. Fried, Luis Herrera Marcano, Philip Telford Georges, Alberto Zelada Castedo, José Luis Siqueiros, Mauricio Gutiérrez Castro, Roberto Alemán, Miguel Ángel Espeche Gil, Eduardo Vío Grossi, and Galo Leoro F.

Dr. Jonathan T.Fried abstained from voting on this Resolution, and his Reasoned Vote of Abstention is attached hereto.

REASONED VOTE OF ABSTENTION

(presented by Dr. Jonathan T. Fried)

I fully support all of the conclusions of the Committee recorded in resolution CJI/RES.I-1/95 approved at its ordinary session held on March 15, 1995, with the exception of paragraph 2.4 regarding private access to international dispute settlement. I record my objection to the Committee's conclusion on this subject for several reasons.

First, and most generally, as the underlying studies and Introductory Note point out, and as paragraphs 2.1 and 2.2 make clear, procedures and institutions for dispute settlement cannot be developed in the abstract. Experience to date in the Americas has shown that each sub-regional agreement includes methods of dispute settlement appropriate to respond to the substantive rights and obligations to be enforced. It is therefore inconsistent with the conclusions of paragraphs 2.1 and 2.2 to imply, in paragraph 2.4, a preference for direct access of private parties to international institutions. I do not believe discussion in the Committee reflected any consensus for such approach.

Second, the term "community tribunals" has no relevance to those international dispute settlement institutions and procedures established in various sub-regional agreements for the enforcement of such rights and obligations as are normally found in free trade agreements. In the NAFTA, for example, neither the Free Trade Commission nor the *ad hoc* panels that may be established under Chapter Eleven, Nineteen or Twenty can be said to be community institutions. The terminology of paragraph 2.4 is, therefore, legally incorrect.

Third, to speak of "the defence of private party rights affected by illegal measures taken by a State Party" through direct access ignores the question of to whom an obligation is owed in the first instance. In all of the agreements canvassed in the reports annexed to the Introductory Note (there being no completed study to date on the Andean Pact), states party to the regional agreements concerned undertake obligations to **other states party**, and not to private individuals (with the exception of the investment obligations of Chapter Eleven and similar agreements, where the states party have explicitly consented to extending their obligations to foreign investors and their investments). Even in the MERCOSUR and European Union customs unions, obligations are owed only to the other states party to the agreement: a private party may only seek recourse through domestic avenues or by requesting a state party (or, in the case of EU, the Commission) to take up a matter on its behalf. As discussed in my comments on the NAFTA annexed to the Introductory Note, the Chapter Nineteen regime for juridical review of antidumping and countervailing duty matters, far from providing private access to community tribunals, creates binational panels to sit in the place of domestic courts to apply the domestic law of the importing country.

This clear distinction between government-to-government obligations properly the subject of international dispute settlement and the rights of private parties as subjects, not objects, of international law, that flow from the adoption or incorporation of a trade agreement into domestic law is consistent with the approach taken in the GATT and the WTO. While various countries provide avenues for private parties to bring to their own government's attention foreign measures or practices that may involve a violation of a trade agreement, only governments may invoke the consultation and dispute settlement procedures available.

Fourth, none of the reports annexed to the Introductory Note even suggest the possibility or desirability of providing greater private party access to community tribunals. It is therefore inappropriate for the Committee to reach any conclusion on a matter that had not been the subject of any analysis.

Fifth, the Committee has given no consideration to the universe of persons "whose rights may be affected" by measures or practices of other countries. The experience of various countries in the Americas with private party invocation of s. 301 under U.S. law to pursue parochial interest, the current debate in the WTO regarding the standing of environmental groups and other non-governmental organizations to provide input into dispute settlement proceedings, and the need to consider the rights and interest of the private parties in the country complained against, all suggest that private party access to international dispute settlement is a complex issue.

Sixth, private access to dispute settlement cannot be divorced from the question of the appropriate degree of transparency that should characterize dispute settlement proceedings. And again, neither the reports nor the Introductory Note contain any analysis of this issue. In the GATT and the WTO, as well as in the majority of trade agreements that have been studied by the Committee, panel proceedings are designed to aid the disputing state parties reach an amicable resolution of the dispute. For this reason, the NAFTA for example permits panels to make recommendations to the state parties on a mutually satisfactory resolution of the matter in dispute. Private access would appear to require more public proceedings, thereby denying governments of the flexibility they might require to reach an acceptable compromise. Again, further study should precede any conclusion in this regard.

Finally, private access to dispute settlement begs the question of the manner in which judgements, awards or reports of "community tribunals" are to be implemented and enforced.

For all of these reasons, it is, in my view, premature and misleading for the Committee to reach any conclusion on this matter other than to say that it requires further careful reflection, study and analysis.

Jonathan T. Fried
March 17, 1995

CJI/RES.I-2/95

BAN ON TRANSBORDER KIDNAPPINGS

(Resolution adopted in the Ordinary Session
held on 23 March 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

IN VIEW OF the study presented by Dr. José Luis Siqueiros (CJI/SO/I/doc.18/95) on the Treaty signed by the Governments of the United States of Mexico and the United States of America to ban transborder kidnappings, signed in Mexico City on 23 November 1994;

RECALLING that this Committee issued its Juridical Opinion on 15 August 1992 (CJI/RES.II-15/92) on the international juridical validity of a decision handed down by the Supreme Court of the United States of America, stipulating that transborder kidnapping is in violation of the norms of international law, even when not expressly banned in the extradition treaties in effect between the countries involved therein;

TAKING NOTE of the Treaty signed by the Governments of Mexico and the U.S.A. which expressly bans this type of kidnapping, stipulating the definition thereof and the procedure for repatriation of the perpetrators thereof;

RESOLVES:

1. To take note of the signature of the bilateral instrument mentioned in the opening paragraphs of this Resolution.

2. To stress the importance of this instrument that clearly demonstrates through a Convention the principle of International Law which imposes respect and preservation of the inviolability of the territorial sovereignty of the States, and which also accurately defines "transborder kidnapping".

3. To express its desire that this Treaty should enter into effect as soon as possible.

This Resolution was approved during the session held on 23 March 1995 by the following Members: Drs. Ramiro Saraiva Guerreiro, Jonathan T.Fried, Luis Herrera Marcano, Alberto Zelada Castedo, José Luis Siqueiros, Mauricio Gutiérrez Castro, Roberto Alemán, Miguel Ángel Espeche Gil, and Eduardo Vío Grossi.

CJI/RES.I-3/95

DEMOCRACY IN THE INTER-AMERICAN SYSTEM

(Resolution adopted during the Regular Session
held on 23 March 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

WHEREAS:

a) its 1959 study on the relationship between respect for Human Rights and the exercise of Democracy (Inter-American Juridical Committee, Recommendations and Reports, Official Documents, v. VI, 1959-1960, Rio de Janeiro - GB, 1961. p. 221 and following);

b) the report presented by Drs. Seymour Rubin and Francisco Villagrán-Kramer, the Rapporteurs for the topic "Study of the Legitimacy of the Inter-American System and the Inter-Relationship of the Provisions of the Charter of the O.A.S. on Self-Determination, Non-Intervention, Representative Democracy and the Protection of Human Rights" (CJI/SO/II/doc.13/91 rev.2, 13 August 1992. Original: Spanish);

c) the two Preliminary Reports presented by Dr. Eduardo Vío Grossi, Rapporteur for the topic "Democracy in the Inter-American System" (CJI/SO/II/doc.10/93 and CJI/SO/I/doc.11/94);

d) the stress laid by the Juridical and Political Affairs Committee of the Permanent Council of the O.A.S. in its commission to the Committee to continue with its study of the topic "Democracy in the Inter-American System" ... "insofar as this refers to one of the basic pillars of the Inter-American System" (CP/doc.2479/94);

e) the Resolution adopted by the General Assembly of the O.A.S. during its XXIV Regular Sessions Period (Belém, 1994) exhorting the Inter-American Juridical Committee to continue its studies of Democracy in the Inter-American System, taking into account that this involves one of the fundamental topics of the Organization [AG/RES.1266(XXIV-O/94)];

f) the Report presented by Dr. Eduardo Vío Grossi, Rapporteur for "Democracy in the Inter-American System" (CJI/SO/II/doc.37/94 rev.1 corr.2, 18 October 1994. Original: Spanish);

g) the Resolution adopted by the Committee (CJI/RES.II-12/94) with regard to the above-mentioned Report, which on the one hand congratulated the Rapporteur and "forwarded this Report to the Secretary-General together with a summary of the minutes of the session in which it was taken under consideration, in order to make it available to the agencies of the Organization or those competent to handle this topic", while on the other it called for a continuation of the analysis of this topic and "required the Rapporteur to report back on the progress noted therein by the date of the March 1995 regular sessions period"; and

h) the Supplementary Report on "Democracy in the Inter-American System" presented by Dr. Eduardo Vío Grossi, the Rapporteur during the current regular sessions period (CJI/SO/I/doc.7/95, rev.2, 22 March 1995. Original: Spanish);

TAKING INTO ACCOUNT unceasing Inter-American concern over the effective exercise of Representative Democracy, as covered in the following, among others:

a) the "Declaration of the Principles of Inter-American Solidarity and Cooperation" adopted through Resolution XXVII by the Inter-American Conference on the Consolidation of Peace, held in Buenos Aires in 1936;

b) the "Declaration of Mexico" approved at the Inter-American Conference on Problems of War and Peace, held in Mexico in 1945;

c) the Resolution entitled "Protection and Preservation of Democracy in America", adopted at the same Conference;

d) Resolution XXXII of the IX Inter-American Conference, held in Bogotá in 1948;

e) Resolution VII on the "Strengthening and Effective Exercise of Democracy" adopted by the IV Consultation Meeting of Ministers of Foreign Affairs, held in Washington D.C. in 1951; and

f) finally, the Declaration of Santiago on "Representative Democracy", adopted at the V Consultation Meeting of Ministers of Foreign Affairs, held in Santiago in 1959;

IN VIEW OF the provisions of the Charter of the Organization of American States in:

a) Paragraph 3 of the Preamble, which states "... that Representative Democracy is an indispensable condition for the stability, peace and development of the region";

b) Paragraph 4 of this same Preamble, which states "... that the real meaning of American solidarity and neighborliness can be no other than that of consolidating on this Continent, within the framework of democratic institutions, a regime of individual freedom and social justice based on respect for the essential rights of Man;

c) Paragraph 2 of Article 1, which states that "the Organization of American States has no powers other than those expressly conferred thereon by this Charter, and none of the provisions thereof authorize it to intervene in the matters falling under the domestic jurisdiction of the Member-States";

d) Article 2, which states that "the Organization of American States, in order to comply with the principles on which it is founded and fulfill its regional obligations in accordance with the Charter of the United Nations, establishes the following basic propositions: .... To promote and consolidate Representative Democracy with respect for the principle of non-intervention";

e) Article 3, which proclaims that "the American States reaffirm the following principles: ... the solidarity of the American States and the high purposes pursued thereby require the political organization thereof on the basis of the effective exercise of Representative Democracy";

f) Item e) of this same provision stresses that "The American States reaffirm the following principles: .... Every State has the right the elect, with no outside intervention, its political, economic and social system, and organize it in the manner most convenient thereto, and has the duty of not intervening in the affairs of another State ...";

g) Article 18 establishes that "No State or Group of States has the right to intervene directly or indirectly and for any reason whatsoever in the internal or external affairs of any other State. This principle excludes not only armed force, but also any other form of interference or attempt against the personality of the State, or the political, economic and cultural elements that constitute it"; and

h) Article 22, which indicates that "The measures which, in accordance with the treaties in effect, may be adopted to maintain peace and security, shall not constitute a violation of the principles stipulated in Articles 18 and 20.";

RECALLING the interpretation of the norms transcribed by the agencies of the Organization of American States, particularly through:

a) the above-mentioned Declaration of Santiago adopted at the V Consultation Meeting of Ministers of Foreign Affairs, held in Santiago, Chile, in 1959, which stated that "the existence of anti-democratic regimes constitutes a violation of the principles on which the Organization of American States is founded ... ", a violation that may nevertheless not be sanctioned except insofar as it constitutes an aggression in terms of the Inter-American Treaty on Reciprocal Assistance;

b) the various Resolutions covering Human Rights adopted by the General Assembly of the O.A.S., the Inter-American Commission on Human Rights, and the Inter-American Court for Human Rights, which stress that "Representative Democracy is a determining factor throughout the entire system of which the Convention (American on Human Rights) forms a part" [e.g.: AG/RES.510 (X-0/80) dated 1980, AG/RES.835(XVI-0/86) dated 1986; AG/RES.837(XVI-0/86) dated 1986; ICHR, Ten Years of Activities 1979-1981. Report 1980-1981, Report 1986 and IHR Court, Consultative Opinion N^{o}. 6, dated 9 May 1986, Series A, N^{o}.6, and Consultative Opinion N^{o}. 8, dated 30 May 1987, Series A, N^{o}.8]

c) the "Commitment of Santiago to Democracy and the Renovation of the Inter-American System" signed by the Ministers of Foreign Affairs and Heads of Delegation of the American nations during the XXI Regular Sessions Period of the General Assembly of the O.A.S. held in Santiago, Chile, in 1991, which expressed the "... indeclinable commitment to the protection and promotion of Representative Democracy" and the "... determination to adopt a set of effective, opportune and expeditious procedures to guarantee the promotion and protection of Representative Democracy, in compliance with the Charter of the Organization of American States";

d) the "Representative Democracy" Resolution [AG/RES.1080 (XXI-O/91)] adopted by

the General Assembly of the O.A.S. in Santiago, Chile, in 1991, which instructs the Secretary-General to "request the immediate convocation of the Permanent Council in case of facts that prompt an abrupt or irregular interruption in the institutional democratic political process or the legitimate exercise of power by a democratically-elected government in any of the Member-States of the Organization in order to examine the situation within the framework of the Charter, take decisions, and call an *ad hoc* Meeting of Ministers of Foreign Affairs or an Extraordinary Sessions Period of the General Assembly, all within a period of ten days", which measures shall be intended to "... analyze the facts collectively and adopt the decisions deemed appropriate, in compliance with the Charter and international law ..."; and

e) the "Unit for the Promotion of Democracy", Resolution AG/RES.1124 (XXI-O/91) adopted on the same occasion as those above, covering the establishment of an entity to support democracy through, in particular, assistance and advice in elections, revealing the interest of the Inter-American System in holding free, genuine elections in the Member-States that safeguard the right of citizens to having their freely-expressed vote counted properly, a human right implicit in the function of the effective exercise of Representative Democracy in the Inter-American System;

GIVEN the stipulations of the reform of the Charter of the Organization of American States -which is not yet in effect - known as the Protocol of Washington, adopted during the XVI Sessions Period of the General Assembly of the O.A.S. held in 1992 and which enshrines the sanction of suspension imposed on a Member-State of the Organization whose democratically-constituted government is overthrown by force, which suspension refers to the exercise of the right to participate in the sessions of the organs of the O.A.S., but does not exclude obligations undertaken therewith, and which may only be decreed by two-thirds of the Member-States in an Extraordinary Sessions Period of the General Assembly, and provided that diplomatic steps designed to restore democracy prove fruitless;

TAKING INTO ACCOUNT Inter-American practice on democracy, shown particularly through:

a) civil missions of the O.A.S. to observe the election process in Haiti (1990-1991); El Salvador (1990); Suriname (1990); Paraguay (1990); Peru (1992-1993); etc..;
b) the application of Resolution AG/RES.1080 (XXI-O/91) on "Representative Democracy" to the cases of Peru in 1992, Guatemala in 1993 and finally Haiti in 1991; and
c) the "Declaration of Principles" and the "Plan of Action" adopted at the Americas Summit held in Miami, Florida, U.S.A. in December 1994, by the Heads of State and Government of the Continent, which reaffirm the commitment to preserve and strengthen democratic systems and acknowledge the O.A.S. as the principal organ responsible for the implementation of this task;

WITH REGARD TO the intervention of the United Nations Organization in Haiti on the basis of:

a) the transmission of the Resolutions of the *ad hoc* Meeting of Ministers of Foreign Affairs of the O.A.S. to the United Nations Organization, exhorting it to take into account the spirit and objectives thereof, including the restoration of President Aristide Bertrand to his position, the isolation of the *de facto* Government of Haiti,

the suspension of economic, financial and trade links with this country, coordination with the United Nations Organization, and the "possibility and convenience of bringing the Haitian situation before the Security Council of the United Nations in order to achieve universal application of the trade embargo recommended by the O.A.S.";

b) the appointment of the same person, Mr. Dante Caputo, as the Special representative for the Haitian case to both the O.A.S. and the United Nations Organization;

c) Articles 33, 52, 54, 103 and 106 of its Charter, as well as the provisions in Chapter VII thereof; and

d) the continuation of the Haitian situation "threatens international peace and security";

CONVINCED that the international juridical norms corresponding to the effective exercise of Representative Democracy in the States of the Inter-American System constitute a specific, special order and as such differ from, although are complementary to, others with disparate purposes, such as those covering Human Rights and International Peace and Security, for example;

UNDERSTANDING that the effective exercise of Representative Democracy constitutes, within the Inter-American System, a protected juridical value or asset; and

APPLYING Articles 104, 107 and 108 of the Charter of the Organization of American States, as well as Articles 2, 3, 12 and 24 of the Charter of the Committee, and Articles 3, 5 and 7 of the By-Laws thereof,

STATES:

That, in compliance with the Charter of the Organization of American States and the Resolutions of its Organs, the Organization and its Member-States have observed the following principles and norms with regard to the effective exercise of Representative Democracy:

ONE: Every State in the Inter-American System has the obligation to effectively exercise Representative Democracy in its political organization and system. This obligation exists with regard to the Organization of American States, and to comply therewith, every State in the Inter-American System has the right to choose the means and forms that it deems appropriate thereto.

TWO: The principle of non-intervention and the right of each State in the Inter-American System to elect its political, economic and social system with no outside intervention and to organize itself in the manner most convenient thereto may not include any violation of the obligation to effectively exercise Representative Democracy in the above-mentioned system and organization.

THREE: The Organization of American States is competent to promote and consolidate Representative Democracy in each and every one of the Member-States. In particular, the Organization is responsible, through the *Ad Hoc* Meeting of Ministers of Foreign Affairs or the General Assembly sitting in an Extraordinary Sessions period, to decide under the terms of the Resolution on "Representative Democracy" [AG/RES.1080(XXI-091)], whether one of its Member-States has violated or ceased to comply with the obligation to effectively exercise Representative Democracy.

FOUR: The abrupt or irregular interruption of the democratic institutional political process or the legitimate exercise of power by a democratically-constituted government within the Inter-American System shall constitute non-compliance with the obligation to effectively exercise Representative Democracy.

FIVE: Any State in the Inter-American System that fails to comply with the obligation to effectively exercise Representative Democracy acquires the obligation to re-establish the effective exercise thereof. The Resolutions that the Organization of American States may adopt under such circumstances should be designed to bring about such re-establishment;

AND RESOLVES

1. To propose to the corresponding agencies in the Organization that they should adopt the following measures designed to foster the effective progressive development of international law in relation to Representative Democracy:

a) To coordinate with other international organizations in order to set up studies and *organize seminars, round tables and other ways of analyzing and studying the experiences and positions of the O.A.S. and these other international organizations regarding Representative Democracy;

b) To distribute Report CJI/SO/II/doc.37/94 rev.1 corr.2, the Supplementary Report CJI/SO/I/doc.7/9 rev.2 and this Resolution to the Member-States so that they may forward them to their respective law schools and political science departments, requesting their observations and comments on the prospects for the progressive development of International Law in terms of the effective exercise of Representative Democracy;

2. To continue with the study of this topic, with special emphasis on the following aspects:

a) Identification and typification of international illegal acts against the effective exercise of Representative Democracy, and the study of the responsibility that may arise therefrom for the State and individuals;
b) Possible international illegality due to actions that distort or are intended to distort election results, imposing constraints on freedom of expression through the vote, as well as adversely affecting the authenticity of electoral scrutineering;
c) The relationship between the effective exercise of Representative Democracy, International Peace and Security, and Human Rights; and

d) The juridical scope of the measures or administrative actions that could be adopted by the O.A.S. with a view to the re-establishment of the effective exercise of Representative Democracy.

3. To forward this Resolution to the Secretary-General and the Permanent Council for the purposes outlined above.

This Resolution was approved unanimously during the session held on 23 March 1995, in the presence of the following Members: Drs. Ramiro Saraiva Guerreiro, Jonathan T.Fried, Luis Herrera Marcano, Alberto Zelada Castedo, José Luis Siqueiros, Mauricio Gutiérrez Castro, Roberto Alemán, Miguel Ángel Espeche Gil, and Eduardo Vío Grossi.

Drs. Jonathan T. Fried, Miguel Ángel Espeche Gil and Alberto Zelada Castedo concurred with Reasoned Votes, attached to this Resolution.

CLARIFICATION OF CONCURRENT VOTE
(presented by Dr. Jonathan T. Fried)

I support the consensus vote approving Resolution CJI/RES.I-3/95 on "Democracy in the Inter-American System", on the basis of my understanding that the Inter-American Juridical Committee "Noting ..." that the Organization of American States and its Member-States comply with various "principles and norms", has not issued any statement or handed down any decision on whether this practice is adopted as a matter of legal obligation or reflects the necessary *opinio juris* that characterizes the usual rule of international law. Consequently, in my view, the Resolution does not represent and analysis of the international legal norms, if any, that could be applicable thereto, and in any case has no real probatory value in this matter.

REASONED VOTE
(presented by Dr. Miguel Ángel Espeche Gil)

I agree in my vote with the Resolution of the Inter-American Juridical Committee on the effective exercise of Representative Democracy in the Inter-American System, based on the Report of Dr. Eduardo Vío Grossi.

1. The necessarily succinct section containing the provisions of this Resolution leads me to formulate some more detailed comments on the historical genesis of this topic in the Inter-American System. I would not wish it to be thought that prior to the founding of the O.A.S. and even before the "Declaration of Principles on Inter-American Solidarity and Cooperation, in Resolution XXVII, Inter-American Conference on the Consolidation of Peace, Buenos Aires, 1936", it was possible to legally proclaim a system of government opposed to democracy in the Inter-American System. Ever since it was first set up, the Inter-American System - consisting of the core of founding governments - made it clear that Representative Democracy was a vital element in the *affectio societatis* of the system itself.

"This idealism - the outcome of the peculiar situation of the American Republics and their democratic form of government, achieved under difficult conditions and through the struggle to achieve their independence, and which persisted for many years afterwards in the form of threats to their security - is an idealism that produced tangible results of permanent value." (Enrique Gil, "*La Evolución de Panamericanismo*", Buenos Aires, 1933).

At times it is thought that there is a conceptual incompatibility between the content of Items d) and e) of Article 3 of the Charter of the O.A.S. The former (Item d) requires that the internal political organization of the Member-States be established on the basis of the effective exercise of Representative Democracy. The latter (Item e) stipulates that "*All States have the right to elect their political, economic and social systems with no outside intervention, and to organize themselves in the manner most convenient thereto" "subject to the above provision, the American States shall cooperate amply among themselves, regardless of the nature of their political, economic and social systems*".

This opinion highlights an incompatibility between the requirement of a political organization based on Representative Democracy, and the juridical possibility of the States electing their own political systems.

This statement would presuppose that the expression "*elect their political system"* may be taken as an authorization to adopt a form of government other than Representative Democracy. This interpretation is groundless, as its ignores the *ratio legis* of the norm in Article 3, adopted within the normative context of the Inter-American System in 1948 - the year in which it was set up. The term "*political organization*" alludes to the options of "*monarchy or republic*", "*federalism or unitarism", "presidentialism or parliamentarism"*, etc. as the organizative form of the State, but always under the condition of the exercise of democracy. On that occasion, when it was decided to reformulate the system by setting up a regional organization, this was done on the basis of the values in effect in the Inter-American System, in which that of Representative Democracy was fundamental.

The actual name of the new organization was based on this interpretation; the form of State was not an obstacle to joining the Inter-American System. Although at that time there was no State in that system that had not actually adopted a republican form of government, it was decided to call it the Organization of *American States,* rather than *American Republics*, in order to leave

open the possibility of the future entry of Canada which - although it was and still is a constitutional monarchy - has always been an exemplary democracy. Validating this decision, the Caribbean countries - some of which have a system similar to that of Canada - have been steadily joining the O.A.S.

2. I feel that this fresh input by the Inter-American Juridical Committee furthering the development of this topic constitutes an adequate update thereof, taking into account and emphasizing aspects that are not merely formal, such as those concerning freedom of the vote and the authenticity of election results (II,b), which are essential to the full exercise of Representative Democracy.

There is a justified trend to attribute to election fraud and practices that skew election results the qualification of al international illicit act, similar to that in effect for *coups d'état*, as both adversely affect the juridical asset that the Inter-American System strives to protect through international law, i.e. the effective exercise of Representative Democracy. The right of citizens to having their freely-expressed vote authentically scrutineered and constituting the genuine basis of representation for governments thus elected is a coherent, ethical and logical requirement of Representative Democracy, a value intrinsic to the Inter-American System.

REASONED VOTE
(presented by Dr. Alberto Zelada Castedo)

In casting his supporting vote for the adoption of this Resolution, Committee Member Dr. Alberto Zelada Castedo stressed that, in his view, the spirit and scope thereof would have been better expressed in the following terms:

STATES

That, in accordance with the pertinent norms of the Charter of the Organization of American States and the Resolutions adopted by the organs and agencies thereof, as well as the practice followed by the Member-States of the Organization, the following are the basic norms and principles that regulate the preservation and strengthening of Representative Democracy:

1. The preservation and strengthening of Representative Democracy in the countries belonging to the Organization is a value protected by the juridical arrangements thereof.

2. The effective exercise of Representative Democracy is an obligation of the Member-States, enshrined in the juridical arrangements of the Organization and exactable thereby.

3. The obligation covering the effective exercise of Representative Democracy does not run counter to the right of the Member-States of the Organization to elect, with full independence and under the aegis of the principle of non-intervention in internal affairs, the means most convenient thereto, in accordance with the free will of their peoples, in order to ensure compliance with this obligation.

At the same time, the right of the Member-States of the Organization to adopt with equal independence the political, economic and social system that they deem most convenient does not exclude the obligation to effectively exercise Representative Democracy.

4. Failure to comply with the obligation to effectively exercise Representative Democracy implies, among others, acts whose outcome is as follows:

a) the abrupt or irregular interruption of the democratic institutional process or the legitimate exercise of power by a democratically-elected government, and
b) the overthrow by force of a democratically-constituted government.

5. The Organization is responsible for overseeing compliance with the obligation to effectively exercise Representative Democracy, and also has the duty of promoting consolidation and strengthening thereof through collective actions pertinent thereto.

In parallel, the Organization must also:

a) determine in each case and in compliance with the criteria, principles and norms of its juridical arrangements, the facts that constitute non-compliance with the obligation to effectively exercise Representative Democracy in any of its Member-States;
b) define and implement the collective actions designed to bring about the re-establishment of the democratic regimes affected by such non-compliance, including the imposition of sanctions as covered in the juridical

arrangements of the Organization.

CJI/RES.I-4/95

IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE IN THE AMERICAS

(Resolution adopted in the Ordinary Session held on 24 March 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

HAVING HEARD the Revised Report of its Rapporteur, Dr. Jonathan T.Fried, on Protection and Guarantees for Judges and Lawyers in the Exercise of their Functions (CJI/II/doc.42/94 rev.2, dated 13 February 1994);

TAKING INTO ACCOUNT the Report of the Working Group on the Improvement of the Administration of Justice in the Americas (CP/CASP-1000/95, dated 6 March 1995);

TAKING ADVANTAGE of this opportunity during its first regular sessions period to bring together the Chairman of the Working Group, Ambassador Julio Cesar Jaureguy and representatives of the World Bank and the Inter-American Development Bank, with a view to intensifying cooperation in activities designed to promote and foster the independence of judges and guarantees for the exercise of the juridical profession in the Americas;

CONVINCED that the independence of the Judiciary and guarantees for the effective exercise of Law play a vital role in Representative Democracy and economic development, in keeping with the declaration of the Chiefs of State at the Americas Summit;

RESOLVES:

1. To reaffirm its commitment to cooperate closely with other agencies and organs of the Organization, particularly the Working Group on the Administration of Justice, undertaking activities that promote and enhance the independence of the Judiciary and strengthening guarantees for the exercise of the juridical profession in the Americas;

2. To continue with the study of this topic during its next sessions period.

This Resolution was approved unanimously during the regular session held on 24 March 1995 by the following Members: Drs. Ramiro Saraiva Guerreiro, Jonathan T. Fried, Luis Herrera Marcano, Alberto Zelada Castedo, José Luis Siqueiros, Mauricio Gutiérrez Castro, Roberto Alemán, Miguel Ángel Espeche Gil, and Eduardo Vío Grossi.

CJI/RES.I-5/95

JURIDICAL ASPECTS OF FOREIGN DEBT

(Resolution adopted in the Ordinary Session
held on 24 March 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

AS the Rapporteur, Dr. Miguel Ángel Espeche Gil, presented a fresh Report during this regular sessions period on the progress of the initiative to bring international juridical aspects of foreign debt before the Court at The Hague through an application for a consultative opinion, accompanied by extensive documentation (CJI/SO/I/doc.5/95);

IN VIEW OF the exchange of views on this topic during this regular sessions period, as well as the convenience of continuing the study thereof focused on the development of this topic at the international level;

RESOLVES:

1. To thank Dr. Miguel Ángel Espeche Gil for the presentation of his Report and the information on the study of this matter provided by various Inter-American agencies;

2. To retain this topic on its Agenda in order to continue with the examination thereof.

This Resolution was approved unanimously during the regular session held on 24 March 1995 by the following Members: Drs. Ramiro Saraiva Guerreiro, Jonathan T. Fried, Luis Herrera Marcano, Alberto Zelada Castedo, José Luis Siqueiros, Mauricio Gutiérrez Castro, Roberto Alemán, Miguel Ángel Espeche Gil and Eduardo Vío Grossi.

CJI/RES.I-6/95

INTER-AMERICAN COOPERATION TO CONFRONT INTERNATIONAL TERRORISM

(Resolution adopted in the Ordinary Session
held on 24 March 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

TAKING INTO ACCOUNT that during its August 1994 regular sessions period it decided to include the topic of "Inter-American Cooperation to Confront International Terrorism" on its Agenda;

RECALLING that during this same regular sessions period the Committee took under consideration a Memorandum presented by Dr. Miguel Ángel Espeche Gil entitled "Inter-American Cooperation to Confront International Terrorism" that included a proposed juridical viewpoint for a future study of this topic, and with regard to which it was concluded that the Committee should continue to discuss this matter in order to define its role in the consideration thereof, as well as studying the work undertaken by the Permanent Council of the Organization on this topic;

MINDFUL that during this regular session the Committee received a visit from Her Excellency Ambassador Beatriz Ramacciotti, Permanent Representative of Peru to the Organization of American States (OAS), who gave a complete account of the different aspects of terrorism which are being considered by the Organization. The Committee is also mindful of the information received and the exchange of ideas between the aforementioned Representative and the members of the Committee on the status and doctrinal development of these topics in international law;

HAVING HEARD the new Report on this topic presented by its Rapporteur, Dr. Miguel Ángel Espeche Gil, (CJI/SO/I/doc.4/95), accompanied by the documentation attached thereto;

RESOLVES:

1. To thank the Rapporteur for the Report presented during the regular sessions period on the topic of "Inter-American Cooperation to Confront International Terrorism".

2. To retain this topic on the Agenda of the Committee in order to continue with the study thereof during its next regular sessions period, as the various lines of analysis outlined in the Report warrant detailed examination.

This Resolution was approved unanimously during the regular session held on 24 March 1995 by the following Members: Drs. Ramiro Saraiva Guerreiro, Jonathan T. Fried, Luis Herrera Marcano, Alberto Zelada Castedo, José Luis Siqueiros, Mauricio Gutiérrez Castro, Roberto Alemán, Miguel Ángel Espeche Gil and Eduardo Vío Grossi.

CJI/RES.I-7/95

INTERNATIONAL COOPERATION TO REPRESS CORRUPTION

(Resolution adopted in the Ordinary Session held on 24 March 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

BEARING IN MIND:

That in 1992 the Inter-American Juridical Committee included the topic of "International Cooperation to Repress Corruption in the American Nations" on its Agenda;

That during its August 1994 regular sessions period, Drs. Luis Herrera Marcano and Miguel Ángel Espeche Gil presented a Draft Recommendation containing guidelines for the preparation of internal legislation and international agreements, that was taken under consideration by the Committee;

That during its XXIV Regular Sessions Period, the General Assembly of the Organization of American States took under consideration the topic of "Probity and Public Ethics" and adopted Resolution AG/RES.1294 (XXIV-0/94) whose opening paragraphs stated, among other concepts that, aware of the importance of the problem of corruption, the Inter-American Juridical Committee would include the topic of "Inter-American Cooperation to Confront International Terrorism" on its Agenda for the August 1994 regular sessions period;

That the above-mentioned Resolution 1294 of the General Assembly resolved to "instruct the Permanent Council to set up a Working Group to study the topic of "Probity and Public Ethics". This Group was to be commissioned to: compile and study the national legislations in effect in terms of Public Ethics; analyze the control and supervision experiences of the existing administrative institutions; draw up an inventory of offenses related to Public Ethics as configured in national norms; and draw up recommendations on juridical mechanisms for curbing this problem, with full respect for the sovereignty of the Member-States";

That the Permanent Council proceeded to set up this Working Group on "Probity and Public Ethics" and that the Inter-American Juridical Committee welcomed a visit from its Chairman, the Permanent Representative of Chile to the Organization of American States, Ambassador Edmundo Vargas Carreño;

That the Permanent Mission of Venezuela to the Organization submitted to the Permanent Council a "Draft Inter-American Convention Against Corruption", and that the Inter-American Juridical Committee welcomed a visit from the Permanent Representative of Venezuela to the Organization of American States, Ambassador Sebastián Allegrett;

That the feedback from the Chairman of the Working Group of the Permanent Council on "Probity and Public Ethics" and the Permanent Representative of Venezuela to the Organization of American States, on the progress of the work under way with regard to the topic of international cooperation to repress corruption provided invaluable information for the further study of this topic, for which it expressed its deep gratitude to both representatives;

That the Rapporteur for this topic, Dr. Miguel Ángel Espeche Gil, presented his Report

(CJI/SO/I/doc.3/95), which was taken under consideration by the Inter-American Juridical Committee;

WHEREAS:

The United Nations Organization has been working on the topic of corruption since 1976, and in 1979 prepared a Draft "Agreement on Illegal Payments", but with no further progress having been made on this topic since then;

The Organization for Economic Cooperation and Development (OECD) adopted a Declaration and Decisions on International Investments and Multinational Companies in 1976 and in 1994 adopted the Recommendation on Bribery in International Transactions, which constituted the first international instrument designed to combat the bribery of foreign functionaries;

The Member-States of the Organization of American States have begun to forward their comments on this topic to the Working Group on "Probity and Public Ethics", together with details of national legislation on this issue;

There is no doubt about the validity of developing various aspects of international law related to international cooperation to repress corruption;

RESOLVES:

1. To thank Dr. Miguel Ángel Espeche Gil for the Report he presented on the topic of "International Cooperation to Repress Corruption in the American Nations".

2. To retain this topic on its Agenda.

3. To request the Secretariat for Legal Affairs to forward the documentation on the efforts of the Working Group on "Probity and Public Ethics" to the Members of the Committee.

4. To request Dr. Miguel Ángel Espeche Gil, as Rapporteur for the topic of "International Cooperation to Repress Corruption in the American Nations", to report back to the Inter-American Juridical Committee during its next regular sessions period, for the purposes of formulating a decision or study thereof, taking into account the "Draft Inter-American Convention Against Corruption" presented by Venezuela, as well as the other drafts and projects submitted to the Organization, together with comments thereon forwarded by other Members of the Committee.

This Resolution was approved unanimously during the regular session held on 24 March 1995 by the following Members: Drs. Ramiro Saraiva Guerreiro, Jonathan T. Fried, Luis Herrera Marcano, Alberto Zelada Castedo, José Luis Siqueiros, Mauricio Gutiérrez Castro, Roberto Alemán, Miguel Ángel Espeche Gil and Eduardo Vío Grossi.

CJI/RES.I-8/95

RIGHT TO INFORMATION

(Resolution adopted in the Ordinary Session
held on 24 March 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

BEARING IN MIND:

That the juridical analysis of the Right to Information has been on its Agenda since 1980 and that it has prompted various contributions from its Members;

That during the XXIII Regular Sessions Period held in Managua, Nicaragua, in 1993, the General Assembly of the Organization of American States accepted the recommendation of the Inter-American Juridical Committee and requested it to continue with the study of the topic of the "Right to Information", "in view of the importance thereof to the Member-States" [AG/RES.1210 (XXIII-O/93)];

That during the XXIV Regular Sessions Period held in Belém do Pará, Brazil, the General Assembly of the Organization resolved to "Recommend the Inter-American Juridical Committee to retain on its Agenda the study of the Right to Information", [AG/RES.1266 (XXIV-O/94)];

HAVING HEARD the verbal report presented by the Rapporteur for this topic, Dr. Mauricio Gutiérrez Castro, in which he mentioned the vast scope of this topic and the various aspects involved in the consideration thereof, requesting the Members of the Inter-American Juridical Committee to express their views on which aspects of the right to information are the most relevant with regard to the development and codification thereof;

WHEREAS the juridical aspects of the topic of the "Right to Information" are important for the development and codification of international law;

RESOLVES:

1. To thank Dr. Mauricio Gutiérrez Castro for his important presentation on the various aspects involved in the codification of the topic of the "Right to Information";

2. To retain this topic on the Agenda of the Inter-American Juridical Committee for consideration thereby during the next regular sessions period, scheduled for August 1995, requesting the other members of the Inter-American Juridical Committee to use this opportunity to proffer comments they consider pertinent to the various aspects of the Right to Information and that warrant attention on a priority basis.

This Resolution was approved unanimously during the regular session held on 24 March 1995 by the following Members: Drs. Ramiro Saraiva Guerreiro, Jonathan T. Fried, Luis Herrera Marcano, Alberto Zelada Castedo, José Luis Siqueiros, Mauricio Gutiérrez Castro, Roberto Alemán, Miguel Ángel Espeche Gil, and Eduardo Vío Grossi.

CJI/RES.II-9/95

RIGHT TO INFORMATION

(Resolution adopted in the regular session
held on 17 August 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

BEARING IN MIND:

That the juridical analysis of the Right to Information has been included on its Agenda since 1980 and has prompted several contributions from its Members;

That during its XXIII regular sessions period held in Managua, Nicaragua, in 1993, the General Assembly of the Organization of American States accepted the recommendation of the Inter-American Juridical Committee and requested it to continue to examine the topic of the Right to Information "in view of its importance to the Member-States," [AG/RES.1210(XXIII-0/93)];

That the General Assembly of the Organization decided during its XXIV regular sessions period in Belém do Pará to "Recommend the Inter-American Juridical Committee to maintain the study of the Right to Information on its Agenda," [AG/RES.1266(XXIV-0/94)];

HAVING HEARD the verbal report presented by the Rapporteur of this topic, Dr. Mauricio Gutiérrez Castro, in which he stressed its scope and complexity, as well as the various aspects involved in the study thereof, requesting the Committee to focus this study on specific aspects of the Right to Information that are more relevant to the development and codification thereof;

WHEREAS all the juridical aspects of the Right to Information are important to the development and codification of International Law, there are some topics which, due to their links with Human Rights and the development of democracy on the Continent, should be given special treatment;

RESOLVES:

1. To express its thanks to Dr. Mauricio Gutiérrez Castro for his broad-ranging presentation on the various aspects involved in the consideration of the topic of the Right to Information.

2. To confirm the mandate given the Rapporteur whereby the direction in which the topic of the Right to Information should be developed is that of "Access to Personal Data and Information," requesting him to present a Report at the next regular sessions period containing the matters he deems pertinent to this field of the Right to Information.

3. To maintain this Topic on the Agenda of the Committee.

This Resolution was unanimously adopted during the session held on 17 August 1995, with the following members present: Drs. Jonathan T. Fried, Alberto Zelada Castedo, Philip Telford Georges, Miguel Ángel Espeche Gil, Galo Leoro F., José Luis Siqueiros, Luis Herrera Marcano, Ramiro Saraiva Guerreiro and Mauricio Gutiérrez Castro.

CJI/RES.II-10/95

ENHANCING EFFECTIVE SECURITIES REGULATION IN THE HEMISPHERE

(Resolution adopted at the regular session held on August 18, 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

HAVING REGARD to the Report of its Working Group in document CJI/SO/II/doc.31/94 rev. 2, and the oral report of the Working Group presented at its current session;

CONSIDERING that the General Assembly, in its Resolution AG/doc. 3268/95, item 4 instructed the Committee to continue its efforts to promote dissemination and discussion of appropriate norms to enhance the reliability and stability of securities markets of the member states, in collaboration with the World Bank, the Inter-American Development Bank, the International Bar Association, the Council of Securities Regulators of the Americas, and other entities mentioned in the last Annual Report of the Committee; and

TAKING ACCOUNT of the preliminary draft "OAS Proposal to the World Bank: Enhancing Securities Regulation in the Americas" for a series of colloquia on this subject prepared by the Department of Development and Codification of International Law of the Secretariat for Legal Affairs (document OAS/Gral. Sec. CJI/doc. 8/95);

RESOLVES:

1. To request the Working Group, with the assistance of the Department of Development and Codification of International Law of the Secretariat for Legal Affairs, to finalize a funding proposal for a series of colloquia on enhancing securities regulation in the hemisphere in accordance with Committee Resolution CJI/RES.II-23/94, to submit it to appropriate entities for consideration, and to present a progress report to the Committee at its next session.

This Resolution was adopted at the August 18, 1995 regular session by the following members: Drs. Jonathan T. Fried, Philip Telford Georges, Miguel Ángel Espeche Gil, Galo Leoro Franco, José Luis Siqueiros, Luis Herrera Marcano, Ramiro Saraiva Guerreiro y Mauricio Gutiérrez Castro.

Dr. Alberto Zelada Castedo abstained from voting.

CJI/RES.II-11/95

INTERNATIONAL JURIDICAL EFFECTS OF INSOLVENCY

(Resolution adopted at the regular session
held on August 18, 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

ACKNOWLEDGING the benefits of increasing cooperation and harmonization in the administration of insolvency laws in the hemisphere;

HAVING REGARD the report of honourary member emeritus Seymour J. Rubin, submitted to the Committee at its current session;

WELCOMING the study "International insolvency: an outline of Preliminary considerations" prepared by the Department of Development and Codification of International Law of the Secretariat for Legal Affairs (document OAS/Gral. Sec. CJI/doc.9/95);

NOTING that analytical work on this subject has already been undertaken through a Joint Project on Cross-Border Insolvencies of UNCITRAL and the International Association of Insolvency Practitioners (INSOL) and by the American Law Institute, particularly through its NAFTA Working Group on this subject; and

CONSIDERING that, at the conclusion of the Fifth Specialized Inter-American Conference on Private International Law (CIDIP-V), a resolution was adopted recommending that the OAS General Assembly consider for CIDIP-VI the topic of international bankruptcy;

RESOLVES:

1. To request Dr. Seymour J. Rubin, in his capacity as honourary member emeritus of the Committee, to continue to act as liaison for the Committee with the American Law Institute and to establish liaison with the UNCITRAL/INSOL Joint Project on this topic and to submit a report to the next session of the Committee.

2. To request the rapporteurs to establish contacts with the NAFTA Working Group and to attend its meetings when possible, in order to indicate this Committee interest in the progress of its work, and to submit a report to this Committee during the next session.

3. To consider further work on this subject in the light of the final agenda to be established for CIDIP-VI.

This Resolution was adopted at the 18 August 1995 regular session by the following members: Drs. Jonathan T. Fried, Philip Telford Georges, Miguel Ángel Espeche Gil, Galo Leoro Franco, José Luis Siqueiros, Luis Herrera Marcano, Ramiro Saraiva Guerreiro, and Mauricio Gutiérrez Castro.

Dr. Alberto Zelada Castedo abstained from voting.

CJI/RES.II-12/95

IMPROVING THE ADMINISTRATION OF JUSTICE IN THE AMERICAS

(Resolution adopted at the regular session held on August 18, 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING the revised report of the Rapporteur, Jonathan T. Fried, on "Protection and Guarantees for Judges and Lawyers in the Exercise of their Functions" (CJI/SO/II/doc.42/94, rev. 2, 13 February, 1995);

CONSIDERING that the General Assembly, in its Resolution AG/doc.3268/95, recommended that the Committee proceed with its studies on enhancement of the administration of justice and the independence of the judiciary in the Americas and, in coordination with the Permanent Council, to distribute its reports thereon to the member states;

NOTING that the General Assembly, in its Resolution AG/doc.3265/95, instructed the Permanent Council, through its Working Group on the Administration of Justice and in conjunction with the Inter-American Juridical Committee and the General Secretariat, to take the necessary steps to improve awareness and disseminate information in the member states on the international rules of law emanating from the inter-American system;

NOTING further that the General Assembly, in its Resolution AG/doc.3266/95, instructed the Working Group on Enhancement of the Administration of Justice in the Americas to organize with the General Secretariat and the Inter-American Juridical Committee regional seminars and workshops, coordinated with national and international institutions involved in this area, to facilitate a better mutual understanding of the administration of justice in the various countries, to achieve greater legal cooperation in the region;

RECALLING that in its Resolution CJI/RES.II-19/94, the Committee requested the Permanent Council to forward the said report of the Rapporteur to the Member States of the Organization in order to make it available to competent authorities;

FURTHER recalling that in the same resolution, the Committee recommended that the Permanent Council consider means for keeping the matter under continuous review;

TAKING ACCOUNT of comments of various member states on the report of the Rapporteur,

RESOLVES:

1. To append a Corrigendum, to be finalized by the rapporteur, to the report on "Protection and Guarantees for Judges and Lawyers in the Exercise of their Functions" (CJI/SO/II/doc.42/94, rev. 2, 13 February, 1995);

2. To request the General Secretariat to explore all appropriate means to publish the Report, with the Corrigendum;

3. To reiterate its recommendation to the Permanent Council to forward the said

Report, with the Corrigendum, to the member States of the Organization in order to make it available to competent authorities;

4. To request that the Chairman of the Committee write to the Chairman of the Permanent Council, to draw particular attention to the recommendation of the Committee in its Resolution CJI/RES.II-19/94 that the Permanent Council "consider the possibility of keeping under ongoing examination, through regular Reports and the publication of information, the problems that could threaten the independence of the judiciary in the Member States, or hamper the adequate protection of judges and lawyers in the exercise of their functions, as well as measures that have been adopted to cope with these problems", and to request that the Permanent Council consider forwarding this recommendation to the Inter-American Commission on Human Rights and to the Working Group on Enhancement of the Administration of Justice in the Americas;

5. To request the Rapporteur, on behalf of the Committee, to maintain liaison with the Working Group on Enhancement of the Administration of Justice in the Americas and the General Secretariat with a view to coordinating the participation of the Inter-American Juridical Committee in any regional seminars or workshops to be undertaken by the Organization on this subject; and

6. To continue its examination of this subject at its next session.

This Resolution was adopted at the August 18, 1995 regular session by the following members: Drs. Jonathan T. Fried, Philip Telford Georges, Miguel Ángel Espeche Gil, Galo Leoro Franco, José Luis Siqueiros, Luis Herrera Marcano, Ramiro Saraiva Guerreiro y Mauricio Gutiérrez Castro.

Dr. Alberto Zelada Castedo abstained from voting.

CJI/RES.II-13/95

INTERNATIONAL COOPERATION TO REPRESS CORRUPTION IN AMERICAN NATIONS

(Resolution adopted in the regular session held on 18 August 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

WHEREAS:

During its 1992 regular sessions period, at the suggestion of Dr. Jorge Reinaldo Vanossi, it included in its Agenda the topic of "Initial Approach to the Juridical View of Corruption in the Americas" (CJI/SO/II/doc.2/92);

During its 1993 regular sessions period, it appointed Dr. Miguel Ángel Espeche Gil as the Rapporteur for this topic, and discussed it during its 1994 sessions;

During its March 1995 sessions period it held a broad-ranging discussion of corruption in public office, with the participation of the Chairman of the Working Group on Integrity and Public Morals appointed by the Permanent Council, Ambassador Edmundo Vargas Carreño, and the Permanent Representative of Venezuela, Ambassador Sebastian Allegrett;

During its XXV regular sessions period, the General Assembly adopted Resolution N□. AG/doc.3287/95, Item 6, dated 9 June 1995, requesting the Inter-American Juridical Committee to prepare, during the current Sessions Period, its comments on the Draft Inter-American Convention Against Corruption commissioned from the Working Group set up by the Permanent Council and drafted by its Chairman (CP/doc.2614/95 dated 16 June 1995), based on the Draft Convention submitted by the Venezuelan Permanent Mission on 15 December 1994 (CP/doc.2544/94 dated 16 December 1994);

That during the current Sessions Period the Committee received the Report and Preliminary Comments of its Rapporteur (CJI/SO/II/doc.20/95rev.1) and heard the presentation by the Chairman of the Working Group, Ambassador Edmundo Vargas Carreño during its session on 2 August, on which opportunity he replied to questions and compatibilized the text of his Draft with that of the Rapporteur;

RESOLVES:

1. To approve the Report entitled "Comments and Remarks on the Draft Inter-American Convention Against Corruption prepared by the Chairman of the Working Group on Integrity and Public Morals", (CJI/SO/II/doc.39/95.rev.2, 18 August 1995), as well as the Alternative Articles to this Draft Convention, forming part of the above-mentioned Report.

2. To request the Chairman of the Committee to forward this Resolution to the Secretary-General.

3. To keep this topic on its Agenda and set up a Working Group chaired by Dr. Miguel Ángel Espeche Gil, with Drs. Luis Herrera Marcano and Eduardo Vío Grossi as its members, in order to carry out supplementary studies, should this prove necessary, as well as to follow up on

the treatment of this matter within the Organization and advise the Committee of the state of this issue during its next Sessions Period.

It is herewith placed on record that Dr. Eduardo Vío Grossi took part in the discussion and voting, on favorable terms, of the above-mentioned Alternative Articles and presented, on behalf of the Committee, the initial version of the above-mentioned Comments (CJI/SO/II/doc.39/95), being absent from the sessions for personal reasons from 16 August onwards.

This Resolution was adopted during the ordinary session held on 18 August 1995, with the following members present: Drs. Jonathan T.Fried, Alberto Zelada Castedo, Philip Telford Georges, Miguel Ángel Espeche Gil, Galo Leoro Franco, José Luis Siqueiros, Luis Herrera Marcano, Ramiro Saraiva Guerreiro and Mauricio Gutiérrez Castro.

Drs. Alberto Zelada Castedo and Miguel Ángel Espeche Gil presented concurrent reasoned votes; Drs. Ramiro Saraiva Guerreiro, José Luis Siqueiros and Jonathan T.Fried submitted abstaining votes. The above mentioned votes are attached to the Committee Report (CJI/SO/II/doc.39/95.rev.2).

CJI/SO/II/doc.39/95 rev.2
18 August 1995
Original: Spanish

REPORT

(Approved in the regular session
held on 17 August 1995)

COMMENTS BY THE INTER-AMERICAN JURIDICAL COMMITTEE ON THE DRAFT INTER-AMERICAN CONVENTION AGAINST CORRUPTION PREPARED BY THE CHAIRMAN OF THE WORKING GROUP ON PROBITY AND PUBLIC MORALS SET UP BY THE PERMANENT COUNCIL

1. The Committee assigned top priority to the mandate contained in Paragraph 6 of the Resolution adopted by the General Assembly on 9 June 1995 (AG/doc.3287/95), which commissioned the Committee to formulate its comments during its current sessions period on the Draft Inter-American Convention Against Corruption prepared by the Chairman of the Working Group on Integrity and Public Morals set up by the Permanent Council.

2. In compliance with this mandate, the Inter-American Juridical Committee analyzed the document entitled "Draft Inter-American Convention Against Corruption"(CP/doc.2614/95), hereinafter called "the Draft", prepared by Ambassador Edmundo Vargas Carreño, Chairman of the Working Group on Integrity and Public Morals set up by the Permanent Council.

As its mandate did not include the question of whether or not the adoption of a Convention constitutes the most appropriate method of combating corruption, the Committee did not take this issue under consideration.

3. In its analysis, the Committee took under consideration the comments made by the Governments of Argentina and Uruguay on the initial text presented by Venezuela, as well as those made by the U.S.A. and Venezuela with regard to the Draft itself.

4. The Committee was honored by the presence of Ambassador Edmundo Vargas Carreño, who presented his Draft and offered useful explanations on the bases and scope of its provisions.

METHOD OF WORK

5. The Committee felt that the best method of preparing its comments as requested by the General Assembly was to move directly into a discussion of the Draft as though preparing to approve it, meaning introducing modifications approved by a majority of the Committee. By using this system, at the conclusion of this analysis, the Committee had not only the comments and suggestions of members, but had also exemplified these comments. These Alternative Articles to the Draft Convention (hereinafter called the "Alternative Articles") constitute an organic whole which is attached to these Comments.

BASIC FOCUS

6. The Committee felt that the Convention should basically focus on cooperation between States to provide mutual support in the actions undertaken by each of them within their own jurisdictions to combat corruption. One of the greatest difficulties encountered by the States in this struggle is the flight beyond their jurisdiction of the persons responsible for acts of corruption, or

the removal of the material outcome thereof. To cope with this situation, the Committee felt that it was necessary to develop three areas of cooperation: extradition, legal seizure of assets, and legal aid.

7. At the same time, the Committee felt that the typification of acts of corruption - with a view to incorporation thereof in national legislations - is an objective that could perhaps be handled more effectively through drafting one or more model laws. The Committee thus decided to maintain the topic of combating corruption on its Agenda.

STRUCTURE OF THE COMMENTS BY THE COMMITTEE

8. The following comments refer both to the Draft as well as to the Alternative Articles, drawing comparisons between them. As the order in which the items are covered is not the same as that used in the texts, it was found convenient to classify the comments under “Differences”, “Points of Agreement” and “New Elements”.

DIFFERENCES

9. Purpose. It is with regard to the purpose of the Convention that a major disparity in criteria appears, with regard to the provisions established by the Draft. In Article I, under the title Purposes and Ends, it stipulates that the States agree to adopt measures to prevent and eradicate corruption; it adds a commitment to implement programs designed to heighten awareness of the seriousness of this sanctionable phenomenon; and also covers the obligation to adopt legislative measures as well as those of a different nature to combat corruption and strengthen cooperation to this end. However, the manner in which this provision is worded may lead to the interpretation that until the treaty enters into effect, there would be no obligation to implement measures against corruption, as the declarations contained in this provision are no more than obligations that would arise from a non-expressed purpose, or rather tools to achieve such a purpose.

10. This is why Article I of the Alternative Articles prefers to state that the purpose of the Convention is to promote, facilitate and regulate cooperation between the Signatory States in order to guarantee the effectiveness of the measures which each of them should adopt to prevent and sanction acts of corruption in public office. This is a more transparent formula in keeping with the Preamble as eradication of corruption is the responsibility of the States, and that in order to achieve this coordinated action among them is necessary. The purpose is thus international cooperation in order to ensure the effectiveness of the measures that each State adopts against corruption in a sovereign manner.

11. Scope. The second discrepancy of a general nature noted in the Draft is that covering the scope of the Convention. Although Article III of this document, under the title Scope, stipulates the obligation to cooperate and hand over persons when legally requested to do so, and when the crime has been committd in the territory of the Applicant State, Article III of the Alternative Articles clearly determines this scope on the basis of the punishable act having been committed in the territory of Applicant State, or having effect thereon, distinguishing three different situations. One covers the location of the person whose extradition is requested in the territory of the Respondent State. Another is the location of the assets arising from acts of corruption in the territory of this same State. The third is a request for information or other form of cooperation different from those mentioned above, requested for implementation in the territory of this State.

12. The scope of the Convention is thus determined in a broader manner, as well as more accurately, with a solid basis on the territorial phenomenon, allowing the implementation of the corresponding provision to the three issues regulated by the Convention, rather than just

extradition, and without conceptually confusing the scope of the instruments planned with the achievement in view for the proposal in question.

13. Crimes. The third major difference from the Draft concerns the obligation covered in its Article V, to adopt measures that correspond to the classification as crimes, under the domestic law of each Signatory State, of the types of conduct that it describes, linked to corruption. This is a capital provision in the Draft, as it determines the concrete manner in which inter-American cooperation against corruption would develop, assuming that this could take place. According to the provisions in the Draft, combating corruption basically would assumes or consist of the fact that under all national legislations, the types of conduct or acts of corruption indicated would constitute crimes, committing or obliging the Signatory States thereto, through the Treaty.

14. There is no doubt that this diversion arises as a consequence of a difference between the purpose outlined in the Draft and that covered in the Alternative Article. Although in the former the central purpose is to implement legislative measures of those of an another nature to prevent and eradicate corruption, meaning it is vital that such measures should be equivalent, including those pertinent to a similar classification of crime, in the latter its purpose is cooperation, which in the fight against corruption covers three different areas: extradition, assets and assistance, whereby it is involved not only in the measures that make such cooperation possible, but also in ensuring that this effectively takes place within the three areas indicated, thus seeking to ensure that the individual characteristics of each Signatory State do not become impediments thereto, perhaps even hampering the effective application and entry into force of the Convention itself.

15. Acts of corruption. This is why Article IV of the Alternative Articles found it preferable to determine as accurately as possible acts of corruption in public office, instead of establishing the obligation to typify corrupt conduct as a crime under each domestic legislative system, on the basis of the issues outlined in the Draft, which would make way for those covered by the Convention in the three areas outlined, rather than only extradition.

16. With regard to the above-mentioned description in the Alternative Articles of acts of corruption, stress is placed on the circumstances of the requesting or accepting and offering or granting gifts, favors or advantages to act or not act in a specific way. This means that the act of corruption does not consist solely - as established in the Draft - nor principally in the action or omission of a civil servant in the exercise of public functions, but basically in the request or acceptance and offer or granting of gifts, favors or advantages, in exchange for the action or omission of a person exercising public functions. On the other hand, this action or omission will be an act of corruption insofar as it is carried out in order to obtain favors, gifts or advantages. The specific nature of this act of corruption is thus due to the existence of these favors, gifts or advantages. Should they not exist, the action or omission by the person in public office would be irrelevant for these purposes.

17. Additionally, and in contrast to the Draft, it was decided to clearly outline in the Alternative Articles that the illicit benefits obtained by a person in public office may or may not be detrimental to State assets. Taking into account that most cases of corruption do not cause any damage to State assets, at least directly or as far as can be seen, unless the private individual offers the gifts, favors or advantages to obtain an action or omission by the person in public office.

18. Finally, it was decided to suggest the re-introduction of the expressions acquisition, possession or use of assets arising from acts of corruption covered in Article V of the Draft, regarding the classification of criminal acts, in order to avoid the interpretation that assets acquired in this manner are outside the juridical area from the acquisition, possession or use thereof, which may run counter to the provisions of certain national juridical systems and give rise to lawsuits on

this issue. This is why it was deemed preferable in Article IV of the Alternative Articles to refer to such acts of corruption as "the criminal use or concealment of goods arising" from other acts of corruption, leaving it to the sphere of domestic law to determine the manner in which such use or concealment takes place, which is what would, according to the Convention, definitively configure this specific type of act of corruption.

19. Judicial Requirements. There is also disagreement with the Draft with regard to the dissemination of the authority which could issue the request for cooperation covered in the Convention. The Draft mentions administrative procedures in this regard (Articles I and X), as well as administrative assistance (Article VI) and the authority issuing the request with regard to assets (Article X). It is certainly well known that all cooperation must necessarily have the intervention of the administrative authority. But it is also certain that this intervention may be as much in the exercise of its own duties and responsibilities, as well as in compliance with the judicial resolution. The Alternative Articles omit all reference to administrative authorities or administrative procedures for the purposes which shall always be those of the judicial authorities with regards to issuing requests for cooperation and which shall definitively implement them, with the cooperation of the administrative authorities, when applicable and judicially ordered to do so, all in compliance with the national law of each Signatory State. It is thus intended to avoid any risk of improper political use of the cooperation agreed upon.

POINTS OF AGREEMENT

20. Preamble. In general terms, there is agreement with the content of the Preamble to the Draft. The Alternative Articles have retained much of its text, reshaping it to the central purpose of the Convention, which is inter-American cooperation against corruption, while avoiding some of its phrases - for example, "corruption is one of the factors that may negatively affect the full implementation of democracy could be wrongly interpreted as the justification for forcefully overthrowing a democratic Government, because it is corrupt. The opening paragraphs have been placed in a logical order starting from the more general, meaning references to morals, justice, security and peace, and concluding with the more particular or specific items, meaning the eradication of corruption in public office.

21. Supplementary instrument. Following the Draft, it was agreed that the Convention should be a juridical instrument supplementary to others applicable to the issue in question, particularly the Inter-American Convention on Extradition and the Inter-American Convention on Mutual Assistance in Criminal Matters. This Convention should thus not be a new treaty on extradition or criminal assistance, but should rather be limited to regulating the characteristics of these issues in case of cooperation in the struggle against corruption. The above-mentioned Convention would thus constitute, together with the two others mentioned above and others, either multilateral or bilateral, an integrated juridical system applicable to cases of corruption, with no need for each of them to reiterate the provisions of the others.

22. Article VII of the Draft acknowledges this idea, as the Convention does not prevent the application of other norms and standards more favorable to the assistance agreed upon. In fact, several of its provisions mention other treaties in effect (Article IV), and applicable (Article IX). The Alternative Articles do the same, referring to treaties applicable to this issue (Articles VII, VIII, IX, XI and XII) as well as stipulating in Article XVI on Interpretation, that the Convention should not be interpreted in such a manner that hampers the application of other international juridical pacts.

23. Also in view of the above, the Alternative Articles do not include certain provisions in the Draft which are already found frequently in general international law or in other applicable treaties. This is the case with the obligation to speed up extradition procedures as much as possible and simplify probatory requirements (Article IX, Item 6) with the pertinent data which should be

contained in the request for assistance in terms of assets (Article X, Item 2), safeguarding the rights of third parties (Article X. Item 5) and the obligation to settle disputes peacefully (Article XI).

24. Civil servant or person in public office. With regard to stipulating the person who commits an act of corruption or with whom such act is committed, there is basic agreement with the Draft. Article II thereof offers a definition of civil servant, which is used in Article V to classify crimes committed thereby or in relation thereto.

25. However, acknowledging the breadth of the definition of civil servants, and trying to cover all possible situations, while taking this intention into consideration, it was found better and more practical to avoid any such definition or denomination, but rather to simply refer to the person in question as exercising public functions. This formula covers everything intended by Article II of the Draft, but without running the risk of leaving out certain persons who are or might be empowered with public functions in a manner other than appointment, election or hiring, the only alternatives covered in this provision, and might include, for example, people spontaneously undertaking public functions under specific circumstances. Additionally, the use of the formula person who exercises public functions, avoids all discussion about how each national legislative system defines a civil servant, and all discrepancies on this issue between the provisions of the corresponding domestic law and the Convention.

26. Domestic Legislation. Similarly, there was agreement with the Draft with regard to confirming the commitment of the Signatory States of the Convention in adopting the legislative measures necessary for the purpose thereof (Articles I of the Draft and VI of the Alternative Articles). As already stated, there is a discrepancy with regard to this provision, whereby the content and form of complying with the obligation to implement the corresponding provisions under domestic law are also different in each of these texts. Although the former basically fulfills the obligation through the typification of crimes that it stipulates and lists in Article V, the latter starts out from the assumption that it may be complied with in a different manner, whereby it is the national juridical system applicable thereto, and the specific issue is covered and regulated by the Convention, meaning extradition, assets and assistance. This explains the different wording in the above-mentioned Articles.

27. Extradition. There is also much similarity with regard to the treatment of extradition. The provisions of Articles III covering the obligation to hand over the person applied for; Article IV covering refusal of the pertinent request; and Article IX regarding applicable law in the Draft are included in the most concise and harmonious manner possible in Alternative Articles VII - Extradition and VIII - Refusal of Extradition. For increased clarity and to avoid disputes over the terminology used in the various national legislations, it has been added that extradition shall always take place whenever the act of corruption is penalized in the legislation of the Applicant State with a penalty of imprisonment of no less than one year.

28. Provisional detention. There was also agreement with the provisions of Article IX Item 7 of the Draft, covering the institution of provisional detention, although this is already confirmed both in most national legislative systems as well as most extradition treaties. It was thought useful to include a provision such as that indicated in order to leave no doubt that provisional detention is also well-founded also in the cases covered by the Convention. Alternative Article IX is certainly worded according to the general structure and style thereof.

29. Assets. With regard to the assets arising from acts of corruption, there is also agreement with the basic issues expressed in Article X of the Draft, although more concise terminology was preferred in Article XI of the Alternative Articles, in keeping with that used in juridical texts, both international as well as domestic, regarding the implementation of foreign judicial resolutions or decisions. It was thus decided, as already mentioned, to restrict this mention of the authority

issuing the request covering the assets, to the juridical authority.

30. Legal cooperation and assistance. There was also agreement with the provisions of Article VI of the Draft covering assistance, to which Article XII of the Alternative Articles added cooperation. However, as already mentioned, on this issue it was also decided to restrict it to judicial matters, omitting all reference to administrative cooperation and assistance, which may however take place if the pertinent judicial authorities so request, and in the manner and form applied for.

31. Bank confidentiality. It also supported the idea contained in the final sentence of Item 2 of Article VI of the Draft, whereby the Parties may not refuse cooperation by having recourse or sheltering behind bank confidentiality. The difference between this provision and Item 1 of Article XIII of the Alternative Articles is that in this latter the cooperation referred to is solely that requested by a competent judicial authority. Thus, similar to the proceeding situations, an attempt is made to avoid the administrative authorities from acting independently, without the judicial authorities being aware of this. These latter seem to offer greater juridical protection against the application being issued for political reasons or others of a non-desirable type.

32. Central authority. Article XV of the Alternative Articles repeats the provisions of Item 3 of Article VI of the Draft, which establishes the institution, found in other conventions, of the Central Authority for the purposes of the application of the Convention. To the provision of the Draft is added the option for the corresponding Central Authorities to communicate directly among themselves and if necessary to forward and receive the pertinent applications also among themselves.

NEW ELEMENTS

33. Definitions. Within the framework of the analysis of the Draft, it was found necessary to formulate various provisions in order to enrich it, as well as to include matters not covered thereby. The first suggestion is that the Convention should start its provisions with an Article covering the definitions of certain terms used therein. Thus, Article I of the Alternative Articles defines, for the purposes of the Convention, acts of corruption, Applicant State, Respondent State and assets.

34. To define acts of corruption, reference is made to Article IV which, as already stated in Paragraphs 11 through 16 above, is suggested as a replacement of Article V of the Draft. With regard to the Applicant State, the central element taken into consideration for defining this as the place or territory where the illicit act took place or in which effects are produced. With regard to the Respondent State, the determining factors in defining this are the situations covered by the Convention, namely, whether this involves extradition, assets or assistance. For the definition of assets, inspiration was sought in international juridical texts in effect that offer a broad-ranging concept on this issue.

35. Assets and political crimes. It is felt that there is a broad-based, solid and unmistakable consensus that the Convention should not be worded in terms that could be interpreted by a Party in a manner that could affect the invaluable right of asylum and in particular the capacity of the Applicant State to qualify a crime as political, and by another - particularly as nothing is said about asylum - as being one which could cover acts of corruption carried out with the purpose of channeling the assets acquired thereby to political ends, a cause commonly invoked expressly or tacitly by those accused thereof.

36. This is why Article V of the Alternative Articles suggests that, for the purposes of application of the Convention, the fact that the assets arising from an act of corruption have been

earmarked for political purposes should not in itself be sufficient to endow such an act with the character of a political crime, or a crime connected to a political crime. Under this order of ideas, in order for an act of corruption to be classified by the Respondent State as a political crime or a crime connected to a political crime, and thus refuse to apply the Convention thereto, other circumstances must also be involved in addition to the pertinent fact of the destination of the assets. The idea behind Article V is to ensure an appropriate balance between the values implicit in asylum, and curbing corruption.

37. Corruption to or from a foreign country. Item 2 of Article VI of the Alternative Articles covers the situation that is not remote from reality, meaning act of corruption carried out in relations to persons in public office abroad. This provision establishes as either a programmatic or behavioral obligation that States should do their utmost to ensure that their laws sanction such cases as acts of corruption when carried out by persons subject to the jurisdiction thereof. It is thus intended to ensure that acts of corruption carried out from abroad are not protected by impunity.

38. Juridical basis for extradition. It was also found convenient to include in the Alternative Articles the provision found in various treaties whereby if the Signatory States make extradition conditional on the existence of a treaty, considering the Convention as a juridical basis that is sufficient for this to take place with regard to acts of corruption. Article X of the Alternative Articles thus guarantees that extradition may always take place for acts of corruption whether or not there are any special treaties in existence covering this issue.

39. Use of confidential bank information. With regard to information which, as mentioned in Paragraph 29 above, the Respondent State is obliged to hand over to the Applicant State, under the Convention and notwithstanding protection under the aegis of bank confidentiality, should it deem it indispensable to seek to maintain the confidential nature of such information, as far as possible, it shall thus oblige the State that receives such information to maintain it under similar terms as those existing in the State which is obliged to supply such data. As there is no provision covering this issue, the outcome is that the Respondent State is unilaterally limited with regard to this bank data, while the Applicant State enjoys ample freedom with respect thereto, which could thus give rise to the possibility of abuse of the cooperation covered in the Convention, for the purposes of skirting the ban on access to such information, indirectly from outside the country,.

40. Item 2 of Article XIII of the Alternative Articles, covering bank confidentiality, indicates that the Applicant State agrees not to use information protected by banking confidentiality that it receives, for no purpose other than the case for which it was requested, and to maintain the confidentiality thereof if its laws so permit. This norm would thus be based on the same principle as that applicable to extradition, whereby the extradited person may only be judged for a crime covered in the extradition application, and granted thereby.

41. Democracy and Human Rights. As curbing corruption may be one of the reasons claimed for *coups d□état* and/or pursuing persons opposed to the *de facto* authorities, and considering the high level achieved by the Inter-American System with regard to instruments and mechanisms for promoting and consolidating or protecting democracy and human rights as the distinct core purposes of this System, Article XIV of the Alternative Articles mentions the link that could appear between such phenomena. It thus covers three situations.

42. The first covers the capacity of any Signatory State to suspend the application of the Convention with regard to a State that has violated the obligation of the effective exercise of representative democracy. In this case, the institution covered in the Convention of Vienna on Treaty Law applies, whereby the Inter-American Convention Against Corruption shall be sufficient, as an expression of prior agreement of the Parties for a State to be declared as suspended through a unilateral declaration. This shall take place, in compliance with the wording given to the Article under comment, even should there be no request issued for cooperation under the

Convention on corruption by the State that has violated the obligation, to effectively exercise representative democracy. This capacity to suspend the Convention would come into operation in order to avoid the issues of request for cooperation notified in advance for these purposes, to which the provisions agreed upon are not applicable.

43. The second situation covers the capacity of any Signatory State, on receipt of a request from a State that has violated the obligation to effectively exercise representative democracy, to refuse the cooperation requested. In this case, if a specific application is issued, and which is not agreed to, others may be formulated with a different outcome, without this altering the application of the Convention Against Corruption.

44. In both situations however, the competent agency of the O.A.S. must declare previously that the State in question has violated the obligation to effectively exercise representative democracy. It is thus not sufficient for the other State involved to deem that the former has committed such a violation. As indicated in Resolution CJI/RES.I-3/95 on Representative Democracy, it should be the *Ad Hoc* Meeting of Ministers of Foreign Affairs or the General Assembly called to an extraordinary sessions period under the Resolution on Representative Democracy (AC/RES.1080(XXI-0/91), that formulates the above-mentioned declaration, and which consequently, being clearly political and discretionary, fully ensures that it is not arbitrary.

45. The third situation covers Human Rights as a phenomenon distinct from that of democracy. Article XIV of the Alternative Articles comments on the possibility whereby the Respondent State may have well-founded reasons for considering that the Applicant State has violated the human rights of the person regarding whom cooperation is requested. In this event, the authorities in the former may refuse the cooperation requested by the latter. If this gives rise to a dispute between the States with regard to the situation of human rights for the person for whom such cooperation is requested, the mechanisms stipulated for promotion and defense of human rights shall come into operation, which should not in principle affect the capacity stipulated in Article XIV above.

46. With these provisions, the matters in Item 5 of Article IX of the Draft are covered, limiting the right to refuse request only in cases of extradition. The procedures as outlined in Article XIV of the Alternative Articles endow this issue with a breadth and scope that totally transform it, converting this proposition into an innovative measure that could be called Democratic Clauses which could be incorporated into other treaties, with the corresponding adaptations thereof.

ALTERNATIVE ARTICLES

FOR THE DRAFT INTER-AMERICAN CONVENTION AGAINST CORRUPTION

(Attached to the Comments of the Inter-American Juridical Committee on the Draft Inter-American Convention Against Corruption)

PREAMBLE

The Signatory States to this Convention,

CONVINCED that corruption adversely affects moral order and justice, the bases of security and peace;

WHEREAS representative democracy, an indispensable condition for stability, peace and the development of the region, by its very nature requires the combat of all forms of corruption in the exercise of public functions;

PERSUADED that combating corruption strengthens democratic institutions and avoids distortions of the economy, flaws in public administration and deterioration of public morals;

CONVINCED that is necessary to adopt an international instrument as soon as possible that promotes and facilitates international cooperation in combating corruption and particularly in ensuring that the effectiveness of the actions of national legal systems is not adversely affected by the departure from the respective territory of persons responsible for acts of corruption or the assets which are the outcome thereof;

BEARING IN MIND that eradication of corruption is the responsibility of the States and that cooperation among them is necessary in order to ensure that actions in this field are effective;

DETERMINED to do its utmost to eradicate corruption in the exercise of public functions;

AGREE ON THE FOLLOWING MATTERS:

ARTICLE I

Definitions

For the purposes of this Convention:

1. “Acts of corruption” is taken to mean the types of conduct described in Article IV of this Convention.

2. “Applicant State” is taken to mean the State in whose territory the illicit act is committed or produces effects, and that requests the application of this Convention.

3. “Respondent State” is taken to mean:

   a) the State where the persons whose extradition is requested by the Applicant State are located;
   b) the State where the assets whose seizure or confiscation is requested by

the Applicant State are located;

c) the State that is requested by the Applicant State to provide information, implement acts leading to trial, or other form of cooperation.

4. “Assets” is taken to mean goods of any type, either portable or fixed, tangible or intangible, as well as the legal instruments or documents that confer ownership or other rights over such assets.

ARTICLE II

Purpose

The purpose of this Convention is to promote, facilitate and regulate cooperation among the Signatory States in order to guarantee the effectiveness of the measures and actions adopted by of each of them to prevent and sanction acts of corruption in the exercise of public functions.

ARTICLE III

Scope

This Convention is applicable whenever a punishable deed is committed in the territory of the Applicant State or has effects thereon, in any of the following cases:

a) When a person is accused, tried or sentenced by a Court in an Applicant State for an act of corruption punishable by a term of imprisonment of at least one year, and is located within the territorial jurisdiction of the Respondent State.

b) When the assets that are the outcome of an act of corruption being tried or already sentenced by a Court in the Applicant State are located within the jurisdiction of the Respondent State.

c) When a Court in the Applicant State hearing a case involving an act of corruption requests information, the implementation of acts leading to trial, or other form of cooperation falling within the jurisdiction of the Respondent State.

ARTICLE IV
Acts of Corruption

This Convention is applicable to the following acts of corruption in the exercise of public functions:

a) The demand for or acceptance of gifts, favors or advantages for the person involved, or another person, either directly or through third parties, by a person exercising public functions,. in exchange for committing or omitting any act in the exercise of the functions thereof;

b) The offer or transfer of gifts, favors or advantages to a person exercising public functions, either directly or through third parties, in exchange for committing or omitting any act in the exercise of the functions thereof;

c) The implementation by a person exercising public functions of any act or omission in the exercise of the functions thereof, in order to gain illicit benefits for him/herself

or for third parties, whether or not this adversely affects State assets;

d) The illicit use or concealment of assets arising from any of the acts mentioned in this Article;

e) Participation as co-perpetrator, accomplice, accessory or any other means. in the commission, attempted commission, association or involvement in the commission of any of the acts mentioned in this Article.

ARTICLE V

Character of the Act

For the purposes of the application of this Convention, the fact that the assets arising from the act of corruption may have been intended for political purposes is not in itself sufficient to endow such act with the character of a political crime or crime connected with a political crime.

ARTICLE VI

Domestic Legislation

The Signatory States shall adopt legislative measures or those of some other type to facilitate cooperation between them, in terms of this Convention, for the prevention and sanction of acts of corruption in the exercise of public office.

The Signatory States shall do their utmost to ensure that their laws - insofar as they do not already do so - sanction not only acts of corruption that have an effect in their own territory, but also those carried out by persons subject to the jurisdiction thereof with regard to those exercising public functions in any other Signatory State.

ARTICLE VII

Extradition

In compliance with the treaties and laws applicable thereto, each Signatory State agrees to hand over persons whose extradition is requested by the Applicant State as being accused , tried or sentenced by the competent court authority for acts of corruption penalized in the legislation of the Applicant State with a period of imprisonment of no less than one year.

ARTICLE VIII

Refusal of Extradition

The Respondent State may refuse to grant extradition in cases determined by the applicable treaties or domestic laws. When the Respondent State refuses to grant extradition as it considers itself competent under its own legislation to try the person whose extradition is requested, or because such person is a citizen thereof, it should try the person and advise the Applicant State of the final outcome of the case.

ARTICLE IX

Provisional Detention

When the Applicant State requests the detention of a person whose extradition has been applied for, the Respondent State may implement this measure or any other it may deem adequate to guarantee the appearance of the person during the extradition procedures, in compliance with the provisions of domestic law and treaties applicable thereto.

ARTICLE X

Basis for Extradition

The Signatory States that make extradition conditional on the existence of a Treaty may consider this Convention as the juridical basis for extradition with regard to the acts of corruption mentioned in Article VII.

ARTICLE XI

Measures Regarding Assets

In compliance with the treaties and laws applicable thereto, the Respondent State shall comply with the requirements stipulated by the competent legal authority in the Applicant State that is investigating, trying or has handed down a sentence in a case trying an act of corruption in order to:

a) identify within its territory the assets arising directly or indirectly from the act of corruption;

b) implement precautionary measures consisting of a preventive ban, embargo or other similar action;

c) implement the final sentence handed down in the Applicant State with regard to its effects on the assets located in its territory, including the confiscation or seizure and restitution thereof.

ARTICLE XII

Juridical Cooperation and Assistance

The Signatory States shall render the utmost reciprocal juridical assistance, in compliance with the treaties and laws applicable thereto, in order to obtain proof, as well as other acts necessary to facilitates juridical cases and actions regarding acts of corruption in the exercise of public functions.

ARTICLE XIII

Bank Confidentiality

The Signatory States shall not invoke bank confidentiality to refuse the cooperation covered by this Convention when so requested by a competent juridical authority.

The Applicant State agrees not to use information received and protected by bank confidentiality for any purpose other than the case for it was requested, and to maintain the confidentiality thereof should its laws so permit.

ARTICLE XIV

Suspension or Refusal

1. Any Signatory State may declare this Convention suspended, either wholly or in part, with regard to another Signatory State whose Government has been declared in violation of the effective exercise of representative democracy by the competent agency of the Organization of American States.

2. The Respondent State may consider itself not obliged to provide the cooperation requested in the application of this Convention when the Government of an Applicant State has been declared in violation of the effective exercise of representative democracy by the competent agency of the Organization of American States.

3. The Respondent State may consider itself not obliged to provide the cooperation requested in the application of this Convention when it has well-founded reasons for considering that the Respondent State has violated the Human Rights of the accused, tried or sentenced person.

ARTICLE XV

Central Authority

Each Signatory State shall appoint a Central Authority at the time of signature, ratification or adhesion to this Convention. The Central Authorities shall be responsible for forwarding and receiving requests for cooperation and assistance covered by this Convention.

The Central Authorities shall communicate directly between themselves for all effects and purtposes of this Convention.

ARTICLE XVI

Interpretation

None of the norms and standards of this Convention shall be interpreted as preventing the Signatory States from offering the reciprocal cooperation covered by this Convention under the provisions of other bilateral or multilateral treaties either in effect or signed in future thereby, or in compliance with the practices applicable thereto, insofar as this ensures more effective cooperation for complying with the purpose outlined in Article II of this Convention.

ARTICLE XVII

Provisos

Each State may formulate provisos to this Convention, whenever this involves one or more specific provisions, and provided that such are not incompatible with the purpose and objective of this Convention.

(THE USUAL CLOSING PROVISIONS FOLLOW)

REASONED VOTE
(presented by Dr. Alberto Zelada Castedo)

(Art. 27 of the Committee By-Laws)

Without adversely affecting the vote in favor of the Resolution, and particularly with regard to the alternative article for the Draft Inter-American Convention Against Corruption prepared by the Committee (Document CJI/SO/II/doc.39/95 rev.2), note should be taken of discrepancies with the text of ARTICLES V, VII, VIII, X and XIV, Item 3 of this Draft.

These discrepancies refer solely to the wording of the draft provisions, rather than to the essential content thereof.

1. With reference to ARTICLE V, the fact that the goods obtained as the consequence of an act of corruption may be allocated to political ends does not seems sufficient as an element for considering or presuming that this act is a political offense or a "offense connected with a political offense". It is also pertinent to take into consideration the allegation that an act of corruption has been committed for political "motivations" or "purposes."

This is why the text of the proposed ARTICLE V would become more precise and accurate if it were worded in the following terms:

> "The fact that the assets obtained as a consequence of an act of corruption were intended for political purposes or the fact that it is claimed that an act of corruption was committed for political motivations or purposes shall not in itself be sufficient to consider such a crime as a political crime or a crime connected with a political crime. For the purposes of the application of this Convention."

2. With regard to ARTICLE VII, it seems more convenient that, before stipulating the obligation or duty of the defendant State, it is necessary to stipulate the scope of the possible application of the extradition process. The following wording is thus to be recommended:

> "The commission of the acts enumerated and described in ARTICLE IV of this Convention may prompt the extradition of the persons involved therein, either as perpetrators, co-perpetrators, accessories or accomplices, when accused , tried or sentenced by the competent court authority of the Applicant State and when, in accordance with the legislation thereof, the acts attributed thereto warrant sanction or punishment by imprisonment for a period of no less than one year.
>
> Having satisfied the requirements and complied with the demands established by the norms and standards of this Convention and the norms and standards contained in other international instruments, both bilateral and/or multilateral, in effect between this State and the Applicant State and the Recipient State and, if applicable, by the norms and standards of its domestic legislation, the Respondent State is obliged to hand over to the Applicant State the persons whose extradition has been requested"

3. With regard to this same ARTICLE VII, and the need to fine-tune its wording and strengthen the norms expressed thereby, it should also mention in a more precise manner the provisions applicable to the extradition request and process, as well as the requirement that the acts enumerated and described in ARTICLE IV of the Convention should effectively fall within the scope of the treaties, conventions and agreements, both bilateral and multilateral, in effect or signed in future between the Signatory States.

This is why it would be convenient to incorporate in ARTICLE VII a new paragraph with the

following text:

"The request and process of extradition mentioned by Article VI of this Convention shall be subject to the provisions of the treaties, conventions and/or agreements, both bilateral and/or multilateral, signed and in effect between the Applicant State and the Respondent State.

For the purpose of the application of such instruments, in keeping with the purposes and objectives of this Convention, the acts listed and described in ARTICLE IV thereof shall be considered as included among the crimes or acts that may prompt extradition in all extradition treaties, conventions and/or agreements, both bilateral and/or multilateral, in effect between the States.

Similarly, the Signatory States agree to include such acts as subject to extradition in all extradition treaties or agreements reached between them".

4. With regard to ARTICLE VIII, although it contains a general reference to the causes for refusing extradition that may be covered in "treaties" or "internal laws", given the nature and scope of the Convention, as well as the nature of the acts which it stipulates as being subject to extradition, it would be more convenient to have a more precisely-worded text on this matter.

The following wording seems more appropriate, in view of the need for accuracy on this matter:

"Without adversely affecting the application, wherever pertinent, of the treaties, conventions and/or agreements mentioned in ARTICLE VII of this Convention, an application for the extradition for a person responsible for one or more of the acts enumerated and described in ARTICLE IV may be refused by the Respondent State in the following cases:

a) when the Respondent State considers that it is competent to try the person whose extradition is being requested;
b) when the person whose extradition is being requested is a citizen of the Respondent State and the constitutional or legal norms and standards thereof expressly ban the extradition of citizens; and
c) when, at the discretion of the Respondent State there are justified reasons that lead to the assumption that extradition would open the way to trial and possible sanction due to the race, religion, nationality or political opinions of the person whose extradition is being applied for.

Any Respondent State that refuses to grant such extradition shall be obliged, should its internal legislation so permit, to try the person whose extradition is being requested and to promptly advise the Applicant State of the outcome of this process.

5. With regard to ARTICLE X, it is clear that this refers to the hypothetical situation whereby there is no extradition treaty between an Applicant State and a Respondent State, and where for this latter the existence of a treaty would be a necessary condition for receiving and processing an application for extradition. Nevertheless, it makes no reference to the situation of those States in which, due to practice followed, it is equally necessary to stipulate norms and standards under domestic law to make international extradition treaties or agreements applicable.

This is why the following text seems more appropriate for the above-mentioned ARTICLE X:

"If a Signatory State which makes extradition dependent on the existence of a treaty received from another Signatory State with which it is not linked by any extradition treaty, receive such request for extradition, it may consider this Convention as the juridical basis for the extradition with respect to the acts enumerated and described in ARTICLE IV thereof.

Any Signatory State that requires detailed legislation to bring this Convention into effect as the juridical basis for extradition, shall do its utmost to implement the necessary legislation."

6. Although ARTICLE XI, item 3, is pertinent, it alludes in general terms to an assumed violation of the "human rights" of the "accused, defendant or convicted person" without stipulating the juridical norms under both General International Law and Convention International Law, regulating this matter.

This provision would thus be better expressed in the following terms:

"3. The Respondent State may consider itself not obliged to provide the cooperation requested in the application of this Convention when, in its view, there are sound reasons for considering that the process followed in the Applicant State has not complied with the general norms, standards, and principles on human rights, and in particular norms and standards on juridical guarantees, freedom of conscience and religion, and freedom of thought and expression, contained in the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man."

7. With regard to the GENERAL OR FINAL PROVISIONS, due to the nature of the Convention and its purposes, the possibility of incorporating a clause on "provisional application" is worthy of consideration, based on reciprocity, and worded in the following terms:

"Without adversely affecting the provisions in Article ..., any Signatory State may, when signing this Convention, declare that it is in a position to apply it in a provisional manner, prior to the ratification thereof, as well as declaring that this provisional application shall be effective with regard to the Signatory States which similarly issue a declaration to this same end."

CONCURRENT REASONED VOTE

(to Article XIV of Alternative Article
and Paragraphs 41-46 – "Democratic Clauses" -
of the Report on Comments)

(presented by Dr. Miguel Ángel Espeche Gil)

1. I had agreed through my affirmative vote with the Resolution approving the Report on the Alternative Articles and the Comments of the Committee on the Draft Inter-American Convention Against Corruption prepared by the Chairman of the Committee on Integrity and Public Morals set up by the Permanent Council.

2. However, I wish to make it clear that in suggesting the inclusion of a norm designed to prevent the exercise of extradition from making it easier for anti-democratic regimes to carry out political persecution on the pretext of repressing acts of corruption, I was aware that the application of this clause in the Convention may prompt some cases of "undesirable effect" whereby persons responsible for acts of corruption may escape the actions of justice unscathed.

3. This "undesirable effect" may be avoided through legislative means and the inclusion of norms and standards under this Convention additional to the so called "democratic clauses" (Article XIV of the Alternative Articles), which rules on lifting the ban on actions and penalties in these cases, although the sanction issued by the competent agency of the O.A.S. may still persist with regard to States that may have violated the principle of the effective rule of representative democracy.

EXPLANATION OF VOTE

(presented by Dr. Ramiro Saraiva Guerreiro)

Article XIV, Paragraph 3, offers the Respondent State excessive freedom of decision regarding causes for refusal, in contrast to Paragraph 2, where there is an objective decision taken by the Organization. This is why I abstain with regard to Paragraph 3 of Article XIV.

With regard to Paragraph 2 of Article VI, although I do not disagree on this issue, I believe that it should be treated autonomously in a different study and under another Convention.

REASONED VOTE OF ABSTENTION

(presented by Dr. Jose Luis Siqueiros)

I fully supported the Comments approved by the Committee, as well as the Alternative Articles given in the Report (CJI/SO/II/doc.39/95 rev.2) regarding the Draft Inter-American Committee Against Corruption, prepared by the Chairman of the Working Group on Integrity and Public Morals set up by the Permanent Council. Without adversely affecting this support, I wish to place on record my abstention in approving the wording of Article XIV, Paragraphs 1 and 2 of this Draft Convention, proposed in alternative form as well as the respective Comments thereon (Paragraph 42, 43 and 44).

The reason for my abstention is that, due to the provisions contained in this article, the Signatory States are granted the optional power of declaring the Convention suspended or refusing to grant the cooperation requested thereof by the Applicant State, when the Government thereof has been declared in violation of the effective exercise of representative democracy through a declaration issued by the competent agency of the Organization of American States.

In my opinion, when the Respondent State exercises such option, suspending or refusing the application of this Convention, the Applicant State is placed in a position of having no further recourse for pursuing and punishing corrupt civil servants who sought refuge outside the country, thus allowing them to escape punishment.

EXPLANATION OF VOTE OF ABSTENTION
(resented by Dr. Jonathan T. Fried)

I abstain from the vote of the Inter-American Juridical Committee on Resolution CJI/RES.II-13/95 and from the "Observations" of the Committee set out in document CJI/SO/II/doc.39/95 rev.2 on both procedural and substantive grounds.

As I was not present for the discussion in the Committee leading to the preparation of its Observations or for the Committee's vote on its Alternative articles (CJI/SO/II/doc.38/95) approved on August 11, 1995, it would not be appropriate for the vote on the Observations and the Resolution to imply that I endorse the results of a process in which I did not participate.

My abstention also reflects several substantive concerns regarding the Articles and accompanying Observations of the Committee, as follows:

1. It appears that inadequate analysis has been made of the possible impact of Article X. The Article states that the Convention may form the "juridical basis" for extradition for those parties requiring the existence of a treaty to execute an extradition request. Although a similar provision is found in the Vienna Convention on Psychotropic Substances, it is likely to prove problematic for countries with strict legislation. I understand that in Canada, for example, "dual criminality" is required for extradition, with or without a treaty, unless a treaty annexed to the schedule to the legislation provides broader grounds for cooperation. Accordingly, were the convention to be annexed as a schedule to such domestic extradition legislation, there would still be a requirement for "dual criminality", and the convention would further cooperation only to the extent that the list of offences under treaty may be somewhat broader than the list applicable in the absence of a treaty. For countries that do not make extradition procedures available in the absence of a treaty, but which nevertheless require dual criminality, Article X would not appear to provide any basis for enhanced cooperation.

2. I do not consider that Article XIV has a place in an instrument whose purpose is facilitating extradition, mutual legal assistance, and freezing and forfeiture, for several reasons. First, the work of the Committee on legal aspects of representative democracy to date does not reflect any conclusion regarding the propriety of actions contemplated to be authorized under this Article. Second, the grounds on which a requested State may refuse assistance is normally set out in relevant extradition or mutual legal assistance treaties or related legislation; in the result, the matters addressed by Article XIV are largely already covered by Articles VII, VIII, XI, and XII. Third, paragraph 3 of Article XIV would grant to the requested State the right to unilaterally sit in judgement on the domestic criminal law process of another State, without regard to relevant applicable international norms or avenues for State-to-State redress.

3. The second paragraph of Article VI would require that the member States ensure that "their laws... sanction not only acts of corruption that have an effect in their own territory...". This language may give the impression that the Committee has given its approval to an effects-based doctrine of jurisdiction, and thereby generally legitimizing extraterritorial application of domestic legislation. My understanding is that the Committee did not thoroughly explore this issue. In my view, further analysis is required.

This paragraph also states that member States should sanction "...those [acts of corruption] carried out by persons subject to the jurisdiction thereof...". While some countries, for example Canada, include provisions along these lines in legislation specific to military and public service abroad, the provision is too broadly cast to provide adequate guidance to member States in preparing appropriate domestic legislation. Again, further work would seem to be required.

4. Although the Articles rightly do not purport to define a crime of corruption, Article VI also

suggests a "best efforts" obligation to "sanction" acts of corruption under domestic law. This could create some definitional confusion. "Corruption" is a broad term encompassing a broad and complex range of institutional and individual behaviour. Given that Article IV appears designed to avoid precision on either the nature of the prohibited conduct, or on which conduct in which degree is deserving of which civil, criminal or administrative response, the obligation of Article VI to "sanction" such conduct presents a risk that "legitimate" conduct in one country is criminalized as "corrupt behaviour" in another. A wider range of more precise and responsive institutional and procedural approaches are required than merely an obligation to "sanction", whether through the development of model laws, codes of conduct, administrative proceedings, or disclosure obligations. In the result, Articles IV and VI should be recast to take this imperative into account.

5. Article XIII, like Article X, parallels a similar provision in the Vienna Convention. I support fully the need to ensure that bank secrecy not be used to shield criminal activity from effective prosecution, to prevent the obtaining of relevant evidence, or to shield ill-gotten gains. I am concerned, however, that the drafting may not accurately reflect the doctrine of the confidentiality of the banker-client relationship shared by Canada and other common-law jurisdictions, whose jurisprudence provides clear guidance as to the circumstances in which the confidentiality of this relationship may be breached. Many bilateral mutual legal assistance treaties codify some of these grounds. Accordingly, in such circumstances, paragraph one of Article XIII is unnecessary in the light of the reference to existing treaty mechanisms in Article XII.

Conversely, paragraph two of Article XIII may be too restrictive: it should be open to a requesting State to request the use of the confidential information obtained for other purposes, although it might also be prudent to provide that the State that had provided such information may refuse a request that the information be used for other purposes.

CJI/RES.II-14/95

THE JURIDICAL DIMENSION OF INTEGRATION AND INTERNATIONAL TRADE

(Resolution adopted at the regular session held on August 18, 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

BUILDING on the conclusions reached by the Committee regarding its study of "Methods for Settlement of Disputes in Regional and Sub-regional Integration and Free Trade Agreements", as set out in its Resolution CJI/RES.I-1/95;

HAVING CONSIDERED at its current session studies on "The Jurisdictional System for the Settlement of Disputes in the Andean Group" prepared by Dr. Alberto Zelada Castedo (document CJI/SO/II/doc.27/95) and on "The Settlement of Disputes in the Central American Common Market" by Dr. Mauricio Gutiérrez Castro (document CJI/SO/II/doc.42/95);

CONSIDERING that the General Assembly, in its Resolution AG/doc.3268/95, recommended that the Committee disseminate its studies on this subject;

IN VIEW OF the fact that the General Assembly, in the same resolution, urged the Committee to include in its studies consideration of "the most-favoured-nation principle and its application in the Americas, or other means of favoring the lesser developed countries";

NOTING that in its Interim Report to the Trade Ministers of the Hemisphere, dated June 30, 1995, the Special Committee on Trade stated its intention to initiate analysis of various issues identified in the Summit of the Americas Plan of Action in accordance with the areas defined by Trade Ministers, including dispute resolution, and encouraged the Committee to continue its analysis and to work closely with the Special Committee on Trade on topics of common interest;

TAKING ACCOUNT of the "Analytical Compendium of the Trade Agreements in the Hemisphere" prepared by the Trade Unit of the Secretariat (document CIES/CEC/doc.18/95), the report of the Committee's observer to the Second Meeting of the Special Committee on Trade (document CJI/SO/II/doc. 21/95), and the preliminary study on "The Most-Favoured-Nation Principle and its application in the Americas" prepared by the Department of Development and Codification of International Law of the Secretariat for Legal Affairs (document OAS/Gral. Sec. CJI/doc.10/95); and

HAVING REGARD to the fact that the progressive entry into force for most countries in the hemisphere of the *Final Act Establishing the World Trade Organization*, by establishing a new multilateral juridical framework for international trade in goods and services and trade-related investment and intellectual property measures, serves as a new benchmark for the achievement of free trade agreements in the Americas,

RESOLVES:

1. To incorporate the papers on "The Jurisdictional System for the Settlement of Disputes in the Andean Group" prepared by Dr. Alberto Zelada Castedo (document CJI/SO/II/doc.27/95) and on "The Settlement of Disputes in the Central American Common

Market" by Dr. Mauricio Gutiérrez Castro (document CJI/SO/II/doc.42/95) into its study of "Methods for Peaceful Settlement of Disputes in Regional and Sub-regional Integration and free trade Agreements".

2. To itself publish this study, as revised, with a view to disseminating it as widely as possible in accordance with the recommendation of the General Assembly.

3. To request members of the Committee serving as rapporteurs for studies on methods for settlement of disputes in regional and sub-regional integration and free trade agreements to update their reports as appropriate to take cognizance of new developments and experience under existing regimes as they occur.

4. To include in its agenda the subject of "The most-favoured-nation principle and its application in the Americas or other means of favoring the lesser developed countries" and to undertake an analysis of this matter covering the application of the most-favored-nation principle in:

a) the juridical framework of the multilateral trade regime under the GATT and World Trade Organization; and
b) the juridical frameworks of economic integration agreements and free trade agreements between countries in the hemisphere.

The study will take particular account of the orientation of the study on "The most-favoured-nation principle and its application in the Americas", prepared by the Department of Development and Codification of International Law of the Secretariat of Legal Affairs (document OAS/Gral. Sec. CJI/doc.10/95). The Committee designates as rapporteurs Drs. Jose Luis Siqueiros, Alberto Zelada Castedo and Jonathan T. Fried for this purpose.

5. To encourage the rapporteurs to circulate a first draft so that it might be considered by the Committee and by the Special Committee on Trade prior to the March, 1996 meeting of Ministers of Trade of the Hemisphere in Colombia; and

6. To request the Chairman of the Committee to inform the Chairman of the Special Committee on Trade and the Head of the Trade Unit of the Secretariat of this resolution, and to request that all relevant documents produced by the Trade Unit, the Advisory Committee to the Special Committee on Trade and the Special Committee on Trade be forwarded to the Committee as a matter of course, and to explore with them the subject of the various institutional structures established under economic integration and free trade agreements in the hemisphere, with a view to reporting back to the Committee at its next session on how the Committee might best frame its further work on this subject.

This Resolution was adopted unanimously at the August 18, 1995 regular session by the following members: Drs. Jonathan T. Fried, Alberto Zelada Castedo, Philip Telford Georges, Miguel Ángel Espeche Gil, Galo Leoro Franco, José Luis Siqueiros, Luis Herrera Marcano, Ramiro Saraiva Guerreiro, and Mauricio Gutiérrez Castro.

CJI/RES.II-15/95

HOMAGE TO DR. PHILIP TELFORD GEORGES

(Resolution adopted at the regular session
held on 21 August 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

WHEREAS:

As a member of the Inter-American Juridical Committee for four years, Dr. Philip Telford Georges has provided input of extraordinary value to the work of this agency, as the outcome of his wealth of experience in international affairs, as well as his experience as a "Commonwealth" Judge;

The term of office of Dr. Georges ends in December this year, and

In token of its gratitude for his admirable contribution to the efforts of this Committee;

RESOLVES:

1. To express its profound acknowledgment to Dr. Philip Telford Georges and wish him continued success in his activities;

2. To hand Dr. Philip Telford Georges the text of this Resolution signed by the Members of the Inter-American Juridical Committee.

This Resolution was unanimously approved during the session held on 22 August 1995, with the following members present: Drs. Jonathan T.Fried, Alberto Zelada Castedo, Miguel Ángel Espeche Gil, Luis Herrera Marcano, Ramiro Saraiva Guerreiro and Mauricio Gutiérrez Castro.

CJI/RES.II-16/95

BUDGET FOR THE BIENNIUM 1996-1997

(Resolution adopted at the regular session
held on August 22, 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

RECALLING its Program Budget proposals for the 1996-1997 biennium set out in its Resolution CJI/RES.II-18/94;

NOTING that in its resolution on the Program Budget of the Organization for the 1996-1997 Biennium, the General Assembly has approved a level of appropriation for the Committee larger than that anticipated by the Committee when planning its own Program Budget;

AFFIRMING its commitment to ensuring that its budget is administered in the most cost-effective manner possible so as to permit the Committee to fulfill the tasks entrusted to it under Chapter XV of the Charter in accordance with the priorities of the Organization; and

ACKNOWLEDGING that the proposed move of its headquarters to the Itamaraty Palace in the course of the 1996-1997 Biennium may require additional expenditures that cannot be foreseen at this time,

RESOLVES:

1. To allocate the additional funds resulting from the appropriation by the General Assembly in accordance with the following order of priorities, subject to the requirement for reallocation of these funds in connection with the proposed move of its headquarters to the Itamaraty Palace:

a) publication and dissemination of its study on "Methods for settlement of disputes in regional and sub-regional integration and free trade agreements" in accordance with General Assembly Resolution AG/doc. 3268/95, paragraph 3;

b) publication and distribution of its report on "Protection and guarantees for judges and lawyers in the exercise of their functions" in accordance with General Assembly Resolution AG/doc. 3268/95, paragraph 5;

c) publication and distribution of its report and resolution on "Democracy in the Inter-American System", in accordance with Committee Resolution CJI/RES.II-12/94;

d) publication of the Reports and Recommendations of the Committee since 1990 in Spanish, and since 1987 in English, in accordance with Committee Resolution CJI/RES.II-18/94;

e) publication of the volumes corresponding to the lectures given in the 1992, 1993, 1994, 1995, 1996 and 1997 Courses on International Law, in accordance with Committee Resolution CJI/RES.II-20/94, the video-taping and distribution of cassettes of the lectures given in the 1996 and 1997 Courses, and the preparation of a handbook of basic materials for students of the Course;

f) provision for translation of the 1996 and 1997 Annual Reports into all official

languages of the Organization;

g) to keep in reserve the sum of US$ 10,000 for promoting dissemination and discussion of appropriate norms to enhance the reliability and stability of securities markets of the member States, in accordance with General Assembly Resolution AG/doc. 3268/95, paragraph 4 and with Committee Resolution CJI/RES.II-10/95;

h) acquisition of juridical periodicals and books to rehabilitate the library of the Committee, in accordance with its previous requests on this subject;

i) upgrading of computer hardware and software at the headquarters of the Committee to ensure its full compatibility with equipment and programs installed at the headquarters of the Organization;

j) additional travel by representatives of the Committee to coordinate activities with the Special Committee on Trade and its Advisory Committee;

k) additional travel by members of the Committee to strengthen links with other international government and non-governmental organizations in the area of international law, in accordance with the Committee's resolution on "Cooperative relations" (CJI/RES.II-10/94); and

l) funding of short-term consultantcy contract positions in the Department of Development and Codification of International Law of the Secretariat for Legal Affairs to permit the Department to provide the necessary analytical support to the Committee.

2. To request the Chairman of the Committee to forward the text of this resolution to the Secretary for Management and the Secretary for Legal Affairs with the request that it be implemented by appropriate organs of the Organization.

This Resolution was adopted unanimously at the August 22, 1995 regular session by the following members: Drs. Jonathan T. Fried, Alberto Zelada Castedo, Philip Telford Georges, Miguel Ángel Espeche Gil, Luis Herrera Marcano, Ramiro Saraiva Guerreiro, and Mauricio Gutiérrez Castro.

CJI/RES.II-17/95

JURIDICAL ASPECTS OF FOREIGN DEBT

(Resolution adopted at the regular session
held on 22 August 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

AS the Rapporteur for this topic, Dr. Miguel Ángel Espeche Gil presented a fresh Report during this regular sessions period on the progress of the project to bring international juridical aspects of foreign debt before the International Court of Justice by means of a consultative opinion, accompanied by the most recent bibliography and a graph showing the current amounts of foreign debt owed by the Latin American nations according to data produced by the World Bank and CEPAL (CJI/SO/II/doc.22/95);

CONSIDERING the interchange of views on this matter as well as the convenience of continuing the study thereof on the basis of the developments in this matter at the international level;

RESOLVES:

1. To study the Report submitted by the Rapporteur and the Annexes thereof;

2. To keep this topic on its Agenda in order to continue with the study thereof.

This Resolution was approved during the regular session held on 22 August 1995, with the following members present: Drs. Jonathan T.Fried, Philip Telford Georges, Miguel Ángel Espeche Gil, Luis Herrera Marcano, Ramiro Saraiva Guerreiro and Mauricio Gutiérrez Castro.

Dr. Alberto Zelada Castedo abstained from voting.

CJI/RES.II-18/95

XXIII INTERNATIONAL LAW COURSE

(Resolution adopted at the regular session
held on August 22, 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

RECALLING its Final Report on the XXI Course on International Law (document JI/SO/II/doc. 67/94);

NOTING that in its resolution on the Annual Report of the Committee (document AG/doc. 3268/95), the General Assembly reiterated the importance of the International Law Course;

ACKNOWLEDGING with gratitude the support provided by the Department of Development and Codification of International Law of the Secretariat for Legal Affairs and by Professor Daniela Trejos Vargas, local assistant to the coordination, in the administration of the XXII Course on International Law;

HAVING CONSIDERED at its current session the observations of its Working Group on the Course established pursuant to its Decision CJI/DI.I-1/95, an Aide Memoire presented by the Department of Development and Codification of International Law of the Secretariat for Legal Affairs, and an evaluation of the XXII Course presented by Professor Daniela Trejos Vargas; and

REAFFIRMING its commitment to ensuring that the Course on International Law continues to offer the opportunity to students from member States to study in depth and in an integrated manner topical subjects in the field of international law in the Americas and that the Course is properly publicized and its materials widely disseminated, while ensuring the budget for the Course is administered in the most cost-effective manner possible,

RESOLVES:

1. To hold the XXIII Course on International Law in Rio de Janeiro centred on the theme of "The Administration of Justice and International Law" in accordance with the guidelines for possible topics attached as an Annex to this Resolution.

2. To request the Secretariat for Legal Affairs to undertake the following tasks and to provide a progress report to the Committee at its next session:

a) to investigate and advise on whether the relevant rules of the Organization would permit students who meet appropriate admission criteria and who are able and willing to pay the costs of tuition to attend the Course in addition to those students who receive scholarships;

b) to investigate and advise on whether the relevant rules of the Organization would permit the Committee to offer places at the Course to students who meet the appropriate admission criteria from organizations or institutions that provide special services, such as library privileges, audio-visual equipment, or lecture rooms, to the Committee for the Course;

c) to design, print and distribute a poster advertising the XXIII Course, including its

keynote theme and instructions for obtaining further information;

d) to compile and distribute to the students enrolled in the XXIII Course a basic handbook of international law materials, reference documents, and lecture papers provided by professors;

e) in collaboration with the Department of Scholarships, to ensure that the selection of scholarship students for the XXIII Course is made, and that all available logistic and related information (including a recommendation to bring material relevant to the topics of the Working Groups) is distributed to them, as far in advance of the Course as possible.

3. To instruct the Secretary of the Committee to undertake the following tasks and to provide a progress report to the Committee at its next session:

a) creation of a computerized data base containing:

i. the names of all course students, by country, legal specialty (if known), date of participation, last known telephone and fax numbers, and last known address;
ii. the names of all lecturers, by country, legal specialty, topic of lecture, last known telephone and fax numbers, and last known address;
iii. all course materials used, indexed by subject-matter and by year; and
iv. all lectures published for which there are transcripts on file, by subject and by year;

b) obtaining audio-visual equipment to permit the taping of the XXIII Course and the making of video-cassettes for distribution in member States; and

c) identifying the possibility of changing the course location to elsewhere in Rio de Janeiro with the objectives of providing greater interaction with the local legal and academic communities, better library facilities, and significantly reduced costs.

ANNEX

XXIII COURSE ON INTERNATIONAL LAW
POSSIBLE TOPICS

THE ADMINISTRATION OF JUSTICE AND INTERNATIONAL LAW

1. Justice and international law
   - 1.1 The concepts of justice and equity in international law
   - 1.2 The peaceful settlement of disputes, with particular emphasis on the Inter-American System
   - 1.3 The administration of justice of general jurisdiction: The International Court of Justice º
   - 1.4 The interpretation of treaties

2. International human rights
   - 2.1 The International Covenant on Civil and Political Rights and the Human Rights Committee º
   - 2.2 The European Court of Human º
   - 2.3 The Inter-American Human Rights Commission and Court for Human Rights º

3. International crimes and courts
   - 3.1 The proposed Draft code of offences against the peace and security of mankind and the proposed international criminal court (International Law Commission) º
   - 3.2 UN War Crimes Tribunals for the former Yugoslavia and Rwanda

4. International aspects of criminal law
   - 4.1 Mutual legal assistance in criminal matters, extradition, and transfer of offenders in the Americas
   - 4.2 Current problems in respect of corruption (OAS Working Group) º
   - 4.3 Current problems in respect of terrorism ●

5. International trade law and integration regimes
   - 5.1 The GATT/OMC System ●
   - 5.2 NAFTA and the G-3 ●
   - 5.3 The Andean Court of Justice ●
   - 5.4 The Court of Justice of the European Union º
   - 5.5 The Central American Court of Justice ●

6. International commercial matters
   - 6.1 Private arbitration: UNCITRAL º
   - 6.2 Private arbitration: The International Chamber of Commerce º
   - 6.3 Mixed Investment Arbitration: ICSID and Bilateral Investment Treaties º

7. Specialized tribunals and mechanisms for the settlement of disputes
   - 7.1 The Law of the Sea Tribunal º
   - 7.2 Administrative Tribunals in the Inter-American System (IADB, OAS)
   - 7.3 The UN System: Administrative Tribunal, ILO, etc.
   - 7.4 The Argentina-Uruguay Tribunal on the Salto Grande

8. Improving the administration of justice in the Americas

8.1 Guarantees and protection for judges and lawyers in the exercise of their functions ●
8.2 The application of international law in domestic courts
8.3 Technical Legal Assistance (e.g., IBRD, IADB) ●

● Lecture by a member of the Inter-American Juridical Committee
o Costs of participation to be borne by corresponding institution

This Resolution was adopted at the 22 August 1995 regular session by the following members: Drs. Jonathan T. Fried, Philip Telford Georges, Miguel Ángel Espeche Gil, Luis Herrera Marcano, Ramiro Saraiva Guerreiro and Mauricio Gutiérrez Castro.

Dr. Alberto Zelada Castedo abstained from voting.

CJI/RES.II-19/95

INTER-AMERICAN COOPERATION TO COPE WITH TERRORISM

(Resolution adopted at the regular session held on 23 August 1995)

THE INTER-AMERICAN JURIDICAL COMMITTEE,

WHEREAS:

The Declaration of Belém do Pará approved at the XXIV regular sessions period of the General Assembly of the O.A.S. on 6 June 1994 states that "terrorist acts, methods and practices in all their forms and manifestations, and which in some countries of the Hemisphere are linked to the illegal drug trade, are activities whose purpose is the destruction of human rights, fundamental freedoms and democracy ... ";

The request of the Commission for Juridical and Political Affairs of the O.A.S., approved in a session held on 26 September 1994, covering the informative document issued by the Secretary-General on 28 October under the title "Background to Terrorism within the Sphere of the O.A.S.," (CP/CAJP-978/94, 2 November 1994), to which the current state of the ratifications of the Convention of Washington (1971) was later added, as well as an Annex on "Universal Conventions on Terrorism: Signatures and Ratifications by the Member-States of the Organization of American States" (CP/CAJP-983/94, 18 November 1994);

The Declaration of Principles of the Americas Summit (Miami, December 1994) under the title "Condemnation of Terrorism in all its Forms" in which the Heads of State and Government affirmed: "Using all legal methods, we will combat terrorist acts everywhere and in America with unity and vigor";

The Declaration of Montrouis: A new view of the O.A.S., approved during the XXV regular sessions period of the General Assembly of the O.A.S. on 7 June 1995, which declares in Item 22 that "terrorism constitutes a serious criminal phenomenon that is of deep concern to all the Member-States, which has devastating effects on civilized living together and democratic institutions, as well as on the lives, safety and assets of persons", and this same Assembly summoned a Specialized Inter-American Conference on Terrorism to be held during the first half of 1996 (AG/doc.3292/95);

WHEREAS:

During its August 1994 regular sessions period the Committee included the topic of "Inter-American Cooperation to Cope with International Terrorism" on its Agenda, at the suggestion of Dr. Miguel Ángel Espeche Gil, who was appointed Rapporteur;

During its March 1995 regular sessions period held in Washington D.C., it heard a presentation on this topic by Ambassadress Beatriz Ramacciotti, Permanent Representative of Peru to the O.A.S. and Chairman of the Working Group on Terrorism, who made another presentation during this August regular sessions period, on which occasion the Committee also studied the Report submitted by the Rapporteur (CJI/SO/doc.4/95) and during which a broad-ranging interchange of ideas took place;

TAKING INTO ACCOUNT:

That for the purposes of the treatment of this topic an interchange of information between the Working Group on Terrorism set up by the Permanent Council and the Committee is both useful and necessary, in order to obtain as far as possible the elements for establishing agendas for international cooperation on the prevention and repression of this scourge at the Hemisphere level, without adversely affecting respect for Human Rights;

That in addition to the valuable documentation already provided by the Secretary-General, it will be necessary to have information on national legislations in effect on this topic;

That it is necessary to establish certain prior conceptual principles with regard to the crimes covered by the term "terrorism" and the appropriate juridical classification thereof in order to later establish the most suitable means - either under Convention or of some other type - for the prevention and repression thereof;

RESOLVES:

1. To keep this topic on its Agenda under the title of "Inter-American Cooperation top Cope with Terrorism".

2. To commission the Rapporteur to prepare for the next sessions period a Report focused on:

   a) the definition of terrorist acts

   b) the possibility of considering such terrorist acts as crimes against humanity, international crimes, or serious common crimes.

3. To recommend to the Rapporteur that he should take into account the documents prepared by the Working Group on Terrorism, among others, as well as relevant studies such as that prepared by the United Nations International Law Commission on the Draft Code covering crimes against the peace and safety of Humankind and the legislations of the Member-States, as well as others linked to this topic.

This Resolution was approved unanimously during the regular session held on 23 August 1995, with the following members present: Drs. Jonathan T.Fried, Alberto Zelada Castedo, Philip Telford Georges, Miguel Ángel Espeche Gil, Luis Herrera Marcano, Ramiro Saraiva Guerreiro and Mauricio Gutiérrez Castro.

PART III

DOCUMENTS

CJI/SO/I/doc.3/95
14 February 1995
Original: Spanish

INTERNATIONAL COOPERATION TO SUPPRESS CORRUPTION IN AMERICAN COUNTRIES

(Report of the Rapporteur, Dr. Miguel Ángel Espeche Gil)

The topic of "International Cooperation to Suppress Corruption in American Countries" was placed on the agenda of the Inter-American Juridical Committee in 1992 at the request of then member Dr. Jorge Reinaldo Vanossi, rapporteur designate, who presented an initial report. The topic continued on the agenda, and in the sessions of August 1994 the Committee considered a draft recommendation with guidelines for the drafting of domestic legislation and international agreements, presented by Drs. Luis Herrera Marcano and Miguel Ángel Espeche Gil, which was not approved by the Committee.

This problem is seen in two spheres: on the one hand, that of the states in which corrupt practices are engaged in which are to be prevented and suppressed, in their international aspect as well when corrupt acts are committed in more than one state or it is sought to evade the justice of one state, and, on the other hand, those committed in international organizations, in relation to which there arises the difficulty of determining the applicable criminal law and the jurisdiction and competence to try the perpetrators. The latter problems have been addressed in the United Nations.

On April 21, 1994, the Permanent Mission of Chile sought and obtained inclusion of the topic "Probity and Civic Ethics" on the agenda of the XXIV regular session of the General Assembly. This new heading covers the same range of topics addressed by the Committee under the heading of "Corruption."

It is evident that this type of crime is a worldwide phenomenon. Last year the Organization for Economic Cooperation and Development (OECD) approved recommendations for the elimination of bribery and corruption in international business. The recommendation makes bribery an international crime and urges the 24 OECD member countries to institute legal proceedings for unlawful acts of their nationals, wherever they are committed. This instrument also covers the adoption of measures in civil, administrative and tax law and seeks transparency in banking and accounting transactions and in government procurement.

The Assistant Secretary for Economic Affairs of the OECD has stated that, while in Germany bribery has long been illegal, it is nevertheless permissible to deduct it as a legitimate business cost for tax purposes.

According to the OECD, bribery has become a serious problem in the nine member countries of the Commonwealth of Independent States (CIS) and in developing countries. The only exception, it said is the United States, which has adopted laws specifically against the bribery of foreign officials, and in 1988 approved a law against corrupt practices abroad.

These subjects are addressed primarily in two areas: one, domestic legislation that suppresses corrupt acts (or those contrary to "probity and civic ethics"), which usually takes the form of collusion between government officers and domestic and foreign private enterprises, and the other international judicial cooperation agreements for the effective suppression of these

unlawful acts. In a recent speech in Buenos Aires (February 14, 1995) OAS Secretary General Dr. César Gaviria referred to the need for improved international judicial cooperation in this area and that of international terrorism.

In its XXIV Regular Session at Belém do Pará, on June 10, 1994, the General Assembly adopted a resolution (OEA/Ser.P, AG/DOC.3160/94) instructing the Permanent Council to set up a Working Group to study the subject of "Probity and Civic Ethics," which will compile and study the current national laws on public ethics, examine the experiences of control and oversight of existing administrative institutions, make an inventory of the offenses against public ethics that are covered by the national laws, and frame recommendations on juridical mechanisms for control of the problem with full respect for the sovereignty of the member states.

The resolution also directs that the Permanent Council present a report and the recommendations framed by the working group to the General Assembly at its XXV regular session.

The preamble to that resolution considers:

> "that the Inter-American Juridical Committee, aware of the importance of the problem of corruption, included the topic 'Juridical Approach to Corruption in America' on its agenda for the session of August 1994."

That preamble also notes that corruption is a problem both in developed and developing countries.

The Government of Venezuela presented a draft Inter-American Convention Against Corruption, which has been submitted to the member states for consideration.

It should also be noted that this issue was mentioned in the "Declaration of Principles" of the "Americas Summit" held in Miami on 9-11 December 1994, stating: "*effective democracy requires an attack on corruption as a factor in social disintegration and distortion of the economic system that supports political institutions*".

We feel that there is some overlapping of tasks within the OAS. In order to economize on effort and resources but without halting the Committee's studies of this issue, it might thus be convenient to await the results of the Working Group of the Permanent Council, at which stage, in the exercise of its basic responsibility of serving the Consultative Body of the Organization in juridical affairs and with the broadest possible technical autonomy granted it under Article 108 of the Charter of OAS, it will analysis these results within its sphere of competence.

CJI/SO/I/doc.4/95
17 February 1995
Original: Spanish

INTER-AMERICAN COOPERATION FOR COPING WITH INTERNATIONAL TERRORISM

(presented by Dr. Miguel Ángel Espeche Gil)

The rapporteur requested that the subject “Inter-American Cooperation for Coping with International Terrorism” (CJI/SO/II/doc.30/94 rev. 1, August 10, 1994) be placed on the agenda of the CJI on the following grounds:

> "The recent terrorist attacks in Argentina, Panama and Great Britain compel acceptance of the commanding necessity to assembly the means for the prevention and suppression of this scourge by the international community.
>
> The transnational nature of this crime requires the establishment of proper intergovernmental cooperation, which requires an updating of the provisions of conventions.
>
> In the inter-American sphere the subject is of long standing, and found expression in the Washington Convention of 1971, based on the much more comprehensive CJI draft.
>
> I propose that the Committee take up again the question of international terrorism, put it back on its agenda, and prepare a new draft based on the afore-cited instruments, amended to suit the new situation."

The Committee examined a report of the rapporteur (CJI/SO/II/doc.47/94, August 18, 1994), which summarized the treatment of the problem by the organs of the hemisphere and provided a basis for the study of a course of action to enhance the effectiveness of the response of the countries of the inter-American system to the terrorist operations carried out in the recent past in our hemisphere.

In the discussion, which resulted in placement of the topic on the agenda, several points were raised, including the real or apparent difficulty of classifying acts of terrorism. A rough description of the problem was outlined in approximately the following terms: cross-border terrorism, which consists in acts that constitute serious crimes against persons and property by means produced, organized and financed in one or more countries and committed in another country or countries with or without local support, whatever religious or ideological motivations are alleged for them.

It may be mentioned that the present paper takes into account that the Committee, in the session of August 1994, in which it decided to place the topic on its agenda, felt that to define its role in this matter it should defer consideration thereof until the meeting in March 1995, which would also give time for any decisions of the Permanent Council.

The fact that terrorism, a historical and now a worldwide phenomenon, has found such virulent expression in our hemisphere has placed it on the agendas of several agencies and earned it renewed and deserved condemnation in forums of the inter-American system. In addition, many documents have linked it to drug trafficking and human rights violations. Moreover,

it is not always easy to separate the legal aspects from the political and institutional.

The linkage between terrorism and human rights is attested in, among other documents, the operative part of the Annual Report of the Inter-American Commission on Human Rights and special reports on the human rights situation (OEA/Ser.P, AG/doc.3134/94, June 10, 1994):

> "23. To reiterate its most vehement condemnation of all forms of terrorism, whoever their perpetrators and whatever their modalities, to repudiate the grave consequences of those acts, whose object is the destruction of human rights and fundamental liberties, and to recommend to the Inter-American Commission on Human Rights that it continue to report on the matter referred to in paragraph (c) of resolution AG/RES.1112 (XXI-O/91) "Recommendations of the Inter-American Commission on Human Rights," for which purpose it must take account of the information supplied by the members, among other material.
>
> 24. To express its profound sorrow over all the innocent victims of terrorism and other acts of indiscriminate and arbitrary acts of violence, for which there can be no justification in any circumstances."

It also has to be borne in mind that the Committee on Juridical and Political Affairs has recommended to the Permanent Council that it reiterate its request to the member states that have not yet done so, to the Inter-American Juridical Committee and the Inter-American Commission on Human Rights that they send in as soon as possible their observations on paragraph (c) of the item on recommendations to the organs of the Organization in the resolution "Strengthening of the OAS in Matters of Human Rights" so as to consider the adoption of mechanisms for combatting the operations of irregular armed and terrorist groups (26 September 1994). On October 26, 1994, the Permanent Council found that the only response to the inquiry had been received from the Government of Ecuador, and it decided to renew the request, without prejudice to the continuing study of the topic in the Commission.

The Declaration of Belém do Pará, approved by the General Assembly of the OAS in its XXIV Regular Session on June 6, 1994, states as follows:

> "RECOGNIZING that terrorist acts, methods and practices in all their forms and manifestations, in some countries of the hemisphere linked to the illicit traffic in drugs, are aimed at the destruction of human rights, fundamental liberties, and democracy;..."

The VIII Summit of Heads of State and Government of the Group of Rio, convened in Rio de Janeiro on September 9 and 10, 1994, stated that:

> "We vehemently condemn all terrorist attacks, and in particular those recently perpetrated in our region, and we call upon the international community to fight this scourge. We accordingly reaffirm the importance of the extradition treaties ratified by our countries and of the action of their respective judicial branches."

In the “Declaration of Principles” of the Summit of the Americas (Miami, December 1994) “Condemnation of Terrorism in all its Forms”, the heads of state and government affirmed that "we will fight terrorist acts everywhere in America with unity and vigor and by every legal means".

In a meeting held in Buenos Aires in February 1995 the Secretary General of the OAS, Dr. Gaviria, said that to fight against terrorism and corruption it is necessary to improve international

judicial cooperation.

In the Permanent Council of the Organization of American States terrorism is a priority topic. In its meeting of September 26, 1994, the Council's Committee on Juridical and Political Affairs asked for and received from the General Secretariat an information document dated October 28 on the solutions adopted by the General Assembly on "some aspects of terrorism, attacks on persons, and associated extorsion."

This document (OEA/Ser.G, CP/CAJP-983/94, 18 November 1994, Original: Spanish), with the title of Background on Terrorism in the Sphere of the OAS, contains, obtained in the Portuguese version, in addition to an update on the subject for the Committee on Juridical and Political Affairs, the present status of ratifications of the Washington Convention of 1971 and an annex on Universal Conventions on Terrorism; Signatures and Ratifications by the Member States of the Organization of American States.

As noted above, the Summit of the Americas at Miami charted objectives for the war on terrorism. The agencies of the inter-American system will have to gear their operations to those objectives if they are to act in concert and effectively.

In the regular session of the Permanent Council, held on January 11, 1995, the Secretary General referred to this fact in his inaugural address:

> "There are a great many tasks of democracy for which we already had mandates, and we also have new mandates given us by the Summit of Presidents. We have all our current tasks for the monitoring of elections, and now we have highly specific mandates in matters of drug trafficking, terrorism and corruption, in a fairly broad consensus that the Organization has a much more active role to play in the strengthening of democracies, especially the most vulnerable of them".
>
> "...And so, in the understanding that my responsibility is that of advancing proposals and searching intently for proposals for a reorientation of the Organization, I will try to make the most of all the far-reaching knowledge of yourselves, your foreign offices and your countries, to see how we can discharge to the full the political mandate handed down from the Summit of the Americas."

The world conventions signed by countries of the inter-American system which condemn different forms of terrorism as international crimes are (**In**: Universal Conventions on Terrorism - OEA/Ser.G, CP/CAJP-983/94, 18 November 1994).

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. New York, December 14, 1973. (In force since February 20, 1977)

2. International Convention against the Taking of Hostages. New York, December 17, 1979. (In force since June 3, 1983)

3. Convention on Offenses and Certain Other Acts Committed on Board Aircraft. Tokyo, September 14, 1963. (In force since December 4, 1969)

4. Convention for the Suppression of Unlawful Seizure of Aircraft. The Hague, December 16, 1970. (In force since October 14, 1971)

5. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Montreal, September 23, 1971. (In force since January 26, 1973)

6. Convention on the Physical Protection of Nuclear Materials. Vienna, March 3, 1980. (In force since February 8, 1987)

7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Used by International Civil Aviation additional to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Montreal, February 24, 1988. (In force since August 6, 1989)

8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. Rome, March 10, 1988. (In force since March 1, 1992)

9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Built on the Continental Shelf. Rome, March 10, 1988. (In force since March 1, 1992)

10. Agreement on the Marking/Labeling of Plastic Explosives for Purposes of Detection. Montreal, March 1, 1991.

In different spheres attempts have been made at the prevention and suppression of different forms of terrorism through international agreements in the United Nations, specialized international agencies, the inter-American system, the European Community, groups of Asian countries, and bilateral agreements. In that of the United Nations the ideological confrontation of the cold war prevented progress in this area, blocking a total condemnation of terrorist practices by "justifying" measures of this kind as purportedly grounded in political considerations.

The situation in the inter-American sphere is described in the documents of annexes I and II.

In tracing the pattern of international rules in this area, Professor González Lapeyre1/ holds that the European system is the most and complete and effective. The European Convention on the Suppression of Terrorism, which was signed in Strasbourg on January 27, 1977, and entered into force on August 4, 1978, contains no explicit definition of terrorism, but does say which crimes may not be described as political or inspired in political motives to evade extradition. This kind of classification by exclusion is quite imaginative and useful, and takes the place of a definition.

Article 1 of the Strasbourg Convention reads as follows:

> "For purposes of extradition between the High Contracting States, none of the following crimes shall be considered to be a political crime, a crime linked to a political crime, or a crime inspired in political motives:
>
> a) a crime coming under the Convention for the Suppression of the Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;
> b) a crime coming under the Convention for the Suppression of Unlawful Acts against Civil Aviation, signed in Montreal on September 23, 1971;
>
> c) a serious crime involving an attack on the life, the physical integrity or the

1 González Lapeyre, Edison. *El Terrorism y el Derecho Internacional*, p. 910-944. *Liber Amicorum* en homenaje al Profesor Eduardo Jiménez de Aréchaga. v. II. Montevideo: Fundación de Cultura Universitaria, 1994.

liberty of internationally protected persons, including diplomatic agents;

d) a crime involving abduction, the taking of hostages, or aggravated and unlawful detention;

e) a crime involving the use of a bomb, grenade, rockets, automatic weapons, or explosive post cards and postal packages, when persons are endangered;

f) the attempt to commit any of the crimes referred to above or participation in them as an accomplice of a person who commits or attempts to commit any of those crimes."

Article 2 says that, for purposes of the Convention, neither "a serious crime involving an act of violence not covered by article 1 against the life, physical integrity or liberty of a person" (subpar. 1) nor "a serious crime involving an act against property not covered by article 1 if that act presents a collective danger to persons (subpar. 2), nor any attempt to commit those acts and complicity in them (subpar. 3), may be regarded as a political crime or a crime inspired in political motives. The cited extradition treaties in force among the parties are amended by article 3 of this Convention in all matters in which they are inconsistent with it.

To strengthen judicial cooperation in the fight against terrorism, on December 4, 1979, the member states of the European Communities signed a complementary agreement in Dublin.

According to González Lapeyre,2/ the Strasbourg Convention "has been subjected to very harsh criticism, in particular from the sectors that accept terrorism when practiced for the accomplishment of certain political goals... While some of the criticisms leveled against it are valid, the Convention has the merit of having codified in one text, for the countries of the European Council, the provisions of Montreal, Tokyo and The Hague, and of the United Nations Convention in matters of the protection of diplomats and of having classified as offenses extraditable in all cases the abduction of persons and taking of hostages, and the sending of explosive postcards and postal packages."

Accession to this Convention is, regrettably, confined to European countries. It is to the credit of the Washington Convention of February 2, 1971, on the prevention and suppression of terrorist acts that it may be acceded to by, in addition to all the OAS member states, "any other member state of the UN or of any of its specialized agencies, or any other state party to the Statute of the International Court of Justice, or any other state that is invited to sign it by the General Assembly of the OAS" (Art. 9).

The result that the Committee now seeks -as has been said from the first- is a definition of its role in the consideration of this matter in accordance with the decisions of its session of August 1994.

Since part of the doctrine leans toward the solution provided in the Strasbourg Convention in relation to criminal acts and extension of the application of extradition, it would be appropriate to include among the points to be discussed by the Committee whether the oas member countries should be allowed to accede to the European Strasbourg Convention, or whether its articles 1 and 2 should be made cornerstones of a new anti-terrorism treaty for the inter-American system. The

2 González Lapeyre, Edison. *Ibid.*, p. 940.

fact that terrorism knows no boundaries and has become intercontinental, as police investigations of several acts (such as that against the Twin Towers in New York City) have been showing, suggests the advisability of having instruments of worldwide scope or, at least in a first stage, of this proposal for adoption of the rules of the Strasbourg Convention for our hemispheric system.

Account will also have to be taken of the links between terrorism, human rights and drug trafficking, already mentioned in documents of the inter-American system. Also meriting consideration are other points noted by Prof. González Lapeyre:[3]

> "1) The restriction of information when it has the effect of encouraging terrorist acts...
>
> 2) The responsibility of government when it has not properly performed its function of maintaining domestic order and preventing acts of terrorism...
>
> 3) The use of diplomatic immunity for purposes of terrorism is also a source of controversy when there are states that have perpetrated or concealed acts of terrorism under the cloak of the diplomatic immunities enshrined in the Vienna Convention of 1961."

Another central issue of terrorism is that of the criminal laws of the different countries for the prevention and suppression of this scourge and their relationship to the desired international cooperation in this struggle. Professor Pérez Montero is singularly lucid on this matter:

> "As the problem of terrorism has grown increasingly acute in recent decades, provisions for combatting it and for the prosecution and punishment of terrorists have been enacted in the domestic law of the different states. A study comparing the laws in this area would be of great interest, but I have no knowledge of any"...
>
> "In discourse on the prevention and suppression of terrorism in national law it is well to note that both doctrine and agreements between states recommend for the proper punishment of terrorism, that the punishment be provided in the legislation of each state. Hence it is in domestic law that a guiding principle for the description of the crimes in this area is best arrived at. Moreover, these crimes should not be established in special laws as though these crimes were regarded as transient and fleeting, and must not be included in Criminal Codes, for, as has been said, terrorism is violence and political violence, and its causes are rooted "in the very nature of man and in sociopolitical reality itself." Hence the struggle against it must be a continuing one, and to wage it measures must be taken to combat it as a manifestation both of subversion and of crime, to prevent it, suppress it, and identify its perpetrators. As a crime, a political-criminal procedure of legislative technique must be adopted to reduce acts of terrorism to purely common crime, stripping them of any political or ideological implication. For this reason, too, measures for suppressing it and identifying its perpetrators must be enacted in ordinary legislation. If consideration is given to reasons of criminal policy that advise waiving political motives, the crime of terrorism is greatly simplified, and its structure is reduced with the equating of political and common terrorism."

3 González Lapeyre, Edison. *Ibid*., p. 941-943.

These ideas suggest the utility of the Secretariat of Legal Affairs' making a compilation (needed to continue the study of the subject) of domestic legislation for the suppression of terrorism in the countries of the inter-American system.

As a working hypothesis and immediate contribution to the Permanent Council and to the work of its Committee on Juridical and Political Affairs, another subject is proposed for consideration by the Committee: the applicability of the Inter-American Treaty of Reciprocal Assistance at the present stage of the terrorist aggression to which our continent is being subjected (see Annex III). The deterrent and preventive effect of coordinated action by the intelligence and security agencies of the countries in the hemisphere, organized by the Organ of Consultation -among other possible actions- can be more effective than the toothless individual efforts of countries victims of terrorism and than the willingness of the countries of the system to cooperate, but without a legally constituted structure for the purpose. The primary purpose of this proposal is to prevent and deter terrorism, which is more urgent than suppressing it.

It is, then, for the Committee to decide among the several approaches to a study of the matter presented above. It is proposed, lastly, that the Committee define its role at this stage in the evolution of the problem, and that in doing so it address the following subjects:

Firstly: an analysis of the possibility of accession to or adoption of the European Convention on the Suppression of Terrorism (Strasbourg, 1977) and its Complementary Agreement (Dublin, 1979) for the strengthening of judicial cooperation.

Secondly: the applicability of the Inter-American Treaty of Reciprocal Assistance to acts of terrorist aggression in the OAS member states.

Thirdly: an analysis of the documents produced by the Permanent Council and its Committee on Juridical and Political Affairs.

Fourthly: keeping in mind for a subsequent stage items 1), 2) and 3) in Professor González Lapeyre's study, cited on page 12, above.

These are the opening proposals for discussion in the Committee.

Annexes:

I Antecedentes sobre o tema "terrorismo" no âmbito da OEA - (OEA/Ser.G, CP/CAJP-978/94, 2 Noviembre 1994.. Original: Português/español)

II Convenciones Universales sobre terrorismo - (OEA/Ser.G, CP/CAJP-983/94, Original: español)

III Inter-american cooperation for coping with international terrorism (CJI/SO/II/doc.47/94, 18 August 1994, Original: Spanish)

CJI/SO/II/doc.19/95
14 July 1995
Original: Spanish

**REPORT OF THE OBSERVER OF THE
INTER-AMERICAN JURIDICAL COMMITTEE OF THE OAS
TO THE INTERNATIONAL LAW COMMISSION OF THE
UNITED NATIONS ORGANIZATION**
(presented by Dr. Eduardo Vío Grossi)

1. As stated in the Final Minutes of the first regular sessions period of the Inter-American Juridical Committee of the Organization of the American States, dated 24 March 1995, the undersigned was appointed the Observer of this Organization to the International Law Commission of the United Nations Organization.

2. In compliance with this mandate, the Observer could attend only the sessions of the International Law Commission held on 27-30 June 1995, at the Palace of Nations, Geneva, Switzerland.

3. In compliance with a decision of the Chairman of the International Law Commission, the Inter-American Juridical Committee Observer spoke on Thursday 29 June 1995 at midday.

4. The text of his presentation is transcribed below.

"Mr. Chairman and Members of the
International Law Commission:

In continuation of a fruitful tradition, I have the privilege of participating as an Observer, on behalf of and representing the Inter-American Juridical Committee in the sessions of this Commission. Consequently, I will also have the honor of bearing the results achieved here to the next session of the Committee, to be held in August at its head-offices in Rio de Janeiro.

The links between the Inter-American Juridical Committee and the International Law Commission have always been close. And this is certainly due to the similarity in functions assigned to both these Organizations. This is why it does not seem strange, but rather very natural, that several people who have been members of the Committee have also been appointed to the Commission. This is the case of two distinguished Latin-American jurists, formerly members of the Committee and currently members of the Commission. I refer to Ambassador Edmundo Vargas Carreño and Dr. Francisco Villagrán-Kramer. There is no doubt that they, more than I myself, can bear witness to the Commission of the efforts undertaken by the Inter-American Juridical Committee since 1906, the oldest agency still in action within the inter-American system, doing its utmost to foster the progressive development and codification of international law.

This is why I will limit this presentation to a brief outline of the current efforts of the Inter-American Juridical Committee.

Mr. Chairman,

During its first regular sessions period this year, held in Washington, D.C., the headquarters of the Organization of the American States, of which it is a part, the Inter-American Juridical Committee approved one decision and eight resolutions.

The decision covers the International Law Course held annually in parallel to the August

sessions of the Committee in Rio de Janeiro, with the cooperation of the Getúlio Vargas Foundation. The above-mentioned decision set up a working group responsible for organizing this course, with the participation of the Under-Secretariat for Juridical Affairs of the OAS.

However, the relevance of this decision, apparently of an administrative order, is found in the spirit behind it. The International Law Course has been held for just over twenty years. Its participants as students include functionaries of the Chancelleries of the OAS Member-States, as well as lecturers and professors from various Universities all over the Americas. The teaching is handled not only by the members of the Inter-American Juridical Committee but also by guest lecturers invited thereby, as well as representatives of other international organizations. The purpose of the Course is to provide an update on matters of international law, rather than enter into in-depth studies of these issues.

With this accumulation of experience, it was found necessary to carry out an analysis of the situation through the above-mentioned Working Group, and consequently undertake the actions needed to upgrade this Course, placing it to an increasingly efficient extent at the timely service of the development of international law in the Americas. There is not the slightest doubt that the cooperation of the International Law Commission in this matter, through the participation in the next International Law Course of Dr. Carlos Calero Rodrigues and Dr. Edmundo Vargas Carreño is highly appreciated and welcomed with sincere thanks.

The Resolutions may be classified into two groups, without denigrating the importance of either of them: namely, those continuing on with topics, and those pronouncing on them.

The former imply, on the one hand, learning about the state in which the studies of the matters covered, and on the other providing the necessary guidelines which, in the opinion of the Committee, should regulate the studies. This type of resolution includes those covering topics of the greatest interest to the American continent, as well as international law in general, such as those on Information Law, as well as International Cooperation to Repress Corruption, Inter-American Cooperation to Cope with International Terrorism, Juridical Aspects of Foreign Debt, and Improvement of the Administration of Justice in the Americas.

The second group - meaning resolutions issuing the pronouncements or opinions of the Inter-American Juridical Committee - focuses on the Ban on Transboundary Kidnapping, the Juridical Dimension of Integration and Foreign Trade, and finally on Democracy in the Inter-American System.

In the resolution on the Ban on Transboundary Kidnapping, the Inter-American Juridical Committee took note at the time of the signature - on 23 November 1994 - of the Treaty Banning Transboundary Kidnapping by the governments of Mexico and the U.S.A. This highlights the importance of this document as it manifests in a conventional manner the principle of international law that rules on the obligation to respect and preserve the inviolability of territorial sovereignty of the States, whereby the transboundary kidnapping of persons is accurately defined as an illicit international act.

To this end, and in the same resolution, the Committee recalls - and this is of the greatest relevance - that it handed down a decision on this matter in a Juridical Opinion issued on 15 August 1992, on the international juridical validity of a sentence issued by the Supreme Court of the U.S.A. In this Juridical Opinion, the Committee confirmed that transboundary kidnapping, even when not expressly banned in extradition treaties in effect among the countries involved, violates the norms and standards of international law.

With regard to the resolution covering the Juridical Dimension of International Trade and Integration, after having carried out studies on experiences with integration and free trade

in the region, the Inter-American Juridical Committee indicated that they all point towards continent-wide integration through convergence and interfacing among the various systems. It concluded that the methods for the settlement of disputes in regional and sub-regional integration and free trade systems should:

a) be tailored to the needs and realities of each scheme;
b) be clearly structured;
c) make provision for access by private parties and individuals to community tribunals and law courts;
d) harmonize with the mechanisms covered by the GATT-WTO;
e) make provision for settling disputes between Member States and non-Member States; and
f) include foreign investment systems.

Finally, with regard to the resolution on Democracy on the Inter-American System, having made reference to this matter and with the relevant reports to hand on inter-American practice, as well as the norms and standards of the Charter of the Organization of the American States, and the interpretation thereof by the Organization itself, the Inter-American Juridical Committee noted that this Organization, together with its Member-States, complies with the following principles, norms and standards with regard to the effective exercise of representative democracy:

ONE: Every State in the Inter-American System has the obligation to effectively exercise representative democracy in its political organization and systems. This obligation exists under the Organization of the American States and to comply therewith, each State within the Inter-American System has the right to select the means and forms it deems appropriate thereto.

TWO: The principle of non-intervention and the right of each State in the Inter-American System to elect its political, economic and social system without foreign intervention, as well as to organize itself in the manner it deems most convenient, shall not excuse any violation of the obligation to effectively exercise representative democracy within such system and organization.

THREE: The Organization of the American States is responsible for fostering and consolidating representative democracy in each and everyone of its Member-States. In particular, through the *Ad Hoc* Meeting of Ministers of Foreign Affairs or the General Assembly, summoned to an extraordinary meeting, the Organization is responsible for determining - under the aegis of the Resolution on Representative Democracy [AG/RES.1080 (XXI-O/91)] - when one of its Member States is in violation of or ceases to comply with the obligation to effectively exercise representative democracy.

FOUR: Any abrupt or irregular halt or break-down of the democratic institutional political process or the legitimate exercise of power by a democratically-elected government or any overthrow by force of a democratically-constituted government within the Inter-American System, shall constitute breach of the obligation to effectively exercise Representative Democracy.

FIVE: Any State within the Inter-American System that breaches the obligation to effectively exercise Representative Democracy acquires the obligation to reestablish the effective exercise of such democracy. Resolutions adopted by the Organization of American States regarding such an occurrence should be designed to bring about this re-establishment.

Given the significance and transcendent nature of this Resolution, it needs no further comment from us.

Mr. Chairman,

As may be seen from this presentation, the Inter-American Juridical Committee has a very up-to-date agenda which in turn responds to the concerns of the American continent and includes the current state of general international law. Added to the topics already mentioned of information, corruption, terrorism, foreign debt, the administration of justice, transboundary kidnapping, integration and free trade, and democracy, there are two others that are currently in the supplementary studies phase, one covering the peaceful settlement of disputes, and the other focused on environmental law.

In this respect, I would like to make one final additional comment. This Agenda and the manner in which it is handled seem to indicate that the functions of the Inter-American Juridical Committee on a day-to-day basis, seem to consist more of attempts to foster and enhance the progressive development of the juridical arrangements in the Americas, rather than efforts to codify international law. This is perhaps due not only to the lack of new consuetudinary norms and standards among the American States, but perhaps more fundamentally to the innovative nature of the topics covered. The globalization of international society, as well as scientific and technological development, have prompted major problems that demand equally urgent normative solutions, without having the necessary time available to create them by means of patient, calm, steady consuetudinary norms.

This means that the challenge facing the Inter-American Juridical Committee - instead of basically being a codificatory agency - today seems to lie in developing into an efficient, timely collaborator with the international legislatures of the Americas, meaning the American States, when they act through the Organization of the American States.

Within this order of ideas, this implies more looking still further ahead and suggesting creative and opportune solutions to new problems prompting deep concern. This means that the most important task of an agency such as the Inter-American Juridical Committee today apparently seems to be cooperating in establishing international law, rather than merely studying the manner in which it developed.

Inspired by its long-standing links with the International Law Commission, the Inter-American Juridical Committee is confident that the cooperation between these two agencies will be increasingly more intensive and fruitful, with the continuation of the practice of sending Observers to each other□s sessions on a reciprocal basis. It is also confident that circumstances and hopes obliged us to work in this direction.

Thank you very much."

5. Immediately after the presentation by the Inter-American Juridical Committee Observer transcribed above, various members of the International Law Commission took the floor, each representing a regional group: Dr. de Saram (Asia); Dr. Tomuschat (Western Europe); Dr. Vargas Carreño (Latin America); Dr. Jankov (Eastern Europe); and Dr. Razafindralambo (Africa). Among other statements and comments, they expressed the views set out below.

6. Dr. de Jaram found the work carried out by the Committee to be notable, interesting and important, worthy of imitation in Asia, while Dr. Tomuschat emphasized the broad-ranging competence of the Committee, which he sees as being greater than that of the Commission, and requested materials from the Committee, particularly on environmental law and terrorism.

7. Dr. Vargas Carreño recalled the input of the Committee for international law and requested the Commission to take into account its achievements. Dr. Jankov mentioned his visit to the Committee, and stressed its working methods, which are more informal, dynamic and inter-personal than those of the Commission, as well as the need to exchange information and documents between both agencies. Finally, Dr. Razafindralambo underlined the pioneering character of the Committee in the progressive development and codification of International Law.

8. Before declaring the session closed, the Chairman of the International Law Commission took the floor to express his pleasure at the presentation given by the Inter-American Juridical Committee Observer, and the above-mentioned members of the Commission. Summarizing the comments of the speakers, he also emphasized that the Inter-American Juridical Committee, a long-established organization, is carrying out an interesting effort in cooperation with the global system on topics that are so up-to-date, whereby the cooperation between the Committee and the International Law Commission should be strengthened and deepened, and should certainly be implemented in practical terms.

9. While making his private farewells to the Inter-American Juridical Committee Observer, the Chairman of the International Law Commission expressed his hopes and concern that a member of the Commission would be present at the next sessions of the Committee.

CJI/SO/II/doc.20/95 rev.1
2 August 1995
Original: Spanish

INTERNATIONAL COOPERATION TO REPRESS CORRUPTION IN AMERICAN NATIONS
(presented by Dr. Miguel Ángel Espeche Gil)

Text of the Draft Comments on the Draft Inter-American Convention Against Corruption, prepared by the Chairman of the Working Group on Integrity and Public Morals of the Permanent Council, regarding the tentative compatibilization thereof with the Report and Preliminary Comments of the Rapporteur

This problem is noted in two spheres: on the one hand in States where corrupt practices are noted, which should be prevented and repressed, and at the international level when censurable acts take place in more than one State, or when efforts are made to avoid the actions of the Courts, and on the other, those that take place within international organizations.

The juridical treatment of this topic has two *prima facie* aspects: one, domestic legislation that represses acts of corruption (those running counter to Integrity and Public Morals) which normally occur in the form of spurious collusion between Government employees and domestic or foreign private corporations; the other involves international legal cooperation pacts for the effective repression of these illicit acts.

Public freedom within the democratic system allows corrupt practices to be better noted: it neither prompts nor favors them. In contrast, corrupt practices flourish best in repressive regimes.

It is clear that this criminal phenomenon is world-wide and in no way restricted to this Hemisphere. The Organization for Economic Cooperation and Development (OECD) has approved recommendations designed to eliminate the practices of bribery and corruption in international business. This recommendation classifies bribery as an international crime, and exhorts the twenty-four OECD Member-States to take legal actions against illicit acts committed by their citizens, no matter where they may be perpetrated. This instrument also covers the adoption of measures under civil administrative and tax law, and urges transparency in banking and accounting operations, as well as Government procurement procedures.

The Deputy Secretary for Economic Affairs of the OECD declared that although bribery has been illegal in Germany for some time, for tax purposes these outlays may be listed as legitimate business deductions.

According to the OECD, bribery has developed into a serious problem in the new nations forming the Commonwealth of Independent States (CIS), formerly the USSR, as well as the developing countries. He mentioned that the sole exception is the USA, which has implemented specific laws against bribing foreign civil servants, and in 1988 approved a law against corrupt practices abroad. It would be desirable for similar norms and standards to be implemented in all national legislative systems.

Referring to the contemporary origin of this problem, former Italian tax inspector Antonio Di

Pietro, who launched an offensive against corruption in his country, recently stated in a lecture given at the Buenos Aires Law School:

> "After World War II, a perverse relationship developed in Italy between the political system and the business sector. It grew to be the natural order of things. I think that Operation Clean Hands - a sweeping action undertaken by the legal authorities - has improved the situation greatly. This was vital, because with corruption there can be no liberal democracy.
>
> However, it is not known how corruption began. It is not known if companies tempted politicians with bribes, or if politicians decided to charge businessmen with a toll for allowing them to do business. But corruption grew into something quite natural.
>
> The political and economic system each support the other, and only if both are healthy can we enjoy liberal democracy and a free market."

He then emphasized that a variety of tools are needed to curb corruption:

> "which allow the judges to investigate. But being able to do so is not enough, because there also has to be the will to do so."

In brief, he stated that

> * The national Constitution should provide guarantees that investigations will proceed. First, penal actions should be mandatory, meaning that inspectors must necessarily undertake searches and investigations, and the Judiciary should be completely independent of the Executive Branch of Government.

He explained that in Italy the positions of judge and inspector are achieved only through public competitive examination, and that merely being the friend of some politician is not enough.

> * Parliamentary immunity should not be absolute.
>
> * There should be controls over the civil service. He feels that it is necessary to establish an assets registry whereby civil servants must declare their personal assets, and when they display enrichment, they should be obliged to prove that such assets were acquired with money that was properly gained.
>
> * There should also be a business ethics code. In Italy, 3,000 politicians and businessmen have been tried. Civil servants should be prosecuted, even for crimes committed outside the country, where they launder money.
>
> * Companies should be made criminally responsible, punished by fines or bans on Government contracts.
>
> * It is also a good idea to guarantee impunity for people who commit a crime and then regret their actions within a specific period, if they return the stolen money.
>
> * Finally, he explained that it is vital for international organizations to establish the mandatory nature of legal assistance among States.

Precedents to this topic in the OAS

The topic of “Juridical Viewpoint on Corruption in America”. (CJI/SO/II/doc.2/92) was incorporated into the Agenda of the Inter-American Juridical Committee in 1992 at the request of Dr. Jorge Reynaldo Vanossi, appointed its Rapporteur, he presented an initial document. This topic remained on the Agenda, and in the August 1994 sessions a draft recommendation - presented by Dr. Luis Herrera Marcano and Dr. Miguel Angel Espeche Gil with a view to guiding domestic legislation and international cooperation agreements - was taken under consideration, but not approved.

On 21 April 1994, the Chilean Permanent Mission requested and obtained the incorporation of the topic “Integrity and Public Morals” on the Agenda of the XXIV regular sessions period of the General Assembly (AG/CP/doc.558/94). This new title covers the same issue already studied by the Committee.

During its meeting in Belém do Pará, the XXIV General Assembly (AG/doc 3160/94), through the Resolution dated 10 June 1994, commissioned the Permanent Council to set up a Working Group to study the topic of Integrity and Public Morals, assigned the responsibility for: compiling and studying national legislations in effect on Public Morals; analyzing experiments and experiences in the control and supervision of administrative institutions; drawing up an inventory of crimes linked to public morals as configured in national norms and standards; and preparing recommendations on juridical mechanisms for the control of this problem, maintaining total respect for the sovereignty of the Member-States.

Additionally, it stipulated that the Permanent Council should submit a report to the General Assembly during its XXV regular sessions period, together with the recommendations of the Working Group.

This Resolution stated:

> “Aware of the importance of the problem of corruption, the Inter-American Juridical Committee included the topic of the “Juridical Viewpoint on Corruption in America”’ on its Agenda for the August 1994 sessions period.”

In its opening paragraphs, it also indicated that the phenomenon of corruption is a problem that affects both the developed nations as well as the developing countries.

In a speech given in Buenos Aires on February 14, 1995, the Secretary-General of the OAS, Dr. Cesar Gaviria, mentioned the need to improve international juridical cooperation on this issue, as well as for curbing international terrorism.

This issue was mentioned in the Declaration of Principles of the Americas Summit, held in Miami from 9-11 December 1994, stating that:

> “Effective democracy requires that corruption be combated on all fronts whenever it constitutes a factor in the disintegration of society and distortion of the economic system that assails political institutions.”

The Venezuelan Permanent Mission presented a Draft Inter-American Convention Against Corruption, which was submitted to the consideration of the Member-States. (CP/doc. 2544/94).

Discussion by the Inter-American Juridical Committee
Session held on 23 March 1995

During the March 1995 sessions held in Washington, D.C., the Inter-American Juridical Committee heard the Report (CJI/SO/I/doc.3/95) prepared by the Rapporteur on this issue on February 14, 1995, and on February 23 heard presentations by Ambassadors Edmundo Vargas Carreño and Sebastian Alegrett, the Permanent Representatives of Chile and Venezuela, respectively.

Ambassador Vargas Carreño spoke as the Chairman of the Working Group on Integrity and Public Morals set up under the mandate of the General Assembly; he outlined the efforts of this Commission and highlighted an analysis of the Venezuelan Draft Convention.

Ambassador Alegrett spoke on the background that shaped the Draft Convention presented by his Government, stating that this issue is a challenge to the Organization of the American States, while at the same time putting the O.A.S. into a trail-blazing position worldwide, as it cannot limit its treatment of this issue to the scope of an Inter-American Convention but should rather work on the idea that this could be taken to the United Nations. He announced that his country, Venezuela, was willing to host a specialized conference on this matter.

Dr. Luis Herrera Marcano highlighted the need for help between the States to be really effective in matters involving corruption, in order to avoid the use of facilities for transporting people and funds, as well as legal provisions being used to escape legal repression. He emphasized the problems involved in extradition, as this may require double jeopardy in both the applicant and respondent nations. The efforts of the Working Group chaired by Ambassador Vargas Carreño on the legislative aspects of this issue are vital. He also outlined the difficult relationship between the institutions of extradition and asylum, whereby guarantees should be sought on the one hand, and on the other assurances of due process. He also mentioned the thorny issues of banking confidentiality, as well as the confiscation of goods arising from crimes and the repatriation thereof.

Dr. Jonathan T. Fried recommended methodological aspects focused on a second revision of the drafts, analyzing them clause by clause, agreeing with difficulties in the points brought up by the members in their comments. He expressed his concern over the possibility that the instrument adopted would lack ratification, emphasizing the need for its wording to avoid clashing with domestic legislations.

Dr. Alberto Zelada Castedo stressed the need for adequate definition of acts falling within the juridical ambit of the new international cooperation system adopted, although it is often not necessary to characterize criminal acts to constitute an international situation within the scope of specific situations. He felt that it is vital to define the material scope of this new normative order of cooperation, and recalled the need to reconcile the effectiveness of international actions with the preservation of the values of the Inter-American system, such as the right of asylum, human rights, and the autonomy and independence of the States, as well as the principle of non-intervention. He added that another aspect to be taken into consideration is that of double responsibility for illicit acts, covering moral damage as well as material losses.

Dr. Eduardo Vío Grossi mentioned current difficulties with extradition when the type of crime is not covered in a similar manner by the applicant and respondent nations, meaning that national legislations should be compatibilized. He also stated that the Law alone was unable to cope with this problem, if not accompanied by political action.

Ambassador Vargas Carreño concluded his presentation with a personal comment on the solution to the problem of qualifying crimes in the case of extradition: that acts of corruption should be considered as common crimes, but should not alter norms and standards in terms of qualification, leaving this to the discretion of the Respondent State. He added that, in principle, he

is in favor of holding a specialized conference, and took note of the invitation proffered by Venezuela, but with the date depending on progress within the Working Group. He said that the comments of the Inter-American Juridical Committee on the efforts of the Working Group would be welcome. He felt that appropriate cooperation with the Inter-American Juridical Committee would be beneficial, and even if it was decided to not call a specialized conference, preferably this year or during the first half of 1996, a Convention could be approved.

Dr. Seymour J. Rubin felt it advisable to take into account the information obtained for the discussion of the U.S. Congressional Law which bans corrupt practices abroad, as well as earlier approaches to this issue in the United Nations General Assembly.

Ambassador Alegrett emphasized the importance of the political will reflected in the Miami Summit as a determining factor in obtaining concrete results in a Convention, which should be firmed up as soon as possible.

Particularly noteworthy was generalized agreement on the relevance of the struggle against corruption in the defense of democracy.

Current State of the Issue

On 7 July, the Director of the International Law Development and Codification Department, Dr. Enrique Lagos, forwarded to the Secretary of the Inter-American Juridical Committee the texts of the Resolution of the General Assembly on Integrity and Public Morals (AG/doc.3287/95), the Draft submitted by the Venezuelan Permanent Mission (CP/doc.2544/94), the Preliminary Draft of the Inter-American Convention Against Corruption submitted by the Chairman of the Working Group on Integrity and Public Morals (CP/doc.2614/95), and the document dated June 16, 1995 prepared by the Secretary-General giving a comparative table of both proposals. He also included the comments of the Governments of Argentina and Uruguay on the original draft submitted by Venezuela. It seems that these are the only comments received by the Permanent Council (CP/GT/PEC-14/95 and add.1).

The General Assembly has established a work-plan that should be followed by the Permanent Council and its Working Group.

The Resolution of the Assembly of the O.A.S. (AG/doc.3287/95) dated June 9, 1995 took note of the Report on Integrity and Public Morals submitted by the Permanent Council and commissioned it to continue with the study of this topic in compliance with the provisions of Paragraph 1 of Resolution AG/RES 1294 (XXIV-0/94), reporting back to the General Assembly in its XXVI regular sessions period. It also instructed the Permanent Council to prepare the Agenda and set the date for a Seminar on Integrity and Public Morals, accepting the offer of the Uruguayan Government to host this event during the second half of 1995, with specialists and Government representatives. It also commissioned the Chairman of the Working Group on Integrity and Public Morals to prepare a Draft Inter-American Convention Against Corruption, with the support of the Secretary-General, on the basis of the draft presented by the Venezuelan Government, taking into account the comments thereon submitted by other Governments.

The General Assembly commissioned the Inter-American Juridical Committee to comment, during its August 1995 sessions period, on the Draft Inter-American Convention Against Corruption prepared by the Working Group. It is also willing to call an extraordinary sessions period of the Working Group on Integrity and Public Morals to be held during the second half of 1995 at OAS headquarters, with the participation of experts appointed by the Governments, in order to study the Draft Inter-American Convention Against Corruption prepared by the Chairman of the Working Group, and taking into account the comments to be submitted by the Inter-American Juridical Committee for the preparation of a final Draft Convention.

The Meeting instructed the Permanent Council that, once the final Draft of the Convention is received, it should call a specialized conference to consider and perhaps adopt this Draft, setting the date, place and Agenda for this conference. Finally, it commissioned the Secretary-General to provide support in the organization of this conference and thanked the Venezuelan Government for offering to host it.

The sequence of responsibilities assigned by the Meeting - once the Working Group has completed its task of preparing the Draft Convention - is as follows:

1. The Permanent Council should continue to study this topic and report back to the General Assembly during its XXVI regular sessions period in 1996.

2. The Inter-American Juridical Committee should comment on the Draft Convention prepared by the Working Group during its August 1995 sessions period.

3. The Working Group will be summoned for an extraordinary sessions period during the second half of 1995 to consider the Draft Convention with the comments of the Inter-American Juridical Committee.

4. The Permanent Council shall call a specialized conference on the basis of the Draft Convention, together with the comments of the Inter-American Juridical Committee (Point 2).

Preliminary Comments on the Draft Convention submitted by the Chairman of the Working Group

With regard to the task assigned to it under Point 2, various comments were prepared on the Draft Convention drawn up by the Working Group, following the comparative table on pages 1 through 26 of a document prepared by the Secretary-General (OEA/Ser.G-CP/GT/PEC-17/95, June 16, 1995), which were guided by comments by the members of the Committee and its special guests, Ambassador Vargas Carreño and Ambassador Alegrett, during the session held on March 23, 1995.

The Draft submitted by the Chairman of the Working Group is an international cooperation agreement on a specific topic, and does not cover international criminal norms and standards.

It selects a specific group of domestic criminal norms and standards falling under the title of corruption or corrupt practices, to set up a cooperation system in order to ensure effective implementation of the punitive intentions of a State in which illicit acts are committed and when efforts are made to avoid them.

It also establishes the generic of its Signatory States to classify as crimes in under domestic law the types of conduct covered in Article V a) and b), given the widespread interest in

the Hemisphere-wide system of incriminating and repressing such conduct by wielding the juridical assets stipulated in the Preamble.

The classification of such types of conduct thus falls to the responsibility of the Signatory States, and the effectiveness of these criminal norms and standards within domestic legislative systems is the juridical condition for the application of this Draft Treaty.

Article VII of the Draft makes provision for the compatibility thereof with the application of other assistance agreements that may be more favorable. The Rapporteur feels that this qualification as more favorable refers to the purposes outlined in the Draft. Perhaps it might prove more convenient to stipulate this in a clearer manner.

The Inter-American Convention on Mutual Assistance in Penal Matters, signed in Nassau in 1922, is the international instrument compatible with this Draft.

One may be viewed as generic while the other is specific.

The duration of the effectiveness of both texts and their reciprocal implications is a topic worthy of lengthy study.

The Inter-American Juridical Committee heard the presentation by the Chairman of the Working Group, Ambassador Edmundo Vargas Carreño, during its session on August 2, 1995. He replied to the questions of the members of the Committee and compatibilized the text of the Draft with the Rapporteur.

In the course of the past few days, the Inter-American Juridical Committee received a communication from the Permanent Representative of the U.S.A., stating that for the treatment of this topic he feels that it is not advisable to adopt a text in the form of a Convention, but that a model law would rather be preferable.

Similarly, the Committee received the text with the comments formulated by the Permanent Representative of Venezuela on the Draft prepared by the Chairman of the Working Group on the Draft prepared by the Chairman of the Working Group, whose original text insists on incorporating the Article on Asylum. In this respect, the Rapporteur agreed with the proposal of the Chairman of the Working Group to remove the mention of asylum, considering that all attempts that could in some way lead to the assumption of a constraint on the qualificatory powers of the Respondent State in terms of asylum would undermine the possibility of adopting a Convention Against Corruption at the Hemisphere level.

Preliminary Comments by the Rapporteur

Preamble - The inclusion of the text of the Preamble of the Charter of the O.A.S. is adequate, as the problem of corruption adversely affects the moral order and should be taken into account for the teleological interpretation of its Articles.

Whereas - The new wording by the Chairman of the Working Group specifically mentions protected juridical assets.

Reiterating - It is advisable to keep this new wording by the Chairman of the Working Group with the following modification: add the word "*de*" between the words "*convencimiento*" and "*que*" in the Spanish version.

Persuaded - In the Spanish text, it is suggested that the word "*nuestros"* should be eliminated on the two occasions in which it is used, as it is not in keeping with the general

wording; the preposition "*de*" should be inserted immediately after the word "*persuadidos*".

The proposed text would read as follows:

"Persuaded that corruption affects the credibility of democratic institutions and distorts economies, contaminates public administration and undermines public morals."

Convinced - It is suggested that the text of the Working Group should include the preposition "*de*" between the words "*convencidos*" and "*que*" in the Spanish version.

Acknowledging - The use of the word "*propiedad*" is not considered appropriate, as it describes ill-gotten gains.
The word "t*enencia*" should be used in the Spanish text, replacing the word "*propiedad"*, when referring to (ill-gotten) gains held by those who involved in acts of corruption. This is compatible with the concept of "*comiso"* (confiscation) or "*decomiso*" (seizure) as a penalty that involves loss of the ill-gotten gains.

Taking into account - The text prepared by the Chairman of the Working Group is preferred.

Article I
Purpose and End - The text prepared by the Chairman of the Working Group is preferred because it outlines the purpose of the Convention with greater accuracy. It is suggested that the word "*legales"* be added after *"constitucionales*" in the Spanish text.

Article II
Definition - The text prepared by the Chairman of the Working Group is preferred as it is more comprehensive with regard to the juridical figure covered.: the civil servant.
Notwithstanding the explanation of the Chairman of the Working Group, it is felt that the other definitions in the Venezuelan Draft are well-founded and should be maintained.

Article III, 3.
(WG) Scope - It is suggested that the wording of the Working Group should be accepted.

Article IV
(WG) - Refusal of
Request - The Working Group text, with the following modification:
It is suggested that the phrase "the Signatory States agree to ..." be replaced by "the Signatory States, when so requested, agree to ...", or by "the Respondent States ...".

Article V
(WG) Crimes - It is suggested that the phrase "to the detriment of the public assets of the States" be eliminated, for the reasons outlined in the proposal submitted by Uruguay. Acts of corruption do not affect State assets in all cases.

Article V, a (WG) - It is suggested that the Uruguayan proposal be accepted, as it incorporates temporal aspects into criminal actions.

Article V, b	-	It is suggested that the Working Group draft text be retained.
Article V, c	-	Idem.
Article V, d	-	Idem.
Article VI, 1 Assistance	-	It is suggested that the Uruguayan proposal be followed, leaving only the word “Assistance” in the title, and accepting the comments of the Chairman of the Working Group in Paragraph 5 on page 2 of the Preamble of the Draft.
Article VI, 2	-	The Working Group text is recommended.
Article VI, 3	-	Idem.
Article VI	-	The view of the Chairman of the Working Group was followed, removing the Article on asylum proposed by Venezuela, in compliance with the reasons put forward on Page 2 of the Preamble of the Draft. On the other hand, the safeguard clause proposed by Argentina for the original text submitted by Venezuela would reconcile the obligation to extradite with the traditional institution of asylum.
Article VII (WG) Compatibility with other international instruments	-	If the words “*o prácticas aplicables*” are added after the word “*tratados*” and the word “*multilaterales*” is eliminated in the Spanish text, Paragraph 2 of the Draft becomes superfluous
Article VIII Nationality	-	It is suggested that the proposals put forward by Argentina and Uruguay be accepted, applicable to the Draft submitted by the Chairman of the Working Group.
Article IX, 1. Extradition	-	It is suggested that the wording of the Draft submitted by the Chairman of the Working Group be accepted.
Article IX, 2.	-	It is suggested that the wording of the Draft submitted by the Chairman of the Working Group be accepted.
Article IX, 3.	-	Idem.
Article IX, 4.	-	Idem.
Article IX, 5.	-	Idem.
Article IX, 6.	-	Idem.
Article IX, 7.	-	Idem, but splitting the article into two sentences, from the word "*extradición* " in line 7, starting with "*Ello a reserva de ... y tras haberse cerciorado de que ...*" in the Spanish text.
Article IX, 8.	-	It is suggested that the word “*suyo*” be added after the word "*national”*, in the Spanish text, removing the comma after the word “*enjuiciamiento*”.
Article X, 1-		

Assets - If the Draft prepared by the Chairman of the Working Group is preferred, commas should be inserted after the word "*establecer*" in the Spanish version, as well as before the word "*conformidade*" in the sixth line.

(Working Group DRAFT)

Article X, 2 - In the Spanish text, it is suggested that the preposition *en* between the words "*autoridad*" and "*que*" should be eliminated, and that the word *se* should be inserted between "*que*" and "*origina*", replacing the final words "*el Estado parte*" by the words "*la solicitud*".

Article X, 4. - It is suggested that the words "*de fuentes ilicitas*" be replaced by the word "*ilicitamente*" in the Spanish text.

Article X, 5. - The text submitted by the Chairman of the Working Group is preferred.

Article X, 6. - Idem.

Article XI Settlement of disputes (shown wrongly as Article X of the WG in the comparative table). - Idem.

It is suggested that the Venezuelan draft be adopted with regard to the wording of Articles XI - Entry into Effect; XII - Special Cases of Territorial Application; XII - Effect and Withdrawal; and XIV - Deposit, Registration, Publication and Notification.

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This Preliminary Report and Comments are submitted to the Committee for consideration.

Miguel Ángel Espeche Gil

CJI/SO/II/doc.21/95
31 July 1995
Original: Spanish

REPORT ON THE SECOND MEETING OF THE SPECIAL TRADE COMMISSION OF THE OAS
(presented by Dr. Alberto Zelada Castedo)

1. Background

1. The Special Trade Committee held its Second Meeting at the headquarters of the Latin American Free Trade Association (LAFTA) in Montevideo on 14 and 15 June 1995.

Delegates were present from most of the Member-States of the Organization of the American States. Delegations from various States such as Argentina, Brazil, Mexico, USA, Canada, Bolivia, Peru, Colombia, Uruguay and Venezuela were headed by senior representatives of their respective Governments.

2. The Special Trade Committee was set up under Resolution AG/Res. 1220 (XXIII-0/93), approved at the XXXIII Ordinary Sessions Period of the General Assembly of the Organization, in mid-1993.

3. According to its provisions, the Commission is "a hemisphere-wide forum of high technical level for considering matters of trade and connected issues".

Its functions are:

a. To continue with the process of liberalization and expansion of trade in the Hemisphere and disseminate updated information thereon.
b. Promote the interchange of viewpoints on trade matters and connected issues, study and offer suggestions for improving trade conditions between the Member-States of the Organization, and encourage the measures needed to achieve this objective, including lifting and non-application of trade barriers; and
c. Study ways of empowering the beneficiary countries to make full use of the preferential programs of the more developed nations in the Hemisphere.

4. The Commission has set up an Advisory Group "consisting of nine top-level Government employees in the trade area of the Member-States". This Group has the tasks assigned to it by the Commission.

5. The First Meeting of the Commission took place at the headquarters of the Organization in Washington D.C., on 16-18 May 1994.

On this occasion, the general guidelines for the work of the Commission were adopted, and the Advisory Group was set up, for which the corresponding work guidelines were approved.

2. Agenda and Documents

6. At the start of its efforts, the Second Meeting adopted the following Agenda for its discussions:

1. Report of the Advisory Group on the work carried out thereby;

2. Examination of work that has progressed in compliance with the mandates of the Americas Summit:

   a. Analytical Compendium of the agreements in effect in the Hemisphere (OAS Trade Unit)

   b. Protection, elimination of preferential customs tariffs, and norms covering origin in the Americas (IDB presentation)

3. Draft report of the Special Trade Committee to the Meeting of Ministers in Denver, Colorado.

7. To cover the topics on its Agenda, the Meeting Secretariat distributed the following documents among the Delegates present:

   a. Juridical dimension of integration and international trade (Document prepared by the Inter-American Juridical Committee) CIES /CEC/doc.11/95.

   b. Report of the First Meeting of the Advisory Group of the Special Trade Committee (CEC) CIES/CEC/doc.12/95.

   c. Report of the Second Meeting of the Advisory Group of the Special Trade Committee (CEC) CIES/CEC/doc.13/95.

   d. Report of the Third Meeting of the Advisory Group of the Special Trade Committee (CEC) CIES/CEC/doc.14/95.

   e. Report of the Fourth Meeting of the Advisory Group of the Special Trade Committee (CEC) CIES/CEC/doc.15/95.

   f. Report of the Advisory Group of the Special Trade Committee (CEC) CIES/CEC/doc.16/95.

   g. Towards free trade in the Americas. Summary and Conclusions. Report to the Special Trade Committee (OAS Trade Unit) CIES/CEC/doc.17/95.

   h. Preliminary Notes on the Analytical Compendium of Trade Agreements in the Hemisphere (OAS Trade Unit) CIES/CEC/doc.18/95.

   i. Analytical Compendium of Western Hemisphere Trade Arrangements (OAS Trade Unit) CIES/CEC/doc.19/95.

3. Presentation by the Secretary-General of the O.A.S.

8. At the inaugural session of the meeting, presentations were made by the Secretary-General of the OAS, Mr. Cesar Gaviria, the Secretary-General of the Latin American Free Trade Association, Mr. Antonio Antunes, and the Deputy Minister of Foreign Relations of Uruguay, Mr. Carlos Perez del Castillo.

9. Of particular interest was the presentation by the Secretary-General of the O.A.S., who mentioned both the work of the meeting as well as the tasks carried out by the Organization to

support the efforts of the Member-States to comply with the matters agreed upon through the Declaration of Principles and Action Plan adopted at the Summit Meeting held in Miami in December 1994.[4]

With this order of ideas, he explained the scope of the task of the Special Trade Committee and its Advisory Group and also the setting up the Trade Unit under the aegis of the General Secretariat.

He then commented on the work carried out so far within the sphere of the functions of the Special Trade Committee, particularly the Analytical Compendium of Trade Agreements in the Hemisphere. Mr. Cesar Gaviria explained his ideas on the process which, in his view, will lead to the progressive establishment of a Free Trade Area in the Hemisphere. He emphasized that this process may well take place in two phases:

1. "A first stage of building up mutual confidence, with an interchange of information, defining the parameters that will guide this joint effort", and

2. "A second stage which will constitute a negotiation phase for the formal development of agreements".

He added that the Free Trade Area for the Hemisphere "could be built on two fundamental pillars":

1. "On the one hand the multilateral disciplines of the GATT/WTO system", and

2. "On the other the commitment contained in various regional or bilateral agreements already in existence".

In his view, "acknowledging the GATT disciplines as the first approach has the advantage of avoiding the difficult tasks of building up a parallel system of commitments which may well be redundant on many topics". To this end, efforts could well be concentrated "on negotiating the topics which are more controversial in areas that transcend the current development of GATT regulations and topics which are not yet covered by the WTO umbrella, because they are inevitable within a Hemisphere-wide context".

Finally, he stressed that "in those cases where the major components of a possible future Hemisphere-wide free trade system - such as the MERCOSUR and the Free Trade Treaty - have developed and consolidated disciplines in critical negotiating areas, and we should make good use of this valuable experience to progress still more rapidly". "It does not seem very efficient, he warned to try and make progress by holding back those who are moving further ahead".

4. Proposals of the Trade Unit:

10. The ideas expressed by the Secretary-General of the Organization coincided to a large extent with the ideas contained in the conclusions of the document entitled "Towards Free Trade in the Americas. Summary and Conclusions", prepared by the Trade Unit of the General Secretariat.[5/]

This document also emphasizes that "progress towards free trade in the Hemisphere may well be organized in stages". During the first stage, "a preparatory negotiation process could be

4 The presentation of the Secretary General of the Organization is contained in document OAS/Ser. H/XIII, CIES/CEC/doc.25/95, 14 may 1995.

5 Document OEA/Ser. H.XIII, CIEs/CEC/doc. 17/95, 9 June 1995.

developed for the Free Trade Area of the Americas". In turn, the second stage would involve a period during which the Free Trade Area of the Americas firms up and final trade talks are held on goods and services, as well as the regulations of these new topics.

During the first stage, according to the Trade Unit, "countries would tend to focus their attention on crucial measures for expanding and extending liberalization of trade at the Hemisphere-wide level". This involves undertaking concrete actions in the following areas: 1) a "framework for the liberalization of trade in goods and services", 2) measures in "areas that could foster trade", and 3) identification of "topics not yet covered by the WTO".

Finally, in the opinion of the Trade Unit, one of the "issues of the utmost importance" to be resolved is whether "a free trade system in the Americas is achieved through accession to some of the existing agreements, or through the negotiation of a global agreement".

5. Discussions and Conclusions

11. The discussions at the Second Meeting concentrated on an examination of the work carried out so far by the Commission, its Advisory Group and the Trade Unit of the General Secretariat, as well as the Preliminary Report for presentation to the Meeting of Trade Ministers held in Denver towards the end of June.

12. With regard to the second point, there was general agreement that the Commission was in a position to advise the Ministers of various advances with regard to the technical reports commissioned for furthering the program set up under the Declaration of Principles and the Action Plan approved at the Miami Summit.

Special emphasis was placed on the preparation of the preliminary version of the "Analytical Compendium of Trade Agreements in the Hemisphere".[6]

13. When presenting this report, the Trade Unit of the General Secretariat summarized the basic principles of the economic integration and free trade agreement signed among Member-States of the Organization and which have been incorporated into the Compendium. The pertinent comments were presented in a preliminary character. [7]

The Trade Unit also stressed, among other matters, that:

a. The area of settlement of disputes "warrants greater future analysis as it is covered in a merely tangential form in the Compendium", and

b. The "description of the executive and administrative entities of each agreement is not studied in depth" and consequently "warrants exhaustive efforts at a later date".

14. The ideas put forward by the Trade Unit on actions to be undertaken in the immediate future in order to launch the process leading to talks on the establishment of a Free Trade Area in the Hemisphere were also cause for discussion. The comments and suggestions contained in the document entitled "Towards Free Trade in the Americas. Summary and Conclusions" came under special discussion.

6 Document CIES/CEC/doc.18/95.
7 Document OEA/Ser. H/XIII, CIES/CEC/doc 18/95, 12 June 1995.

These discussions prompted the feeling that these ideas and comments did not achieve widespread acceptance.

15. Finally, the delegates exchanged their points of view on the contents of the preliminary report of the Commission for submission to the Meeting of Ministers in Denver.

The text of the report was not formally approved. The Secretary of the Meeting was asked to prepare this text taking into consideration the outcome of the discussions.

16. However, it was made quite clear that the institutional links between the Commission and the Meeting of Ministers were somewhat lax. Although the Commission has held its Second Meeting and preliminary discussions between the Ministers of Trade on a Draft Declaration to be adopted in Denver, it seems that this was not examined at the Commission meeting.

6. Final Commentaries and Recommendations

17. As this is an Agency set up relatively recently, with its main tasks arising largely under the Declaration of Principles and Action Plan of the Miami Summit, also recent, the Special Trade Committee gives the impression of an Agency that needs to fine-tune its institutional role within the process targeting the establishment of the Free Trade Areas in the Hemisphere.

Over the course of time, this role and the relationships between the Commission and the meetings of Ministers of Trade will certainly improve.

To date, the tasks carried out by the Commission consist largely of the establishment and implementation of its Advisory Group and undertaking the preliminary studies on regional integration and free trade agreements signed between the countries in the Hemisphere. it has thus not yet developed its role as a forum for pre-negotiation which is to some extent implicit in the functions conferred on it by its Charter.

18. It is most convenient to maintain close coordination between the tasks of the Inter-American Juridical Committee and the tasks of the Commission, wherever pertinent. This will depend on appropriate communications between these two agencies, either directly or through the General Secretariat of the O.A.S., particularly the Trade Unit.

A good indication of the interest of the Commission in the tasks of the Committee is the presentation during the Second Meeting of the Commission of a summary of reports prepared by the Committee on settlement of disputes in economic integration agreements and free trade pacts.[8] However, it would have been better to present the entire set of studies prepared by the Committee, rather than merely a summary thereof.

19. With regard to the future tasks of the Committee, the comments issued by the Trade Unit of the General Secretariat should be noted, whereby the area of the settlement of disputes "warrants greater future analysis, as it has been considered in a merely tangential form in the Compendium" and the "description of the executive and administrative entities of each agreement" "warrant an exhaustive study at a later date".

As both these issues fall under the specific technical sphere of competence of the

8 Juridical Dimension of Integration and International Trade. (Document prepared by the Inter-American Juridical Committee) CIES/CEC/doc. 11/95.

Committee, it would be appropriate for it to undertake - over the short term and taking into account the emerging needs of the preliminary studies carried out by the Special Trade Committee and particular the Trade Unit of the General Secretariat - the following tasks:

a. Extension and enhancement of studies on systems for the settlement of disputes; and
b. An analytical and comparative analysis of the basic norms and standards of the juridical arrangements of regional integration and free trade agreements regulating the corresponding institutional structures responsible for the administration thereof.

These two studies will provide valuable input for carrying out the tasks of both the Commission as well as the Trade Unit.

20. It is also timely to emphasize that the “Analytical Compendium of Trade Agreements in the Hemisphere” prepared by the Trade Unit, despite its title, is limited to a tabular presentation of the main provisions of these agreements, and lacks an in-depth analysis from the juridical viewpoint of the nature and scope of the pertinent norms and standards.

The Committee could also consequently provide input to fill this gap, contributing with the preparation of a more detailed comparative analysis.

CJI/SO/II/doc.22/95
31 July 1995
Original: Spanish

JURIDICAL ASPECTS OF FOREIGN DEBT

(presented by Dr. Miguel Ángel Espeche Gil)

In keeping with its earlier decisions in 1993 (CJI/Res11-18/93) and 1994, during its March 1995 sessions period the Committee decided that the Rapporteur should continue to keep it informed regarding the development of juridical aspects of foreign debt.

The Consultative Committee of the Latin American Parliament organized a Round Table Meeting in São Paulo on 27 March last to analyze the inter-disciplinary nature of the topic "Rights of the Latin American Peoples and Foreign Debt".

So far, the only movement noted in the international juridical field on foreign debt is that urging that these juridical aspects be submitted to the International Court of Justice through a request for a consultative opinion that would be actually be submitted by the General Assembly of the United Nations.

This suggestion has found an echo in religious and political spheres, as well as yet again - for the fifth time - in the Jurisprudence Group of the European Council for Social Research in Latin America.

On 25 and 26 May 1995 in Rome and on 27 May in Sant' Agata dei Goti, the II International Seminar was held on "International Debt, General Principles of Law, and the International Court of Justice". Jurists, sociologists and economists from countries in Europe and the Americas once again plunged into discussions of these topics. Eleven Islamic jurists also took part.

Particularly noteworthy are the comments of the Bishop of Sant' Agata dei Goti, recalling that the teachings of St. Alfonso Maria of Ligorio condemned usury as a sin against the Fifth Commandment, comparing it to murder.

The IX European Union/Latin America Interparliamentary Conference took place in Brussels, Belgium, from 19-23 June. In the final version of its minutes, it decided the following:

> "27. It reaffirms the Resolution of the XI European Union/Latin America Interparliamentary Conference in the final version of its minutes, regarding the problems caused by Latin America□s foreign debt. Equally, and on the basis of the analysis of the origin thereof, as already introduced by the statement approved by the Economic and Social Committee of the European Union in 1985 (Doc.CES.931/85 CAL/DLM, section 7) under the aegis of the Latin American Parliament and a juridical analysis carried out by various academic and scientific organizations, it asks the Member-States of the two Parliaments to undertake timely initiatives, seeking the support of other countries, so that the United Nations General Assembly requests the International Court at the Hague for a consultative decision that will allow the foreign debt problem to be handled in accordance with the general principles of contemporary

international law (Court by-Laws, Article 38 c.)"

We share the conviction that the doctrinal and argumentary foundation for a request for a consultative opinion is already fully present in the publications of the works presented at the Seminars organized by the Economic and Social Committee of the European Union.

The rapid deterioration of the situation caused by foreign debt in Latin America, reflected in the Table attached, is finally expected to prompt political powers to make use of the above-mentioned consultative resource, in view of the intolerable situation whereby over half all Latin American exports are today earmarked to service its foreign debt, which has in fact been paid off in full and more.

Some of the reports presented, which formed the basis for discussions at both Seminar sites, are attached hereto, as well as the book entitled *Debito Internazionale - Principi Generali del Dirito*, which compiles works from earlier Seminars on this topic, organized by the same entity.

This Seminar also offered an overview of the current foreign debt situation according to World Bank and CEPAL statistics, also attached herewith.

ANNEX

Total Debt

Table 1
Latin America: interest paid and capital flows
in the government sector and commercial banks. 1980 - 1990
(accumulated total, in US$ million) *

Current Account. Factors service:	
Interest paid (b)	-481,662.0
Capital account. Other capital	
Public sector	
Loans received	309,177.4
Amortization	-174,991.9
Commercial banks	
Loans received	74,687.2
Amortization	-58,755.3
Amount of global foreign debt claimed	
1980	228,236.0
1990	441,486.0
1994	533,765.0

(a) Includes Argentina, Bolivia, Brazil, Columbia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Uruguay and Venezuela.

(b) Refers to the total amount of interest paid, and does not discriminate between the public and private sectors.

Source: CEPAL, *Annual Statistical Yearbook for Latin America and the Caribbean*. 1992 Edition, p. 430-431; 1994 Edition, p. 438-439; 504-505.

* The countries and sources are the same as those in Table 2

II

Commercial Bank Debt

Table 2

Latin America and the Caribbean:
overview of commercial bank debt
(US$ million) (a)

Commercial bank debt in 1970	3,070.4
Net transfers (b) to commercial banks 1971-1990	-99,663.9
Commercial bank debt in 1990	176,528.5

(a) Includes Argentina, Barbados, Belize, Bolivia, Brazil, Chile, Columbia, Costa Rica, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, St.Kitts & Nevis, St. Lucia, St. Vicent and Grenadines, Trinidad Tobago, Uruguay and Venezuela.

(b) Net transfers correspond to the inflow of capital less amortization and interest paid.

Source: Report by Arturo O' Connell based on the *1993-1994 World Debt Tables* issued by the World Bank on diskette.

Table 3

Net short-term and long-term flows from commercial banks
and interest paid to commercial banks
1971-1990
(US$ million) (a)

	1971-79	1980-90	TOTAL
Net flows from commercial banks	61,525.1	65,933.8	127,458.9
Interest paid to commercial banks	-17,694.8	-209,428.0	-227,122.8

CJI/SO/II/doc.24/95
1 August 1995
Original: English

**REPORT OF THE OBSERVER OF THE
INTER-AMERICAN JURIDICAL COMMITTEE
TO THE XXV REGULAR PERIOD OF SESSIONS OF THE
OAS GENERAL ASSEMBLY**
(presented by doctor Philip Telford Georges)

On Tuesday June 6, 1995 I attended as an observer on behalf of the Inter-American Juridical Committee (CJI) of the Organization of American States (OAS) at a meeting of the Juridical and Political Commission of the OAS presided over by Ambassador Dean Lindo. Dr. Lagos was also in attendance.

In making an oral presentation of the Report which was already before the Commission I noted that the countries of Latin American and the Caribbean were going through a period of rapid and fundamental change. The era of protectionism was ending. It was being replaced by the formation of trading blocs which would inevitably lead towards a system of general free trade. There was a greater opening up to the outside world and a willingness to accept investment of foreign capital. There was a greater emphasis on democracy and the importance of protecting and expanding individual rights and freedoms.

In such periods of serious structural changes close analysis of the underlying trends was vital if there was to be a deeper understanding of swiftly moving events which seen in isolation may seem contradictory. It was in that area that the CJI had sought to make a contribution.

The CJI was engaged in a thorough analysis of the dispute settling mechanisms adopted by the various free trade and common market associations in Latin America and the Caribbean. A clear and accurate compilation of existing mechanisms had been prepared which could provide a basis for decision making as the various systems evolved.

The CJI had initiated a study in the area of the independence of the Judiciary and the machinery for the protection of judges and lawyers, an indispensable element in the improvement of the administration of justice in Latin America and the Caribbean.

The CJI was engaged in a re-examination of the concept of non-interference in the light of the increasing emphasis being placed on the importance of strengthening democratic systems of government in Latin American and the Caribbean. An analysis of the fundamental concepts in this problematic area should be of considerable assistance when decisions come to be make in the area of the exercise of governmental power.

Comments by members of the Commission were generally favourable.

The representative for Ecuador described the CJI as one of the Crown jewels of the OAS. He noted that courses run by the CJI in Rio de Janeiro had lived up to expectations.

The representative of Canada congratulated the CJI on its work. He referred to the work initiated by the CJI in the area of stock market regulation.

The representative of Guatemala emphasized the importance of legal structures in the

process of development and the value of the work of the CJI in analyzing those structures.

The representative of Honduras noted that the CJI worked out of the spotlight and enough was not known of its work.

The representative of the United States of America emphasized the need for studies in the area of free trade.

The representative of Panama praised the Course conducted by the CJI in which he had participated as a student. He noted the need for more resources for the CJI.

The representative of Chile noted that the CJI was the most important agency of the OAS in the area of the development of international law both public and private. It was vital that the CJI should address the burning issues of the day. While its Report showed that the CJI was in tune with what was happening in the world, there was need to collaborate more closely with other groups working in areas under their consideration. This would avoid duplication of effort.

There was need to emphasis dissemination of the work done by the CJI. The CJI should consider holding sessions of the Course in other member States. The CJI should initiate efforts towards the codification of laws.

The representative of Jamaica thanked the CJI for the good work it had done.

In summary it can be said that the Report of the CJI was well received and that the Commission considered its work relevant to the issues of the day and making a significant contribution to the development of legal analysis as a component in the resolution of the problems of Latin American and the Caribbean.

CJI/SO/II/doc.25/95
1 August 1995
Original: Spanish

**DATE, AGENDA AND RAPPORTEURS
FOR THE JULY-AUGUST 1995 REGULAR SESSIONS PERIOD**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

In conformity with its By-Laws, agreed to hold its second regular sessions period from 31 July through 25 August 1995.

The following Agenda was adopted, on the understanding that the topics will be addressed in the order shown below:

1. The juridical dimensions of integration and international trade:

   a) Methods for settling disputes in sub-regional integration and free trade schemes: (AG/doc.3131/94 - Item 4)
   Working Group
   Coordinator: Dr. José Luis Siqueiros
   Co-Rapporteurs: Drs. Alberto Zelada Castedo, Philip T.Georges, Miguel Ángel Espeche Gil, Jonathan T.Fried, Mauricio Gutiérrez Castro, and Ramiro Saraiva Guerreiro.

      i. Pact of Cartagena
      ii. CARICOM Pact
      iii. MERCOSUR
      iv. North American Free Trade Agreement (NAFTA)
      v. Juridical systems for the settlement of disputes in bilateral free trade and economic supplementation treaties
      vi. Central American integration system (SICA)
      vii. G-3 (Mexico, Venezuela and Colombia)
      viii. Latin American Integration Association (LAIA)

   b) Facilitation of international activities by individuals and corporate entities (AG/doc.3131/94 - Item 2)
   Rapporteur: Dr. Luis Herrera Marcano

   c) The securities market. Benchmark principles considered basic to its regulation in the Hemisphere.
   (AG/doc.3131/94 - Item 3)
   Rapporteurs: Drs. Seymour J. Rubin, José Luis Siqueiros, and Jonathan T. Fried

   d) International juridical effects of insolvency
   Rapporteurs: Drs. Seymour J. Rubin, José Luis Siqueiros, and Jonathan T. Fried

e) Most-favored nation principle and its application in the Americas, and other ways of benefiting the less-developed nations
(AG/doc.3268/95)
Rapporteurs: Drs. José Luis Siqueiros, Alberto Zelada Castedo

f) Analytical and comparative examination of the structure and spheres of competence of regional integration and free trade schemes
Rapporteurs:

2. Democracy in the Inter-American System
(AG/doc.3131/94 - Item 7)
Rapporteur: Dr. Eduardo Vío Grossi

3. Improvement of the administration of Justice in the Americas
(AG/doc.3131/94 - Item 5)

a) Streamlining Access to the Courts. Simplification of judicial procedures
Rapporteur: Dr. Seymour J. Rubin

b) Appointment of magistrates and court employees. Protection and guarantees for judges and lawyers in the exercise of their functions
Rapporteur: Dr. Jonathan T. Fried.

4. The right to information
(AG/doc.3131/94 - Item 6)
Rapporteur: Dr. Mauricio Gutiérrez Castro

5. Environmental law
(AG/doc.3131/94 - Item 8)
Rapporteur: Dr. Galo Leoro F.

6. Peaceful settlement of disputes.
(AG/doc.2683/91) (AG/doc.2771/91 rev.1)
Rapporteur: Dr. Galo Leoro F.

7. International cooperation to repress corruption
Rapporteur: Dr. Miguel Ángel Espeche Gil

8. Juridical asp/ects of foreign debt
Rapporteur: Dr. Miguel Angel Espeche Gil

9. Inter-American cooperation to cope with international terrorism
Rapporteur: Dr. Miguel Angel Espeche Gil

10. National jurisdiction and the personality of juridical entities
Rapporteur: Dr. Jonathan T.Fried

CJI/SO/II/doc.27/95
7 August 1995
Original: Spanish

JURIDICAL DIMENSION OF INTEGRATION
THE JURISDICTIONAL SYSTEM FOR THE SETTLEMENT OF DISPUTES IN THE ANDEAN GROUP

(presented by Dr. Alberto Zelada Castedo)

Summary

I. Background. II. Jurisdiction and competence of the Court. III. Annulling cases.IV. Non-compliance. V. Interpretation by pre-judicial means. VI. Juridical effects of Court decisions. VII. Review, amendment, expansion and clarification of Court decisions. VIII. Organization of the Court. IX. General comments and conclusions.

I. Background

1. At the start, the Andean Group Economic Integration Program had no procedures of its own for controlling legality nor for settling disputes. To handle these issues, the original version of the Pact of Cartagena set various rules on diplomatic methods, assigned to the Pact Commission, and deferred the issue of using the means established by the Protocol of the Settlement of Disputes signed among the LAFTA nations.

Article 23 of the original text of the Pact states that "the Commission will be responsible for implementing the procedures for negotiation, good offices, mediation and conciliation necessary when discrepancies arise due to the interpretation or implementation of this Agreement or the Decision of the Commission". At the same time, it stipulated that "should no agreement be reached, the Member-States shall be subject to the procedures established in the Protocol for Settlement of Disputes, signed in Asunción on 2 September 1967 by the Ministers of Foreign Affairs of the signatories of the Treaty of Montevideo".

This provision was modified by the Protocol of Quito, signed in 1988, which introduced various important alterations into the Pact of Cartagena.[1]

2. This situation changed radically after 1979 with the signature and entry into effect of the treaty setting up the Court of the Pact of Cartagena. This instrument formalized the establishment of a complex, advanced system of measures for the settlement of disputes, control of legality and uniform interpretation of the norms and standards of the juridical Arrangements of the Agreement.[2]

3. In the Preamble to this Treaty, the Signatory States declared that the "stability of the Pact of Cartagena and the rights and obligations arising therefrom should be safeguarded by a jurisdictional agency of the highest level, independent of the Governments of Member-States, with the capacity to declare community law, and settle disputes arising therefrom, interpreting it in a uniform manner".[3]

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[1] Prior to approval of the Protocol of Quito, this provision was modified in an implicit manner by Article 33 of the Treaty setting up the Court, whereby "the Member-States shall not submit any dispute that may arise based on the application of the norms and standards that shape the juridical arrangement of the Pact of Cartagena to any court, arbitration system or proceedings other than those covered in this Treaty".

[2] The Treaty setting up the Court was signed in Cartagena de Indias (Colombia) on 28 May 1979.

[3] Similarly, Article 2 of the Court Charter, approved by Decision 184 of the Pact of Cartagena Commission, defines the Court as "a jurisdictional agency set up to guarantee respect for the law in the application and interpretation of the juridical arrangements of the Pact.

On this basis, in addition to the well-known need - as expressed in the same Preamble - to "guarantee strict compliance with the commitments arising directly or indirectly from the Pact of Cartagena", a Court was set up as the "principal agency" of the Agreement.

The system set up by the Court Treaty covers the functions of control of legality, settlement of disputes and uniform interpretation of the law within the economic integration system of the Andean Group. This is consequently one of the most complete systems yet developed and applied in integration programs involving the Latin American nations. The precision with which it is designed to a large extent responds to the nature of the integration program covered by the Pact of Cartagena, as well as the type of normative powers conferred on the agencies within its basic structure and the effects of the provisions of Law arising therefrom.

This system was inspired by that of the European Community. The authors of the Preliminary Draft of the Treaty setting up the Court acknowledged that "the characteristics of the organization" of the jurisdictional agency proposed were based on "the experience built up on this matter by the Court of the European communities".[4]

4. The nature and scope of the economic integration program postulated by the Pact of Cartagena, as well as the quality of the spheres of competence and powers attributed to the agencies of the institutional structure of this scheme, meaning the Commission and the Board, constituted the fundamental principals of the decision to set up a system for the settlement of disputes, control of legality and uniform interpretation of the law, under the responsibility of a permanent, independent jurisdictional agency.

Although it does not expressly state this, the Pact implies that the economic integration process among the Signatory States has as its purpose a final objective of a material order: the establishment of a type of "economic community", which assumes the progressive development of a complex juridical order whose application may prompt an appreciable number of disputes among such States, and at the same time require appropriate surveillance.

Within this framework, the Pact confers on the Commission - as an intergovernmental agency - important powers to adopt binding norms and standards for the Member-States, including through a majority vote, with no requirement for unanimity.[5] Similarly, it attributes to the Board - as an independent or non-governmental organization - powers not only to issue proposals designed to implement the decision-taking and normative process assigned to the Commission, but also to adopt rules that are equally mandatory for the Member-States.[6]

5. Both in terms of the Treaty that established it as well as the amendments introduced in the Pact of Cartagena by the Protocol of Quito, the Court became a part, as the "principal agency" of

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[4] A comparative analysis between the European Community Court and the Pact of Cartagena Court may be found in Zelada Castedo, Alberto, Control of legality, settlement of disputes and uniform interpretation of common law in the Andean Group Integration Scheme, in Sachica, Carlos and other, "The Pact of Cartagena Court", Buenos Aires, INTAL, 1985.

[5] According to Article 6 of the Pact of Cartagena, as amended by the Protocol of Quito, the "Commission is the most senior agency of the Pact, and as such has the exclusive legislative capacity over the matters falling within its sphere of competence". On the other hand, according to Article 11 of this same Pact, in order to adopt its decisions, the Commission must generally have "the affirmative vote of two thirds of the Member-States".

[6] According to Article 13 of the Pact, the Board is the "technical agency" thereof, and is obliged to "act solely in function of the interest of the sub-region", enjoying broad-ranging power to submit "proposals" to the Commission, as well as having decision-taking powers on specific issues linked to the application of the principal instruments of the economic integration scheme, particularly the trade liberalization program and the common customs tariff scheme. Thus, it is endowed with precise powers, under the Treaty setting up the Courts, to implement the competence thereof in terms of failure to comply with the norms and standards of the juridical arrangements of the Pact of Cartagena by the Member States.

the institutional structure of the economic integration scheme of the Andean Group. Article 5 of the Pact, as amended, stipulates the "principal agencies of the Agreement are: the Commission, the Board, the Court and the Andean Parliament".[7]

II. Jurisdiction and Competence of the Court

6. The jurisdiction of the Court is mandatory for the Member-States of the Pact with regard to application of the norms and standards of the juridical arrangements thereof. This is stipulated both in Article 23 of the Pact as well as in Article 33 of the Treaty setting up the Court.

According to the first of these norms, the settlement of disputes that may arise due to the application of the juridical arrangements of the Pact, "shall be subject to the norms and standards of the Treaty setting up the Court". According to the latter, the Member-States of the Pact are obliged, more accurately, to avoid submitting "any dispute that may arise on the basis of the application of the norms and standards that constitute the juridical arrangements of the Pact", "to any Court, arbitration system of procedure different from those covered" in the Treaty setting up the Court.

7. Consequently, the jurisdiction of the Court is both exclusive and mandatory for the Signatory States of this Pact, as recourse to other procedures is expressly banned.

Acceptance of the mandatory jurisdiction of the Court extends automatically to those States which may in the future adhere to the Pact of Cartagena. As stipulated by Article 36 of the Treaty setting up the Court, adherence to the Pact necessarily implies adherence to this latter Treaty.[8]

8. With regard to the jurisdiction and spheres of competence of the Court on this issue, it is clear that this extends to cover everything relative to the interpretation and application of the juridical arrangements of the Pact.

When outlining this scope, Article 1 of the Treaty setting up the Court states that these arrangements include the following sets of norms and standards:

a) The Pact of Cartagena, its Protocol and additional Instruments;
b) The Treaty setting up the Court;
c) The Decisions of the Commission; and
d) The Resolutions of the Board.

9. Although it is not expressly stated, the correct interpretation is that this provision contains a true listing of the sources of the law regulating the economic integration process of the Andean Group. This implies that such components constitute both ways of creating law as well as measures for implementing norms and standards under law.

Also implicit, but unmistakable, this important norm establishes a hierarchical order among the various sources of law, locating the Pact of Cartagena and the Treaty setting up the Court at the base of the normative order of the economic integration system, as conventional instruments of basic law and the Decisions of the Commission and the Resolutions of the Board are ranked in a subordinate position below the former, as unilateral or non-conventional instruments under

[7] Similarly, Article 6 of the Treaty setting up the Court defines it as the "principal agency" of the Pact of Cartagena.
[8] Article 36 of the Treaty setting up the Court stipulates that it "may not be signed with provisos", and that "the States that adhere to the Pact of Cartagena must also adhere to this Treaty".

derived law.

This same rule also sets the normative framework within which the competence of the Court should be exercised. The exhaustive listing of the segments of norms within the juridical arrangements of the Pact seems to exclude the possibility that the Court may have recourse to other sources of law when hearing and judging cases submitted to its jurisdiction, including general international law and the general principals of the law. It similarly excludes the possibility that the Court may hand down equity or *ex aequo et bono* decisions.

10. In order to fulfill the three basic functions assigned to it, the Court has the competence to hear cases and hand down sentences in the following circumstances:

a) annulment cases of the Decisions of the Commission and the Resolutions issued by the Board of the Pact,
b) cases of non-compliance by the Member-States with the norms and standards of the juridical arrangements of the Pact, and
c) cases of interpretation in a pre-judicial manner of the norms and standards that constitute the juridical arrangements of the Pact, and which may be filed by the legal authorities of the Member-States.

III. Annullation cases

11. The capacity of the Court to exercise control over the legality of acts of the Commission and the Board is based on its competence to "declare null and void" the Decisions of the former and the Resolutions of the latter.[9]

The annullation of these acts - in compliance with the provisions of Article 17 of the Treaty setting up the Court - may be declared under the conditions that they have been adopted in "violation of the norms and standards that shape" the juridical arrangements of the Agreement, as well as by "misuse of power".

Annullation cases may be brought by both the Member-States as well as the Commission and the Board. The former may only file such cases in relation to Decisions of the Commission that have not been approved by the affirmative vote thereof. [10]

12. Private persons, whether individuals or corporations are also qualified to request the annullation of the decision of the Commission and the Resolutions of the Board directly before the Court. This right may be exercised only in the case of challenged decisions or resolutions "that are applicable thereto and cause losses or damage". [11]

13. The challenge may have the effect that the "Court declares the total or partial annullation of the Decision or Resolution challenged". Under these circumstances, the agency of the Pact "whose act has been annulled should adopt the provisions required to guarantee effective compliance with the decision" of the Court. [12]

In all, as stipulated by Article 21 of the Treaty setting up the Court, "bringing a annullation case shall not affect the effectiveness and validity of the norms or standards under dispute".

14. The norms and standards regulating the spheres of competence of the Court for declaring

[9] Article 17 of the Treaty setting up the Court.
[10] Articles 17 and 18 of the Treaty setting up the Court.
[11] Articles 17 and 18 of the Treaty setting up the Court.
[12] Article 22 of the Treaty setting up the Court.

null and void the acts of the Commission and the Board are not explicit with regard to conformity requirements, either material or formal, with which they should comply to avoid being declared null and void.

Nevertheless, as the normative system of the Pact is conceived as a true juridical arrangement and is consequently subject to a hierarchical relationship among its various normative segments, this leads to the understanding that norms and standards under derived law, meaning those that emanate from the powers conferred on the Commission and the Board, may not run counter to norms and standards under basic law contained in the Pact of Cartagena and Treaty setting up the Court. At the same time, due to the nature of the corresponding agencies, the norms and standards issued by the Board - whose task, functions and spheres of competence characterize it as an executive agency - may not run counter to the norms and standards issued by the Commission - whose sphere of competence characterizes it as a legislative agency.

IV. Non-compliance

15. Filing charges of non-compliance is designed to bring into operation the spheres of competence of the Court that exercise control over the acts of the Signatory States of the Pact. Due to the basis, scope and characteristics of its origin, this also establishes the competence of this Agency to resolve through jurisdictional means or adjudication the disputes that may occur between the above-mentioned States.

This case may be brought by the Board in its official capacity of at the request of a Member-State, when it considers that another Member-State "has failed to comply with the obligations arising from the norms and standards that constitute the juridical arrangements" of the Pact.

Before bringing this case, the Board is empowered to forward its comments to the State that, in its view, is in non-compliance, issuing a "motivated decision" on receipt of the response thereof. If this decision "confirms non-compliance" and the "defendant State persists in this conduct, the Board may request a sentence from the Court". [13]

The intervention of the Board may also be motivated by the request of a Member-State. In this case the Board should also forward its comments to the defendant State and issue a motivated decision. If this decision "confirms non-compliance" and the defendant State persists in this conduct, the Board "may request a sentence from the Court". [14]

16. The powers conferred on the Board to bring suit for non-compliance does not exclude the right of any Member-State to appeal directly to the Court. This is possible under the following circumstances: 1) if after its decision of non-compliance has been issued, the Board does not bring a case "within the next two months after the date of its decision", and 2) if the Board does not issue its "decision within the three months after the date of the presentation of the appeal or the decision does not confirm non-compliance". [15]

17. It is important to note that a charge of non-compliance by a Member-State is not necessarily based on the declaration of non-compliance issued by the Board. The right of any State to appeal to the Court due to non-compliance by another with the norms and standards of the juridical arrangements of the Pact may be exercised, even though such a decision may not have confirmed non-compliance.

[13] Article 23 of the Treaty setting up the Court.
[14] Article 24 of the Treaty setting up the Court.
[15] Article 24 of the Treaty setting up the Court.

Similarly, it is important to note that when the Board is faced with the situation of non-compliance, it proceeds at its own initiative, and is solely empowered to submit the case to the Court. In compensation, when it acts at the request of the Member-State, it is obliged to bring a case for non-compliance.

18. This case may cause the Court to hand down a sentence of non-compliance. Under these circumstances, the "Member-State whose conduct has formed the subject of complaint shall be obliged to adopt the necessary measures to carry out the sentence, within three months after notification thereof".[16]

Should it fail to comply with this obligation, the Court is empowered to authorize both the Member-State adversely affected by the situation of non-compliance to apply sanctions, as well as the other Member-States. Based on a prior opinion of the Board, the Court "shall determine the limits within which the plaintiff nation or any other Member-State may restrict or suspend, totally or partially, the advantages of the Pact of Cartagena that benefit the Member-State in non-compliance".

19. Authorization to apply sanctions is subject to a summary process regulated by the Charter of the Court. According to this instrument, after a sentence of non-compliance has been handed down and at the termination of the period set by Article 25 of the Treaty setting up the Court for the defendant State to comply with the obligation to implement the measures necessary for the execution thereof, and should it fail to do so, the jurisdictional agency "shall request the opinion of the Board". Having received this opinion, the court shall – "if it so deems fit" - set a date and time for a hearing. Having held this hearing, "the Court shall, in a plenary session, discuss and determine the limits within which the Member Nations may restrict or suspend, totally or partially, the advantages of the Pact that benefit the Member Nation in non-compliance". These limits "should be sized to the seriousness of the non-compliance."[17]

Finally, as established by Article 71 of the Charter of the Court, the "application of measures of restriction or suspension" mentioned above "shall not require the issue of any instrument by the Commission or the Board".

20. The powers of the Court to exercise control over the legality of the acts of the Member-States in response to a case of non-compliance derive from the principal of the pre-eminence of the juridical arrangements of the Pact in relation to the domestic law of the Member-States.

The pre-eminence of the basic law contained in conventional norms and standards, or those arising from the Pact between the States, are based on principles and practices generally accepted as mandatory and that form part of general international law.

In contrast, the pre-eminence of derived law, meaning the decisions of the Commission and the Resolutions of the Board, are based on two important norms of the Treaty setting up the Court. The first is expressed in Articles 2, 3 and 4 of this instrument, while the latter is expressed in Article 5 thereof.

According to Articles 2, 3 and 4 of the Treaty setting up the Court, the decisions of the Commission "are binding on the Member Nations from the date on which they are approved" and additionally "shall be directly applicable in the Member Nations as from the date of publication

[16] Article 25 of the Treaty setting up the Court.
[17] Article 69, 70 & 71 of the Charter of the Court.

thereof in the Official Gazette of the Pact". In turn, the Resolutions of the Board "shall enter into effect on the date and in the manner established in the Regulations thereof".

On the other hand, Article 5 of this same Treaty stipulates that the Member-States are first obliged to "adopt the measures necessary to ensure compliance with the norms and standards that constitute the juridical arrangements" of the Pact, and secondly to "neither adopt nor employ any measure that runs counter to such norms and standards or that in some manner hampers the application thereof".

21. Consequently, the acts of the Member-States relative to the issues covered by the juridical arrangements of the Pact should remain in conformity with the norms thereof, as well as those under basic law and derived law. As a corollary, an act adopted running counter to these norms and standards will give rise to not only a conflict with another Member-State which may eventually be affected, but also to a conflict with the juridical arrangements of the Pact.

This makes it clear that the responsibility for bringing a case for non-compliance before the Court is basically in the hands of the Board which, as an executive agency, has - among others - the function of "safeguarding the application of the Pact and compliance with the decisions of the Commission and its own Resolutions".[18]

22. It is thus reasonable to accept that a sentence of non-compliance is the appropriate outcome of the exercise of the power of the Court in monitoring the legality of the acts of the States, or declaring the conformity or non-conformity of such acts with the juridical arrangements of the Pact, in function of the pre-eminence thereof over domestic law and the obligation of the Member-States to apply or not to hamper the application of the norms and standards that constitute such arrangements.

23. The duties stipulated by the above-mentioned Article 5 of the Treaty setting up the Court constitute true duties in terms of conduct, and not only results. They additionally have both a positive and negative sense, so that a situation of non-compliance may occur as much through omission in failing to implement measures to guarantee the application of the norms and standards of the juridical arrangements of the Pact, as through actions in adopting measures running counter to the above-mentioned norms and standards or that hamper the application thereof.

V. Interpretation by pre-judicial means

24. The competence of the Court to issue valid, binding interpretations, by pre-judicial means of the norms and standards of the juridical arrangements of the Pact of Cartagena, is designed to preserve the unity and coherence thereof. This is based on the assumption that these norms and standards, due to their nature and scope, as well as their full validity within the domestic juridical arrangements of the Member-States, may be applied in an individualized manner by the administrative or jurisdictional authorities thereof.

25. The initiative to undertake the pre-judicial interpretation process is assigned to the judicial authorities of the Member-States.

According to the provisions of Article 29 of the Treaty setting up the Court, "the national judges hearing a case in which some of the norms and standards constituting the juridical arrangements" of the agreement should be applied, "may request the interpretation of the Court of such norms and standards, whenever the sentence thereof is susceptible to appeal under

[18] Article 14, item a) of the Pact of Cartagena .

domestic law".

Should the court decision not be susceptible to later appeal, the judge in question is obliged to suspend the procedure and request the interpretation of the Court. This request should be handled officially, or through a separate petition.

26. On issuing its decision, the court "should limit itself to stipulating the contents and scope of the norms and standards of the juridical arrangements" of the Pact. It consequently may not interpret the contents and scope of national law nor qualify the material facts in the case. [19]

The decision handed down by the Court is fully binding on the legal authorities that requested an interpretation by pre-judicial means. Thus, Article 31 of the Treaty setting up the Court stipulates that "the judge hearing the case should adopt the interpretation" thereof.

VI. Juridical effects of Court decisions

27. The decisions handed down by the Court are fully binding "as from the day after the reading thereof in a hearing", in accordance with provisions of Article 58 of its Charter. Compliance therewith thus does not "require ratification or *exequatur* in any" of the Member-States. [20]

In all, the concrete legal effects of the decisions differ, depending on whether they are the outcome of a case of annullation, a case for non-compliance or a process requesting interpretation by pre-judicial means.

28. In the case of a sentence handed down as the outcome of a case for anullation, this has a direct effect on the agency of the Pact of Cartagena whose act has been annulled. Consequently, as stipulated in Article 22 of the Treaty setting up the Court, this agency is obliged to "adopt the provisions required thereof to guarantee effective compliance" therewith. [21]

In turn, a sentence handed down based on a suit for non-compliance addresses a defendant State that has "fallen into non-compliance with the obligations arising from the norms and standards that constitute" the juridical arrangements of the Pact. Should this decision "confirm non-compliance", such State shall "be obliged to adopt the necessary measures" to ensure the execution thereof. [22] More precisely, the Charter of the Court states that in a sentence of non-compliance this agency shall "stipulate the measures that the corresponding Member-State should adopt for the implementation thereof". [23]

Finally, a sentence adopted by means of a process of application for interpretation by pre-judicial means is addressed to the Court or judge who requested it. Under these circumstances, as indicated, a judge who requested this interpretation is obliged to adopt it.

29. According to the norms and standards commented on, only in the case of a decision handed down in a process of request for interpretation by pre-judicial means is the precise scope of the obligation arising therefrom stipulated, for the national judge who submitted this request.

With regard to the effect of the sentences handed down as a consequence of cases of

[19] Article 30 of the Treaty setting up the Court.
[20] Article 32 of the Treaty setting up the Court.
[21] According to the above-mentioned Article 22, 'when the Court declares the total or partial annullation of the Decision or Resolution challenged, it shall also indicate the effects of this decision in terms of time".
[22] Article 24 of the Treaty setting up the Court.
[23] Article 56 of the Charter of the Court.

annullation and non-compliance, the pertinent provisions refer simply to the obligation of the agency of the Pact or the respective State to "adopt the measures required to guarantee effective compliance with the sentence", or "to adopt the measures necessary to implement the sentence".

If these rules leave it to the discretion of the Agency of the Pact or the State that is the recipient of the sentences of annullation or non-compliance, it is also clear that both are nevertheless obliged to implement a specific type of behavior.

30. It is thus feasible to interpret that in cases of anullation of a decision of the Commission or a Resolution of the Board, these agencies may select one of the following two paths: 1) Repeal or modify the act challenged and declared null, with general effect, or 2) declare through another pertinent act the non-applicability of the decision or resolution challenged and declared null to a concrete or individual case. This latter option may be appropriate when it involves a case of anullation brought by a private individual. In contrast, the latter may be appropriate when this involves a case of annullation brought by a State or the Board, against the acts of the Commission, or by the latter against the acts of the former.

Another interpretation is that in the case of a sentence handed down as the outcome of a case of non-compliance, the defendant State is called upon to rectify its conduct including through the repeal of the measure declared counter to the juridical arrangements of the Pact, or the declaration of the inapplicability thereof. However, this latter action prompts some doubts about the case of annullation, as it is reserved solely for Member-States and the Board, meaning it may be understood as being a resource whose effects would necessarily be of a general order.

31. Both the nature of annullation cases, as well as the effects of the sentences handed down as a result thereof, clearly classify the type of jurisdictional control procedures over the legality adopted in the economic integration system under the Pact of Cartagena. At the same time, they tend to equivalate the Court to a Constitutional Court or a Council of State, similar to those that exist in most of the national juridical arrangements of the Member-States of the Pact.

The function of hearing and handing down decisions in cases of non-compliance, which arises from the power of the Court to "hand down community law" and "settle disputes that arise therefrom", as stipulated in the Preamble to the Treaty setting up this agency, leads to it becoming equivalent to an effective Court of Appeal.

VII. Review, Amendment, Expansion and Clarification of Court decisions

32. The norms and standards contained in both the Treaty setting up the Court as well as its Charter, make it quite clear that the decisions handed down thereby are not subject to appeal before any other institutional court. This Court is conceived as a Court of single and final instance.

This is why the powers conferred by other norms and standards of both the Treaty as well as the Charter of the Court, on the Board, the Commission or a Member-State to request a "review", "amendment", "expansion", or "clarification" of a sentence or decision, give rise to cases that are heard only by the Court itself.

33. A request for or the actual process of review is applicable only to decisions handed down in a case of non-compliance. In this respect, Article 36 of the Treaty setting up the Court stipulates that "decisions handed down in cases of non-compliance are subject to review by the Court, at the petition of the party involved". This review should be founded solely on "some fact that may have had a decisive effect on the outcome of the case" and shall be well-founded "whenever this fact shall have been unknown on the date of the issue of the decision by whomsoever requests the

review thereof". [24]

34. Applications for "amendments", "expansion", and "clarification" are in contrast well-founded, in accordance with the terms of the Charter of the Court, for any decision.

Article 59 of this instrument stipulates that "the Court at its own initiative or when petitioned by a party" may amend or expand its decision. A possible amendment thereto is only possible "if the decision contains manifest errors in the wording, or calculation, or obvious inaccuracies, or if it pronounces a topic not covered in the case". In turn, expansion will only be well-founded "when it is not the outcome of any of the points under discussion".

A request for "clarification", in keeping with Article 60 of the Charter of the Court. may be submitted by a Member-State, the Commission or the Board, depending on the case. Clarification shall be limited to "points in the decision which are ambiguous, in its opinion".

35. Appeals or processes of review, amendment, expansion and clarification of a decision handed down by the Court may not be interpreted as undermining the mandatory nature thereof, nor as hampering their implementation, in the terms stipulated by Article 32 of the Treaty setting up the Court and Article 58 of the its Charter.

Similarly, they may not be interpreted as measures running counter to the rule whereby the decision of the Court is an act handed down in a sole, final instance.

[24] Similarly, Article 67 of the Charter of the Court establishes that "only sentences handed down in cases of non-compliance are subject to review".

VIII. Organization of the Court

36. The Court consists of "five magistrates", appointed by plenipotentiary representatives of the Member-States of the Pact of Cartagena specially accredited for this purpose.[25] These appointments shall be agreed upon "unanimously".

The magistrates thus appointed shall hold office for six years, at the end of which period they may be reelected once only.

Candidates for appointment as magistrates to the Court should be citizens of the Member-States of the Pact, and "enjoy a high moral reputation and comply with the conditions stipulated in their home countries for the exercise of the highest legal functions, or be legal experts of well-known competence". [26]

37. In compliance with the norms and standards that explicitly stipulate the concept of the Court as an independent agency, Article 7 of the Treaty setting it up states that "the magistrates shall enjoy full independence in the exercise of their functions". In turn, Article 13 of this same instrument obliges the Governments of the Member-States to grant them "all the facilities necessary for full compliance with their functions", including the benefit in the territories of such States of the "immunities acknowledged by international custom, and in particular by the Convention of Vienna on diplomatic relations with regard to the inviolability of its records and official correspondence, as well as in all matters regarding civil and criminal jurisdictions".

38. At the request of the Government of a Member-State, one or more magistrates of the Court may be removed from office, "only when they have committed a serious fault in the exercise of their functions, covered in the Charter of the Court and in compliance with the procedure established therein" [27] This removal process shall be handled at a special meeting of the plenipotentiary representatives of the Member-States appointed for this purpose, whose decision shall be adopted "unanimously".

39. As shown, the magistrates of this Court receive their mandate directly from the Governments of the Member-States. Similarly, they are also directly responsible thereto. The other agencies of the Pact play no part in their appointment or removal.

The norms and standards regulating the election procedures or appointment of the magistrates, as well as the procedure for the removal thereof from office, constitute another of the means designed to guarantee the independence of the Court from both the Member-States as well as the other agencies of the Pact.

IX. General comments and conclusions

40. The jurisdictional system for the settlement of disputes, control of legality and uniform interpretation of the law adopted within the process of economic integration under the Pact of Cartagena, may be interpreted as an indication of the validity of the hypothesis of the interrelationship between the nature and scope of an integration scheme and its corresponding institutional structure, including the means for monitoring the application of norms and standards under law that regulate it.

Several experts in economic integration law see a close link between the scope and depth

[25] Articles 7 and 8 of the Treaty setting up the Court.
[26] Article 7 of the Treaty setting up the Court.
[27] Article 11 of the Treaty setting up the Court.

of the objective or stage of integration postulated within a scheme, and the institutional structure - particularly from the viewpoint of the spheres of competence and powers conferred on the agencies thereof - established for handling or administering it. Similarly, they stress the relationship between the complexity and above all the binding effects of the norms and standards under law that arise as a consequence of the development of a process of this type, and the need to establish finer-tuned measures for monitoring the application and compliance of such norms and standards.

41. These certainly include the links between the quality of the commitments assumed by the Member-States within a specific economic integration scheme on the one hand, and the institutional structure thereof as well as the measures for the settlement of disputes on the other.

Nevertheless, the nature and characteristics of the methods for the settlement of disputes seem to have a more direct relationship with the quality of the normative powers conferred on certain agencies - whether intergovernmental or independent - of the corresponding institutional structure, as well as the effect under the aegis of the domestic law of the States of acts arising from the exercise of such powers.

Thus, for example, in accordance with the respective constitutive treaties, both the Council of the European Union as well as the Commission of the Pact of Cartagena, as legislative agencies, have sufficient power to issue norms and standards under law that can directly affect and even modify the domestic legislations of the Member-States. At the same time, within the respective common policies - such as trade policy - they have the power to replace the spheres of competence and powers of the States. Additionally, in certain cases, they are empowered to hand down norms and standards under law even when faced with the opposition of a Member-State.

At the same time, the Commission, in the case of the European Union, and the Board, in the case of the Pact of Cartagena, as independent executive agencies, have the power to adopt norms and standards under law, particularly of an individualized nature, that are binding on the Member-States of the organizations and even on other subjects under law.

These factors serve as the basis for the decision to adopt, within these integration systems, jurisdictional procedures regarding control of legality, assigned to permanent, independent Courts.

42. Of no less importance in the adoption of measures, also jurisdictional and designed to exercise control over the acts of the State, particularly the obligations and commitments acquired thereby, is an awareness that the complexity and above all the depth of the objectives of these integration schemes, demand an appropriate balance in terms of the effectiveness of the process of normative development. It is assumed that this effectiveness parallels the need for a solid juridical security for the various subjects covered by the emerging norms and standards of such processes.

In the view of many analysts, this security would be effectively guaranteed only if surveillance of the acts of the States is assigned to an independent jurisdictional agency.

43. Finally, the need to guarantee the coherence and uniform application of law designed to foster the development of these integration schemes, leads to the postulation of the convenience of a valid, mandatory interpretation of the norms and standards of the corresponding juridical arrangements, which is also assigned to a single agency, whose authority overrides the authority of the agencies within the domestic order of the States.

This need becomes still more patent due to the broad scope of the material and personal validity of such norms and standards and, above all, to their direct and immediate effect on

domestic juridical arrangements, giving rise not only to the possibility but to the necessity that they should be applied in an individualized manner by various jurisdictional agencies.

This postulate gives rise to the establishment of procedures for interpretation by the pre-judicial means, which is also the responsibility of an independent jurisdictional agency.

44. All in all, a process targeting the establishment of stages of advanced economic integration, such as a customs union, a common market or an economic community, gives rise to a true new self-sufficient law community from the viewpoint of its formal sources. This consequently prompts the need to contain, within its own sphere of action, all measures and institutional procedures guaranteeing a well-ordered process of creating norms and standards as well as an appropriate and coherent process of interpretation and application thereof.

CJI/SO/II/doc.38/95
14 August 1995
Original: Spanish

DRAFT INTER-AMERICAN CONVENTION TO REPRESS CORRUPTION IN THE AMERICAN NATIONS

(Approved by the Inter-American Juridical Committee on 11 August 1995)

PREAMBLE

The Signatory States to this Convention,

CONVINCED that corruption adversely affects the moral order and justice, the bases of security and peace;

WHEREAS representative democracy, an indispensable condition for stability, peace and the development of the region, by its very nature requires the combat of all forms of corruption in the exercise of public functions;

PERSUADED that combating corruption strengthens democratic institutions and avoids distortions of the economy, flaws in public administration and deterioration of public morals;

CONVINCED that is necessary to adopt an international instrument as soon as possible that promotes and facilitates international cooperation in combating corruption and particularly in ensuring that the effectiveness of the actions of national legal systems is not adversely affected by the departure from the respective territory of persons responsible for acts of corruption or the assets which are the outcome thereof;

BEARING IN MIND that eradication of corruption is the responsibility of the States and that cooperation among them is necessary in order to ensure that actions in this field are effective;

DETERMINED to do its utmost to eradicate corruption in the exercise of public functions;

IT AGREES ON THE FOLLOWING MATTERS:

ARTICLE I
DEFINITIONS

For the purposes of this Convention:

1. "Acts of corruption" is taken to mean the types of conduct described in Article IV of this Convention.

2. "Applicant State" is taken to mean the State in whose territory the illicit act is committed or produces effects, and that requests the application of this Convention.

3. "Respondent State" is taken to mean:
   a) the State where the persons whose extradition is requested by the Applicant State are located;

b) the State where the assets whose seizure or confiscation is requested by the Applicant State are located;
c)the State that is required by the Applicant State to provide information, implement acts leading to trial, or other form of cooperation.

4. "Assets" is taken to mean goods of any type, either portable or fixed, tangible of intangible, as well as the legal instruments or documents that confer ownership or other rights over such assets.

ARTICLE II
PURPOSE

The purpose of this Convention is to promote, facilitate and regulate cooperation among the Signatory States in order to guarantee the effectiveness of the measures and actions adopted by of each of them to prevent and sanction acts of corruption in the exercise of public functions.

ARTICLE III
SCOPE

This Convention is applicable whenever a punishable deed is committed in the territory of the Applicant State or has effects thereon, in any of the following cases:

a) When a person is accused, tried or sentenced by a Court in an Applicant State for an act of corruption punishable by a term of imprisonment of at least one year, and is located within the territorial jurisdiction of the Respondent State.
b) When the assets that are the outcome of an act of corruption being tried or already sentenced by a Court in the Applicant State are located within the jurisdiction of the Respondent State.
c) When a Court in the Applicant State hearing a case involving an act of corruption requests information, the implementation of acts leading to trial, or other form of cooperation falling within the jurisdiction of the Respondent State.

ARTICLE IV

This Convention is applicable to the following acts of corruption in the exercise of public functions:

a) The demand for or acceptance of gifts, favors or advantages for the person involved, or another person, either directly or through third parties, by a person exercising public functions, in exchange for committing or omitting any act in the exercise of the functions thereof;
b) The offer or transfer of gifts, favors or advantages to a person exercising public functions, either directly or through third parties, in exchange for committing or omitting any act in the exercise of the functions thereof;
c) The implementation by a person exercising public functions of any act or omission in the exercise of the functions thereof, in order to gain illicit benefits for him/herself or for third parties, whether or not this adversely affects State assets;
d) The illicit use or concealment of assets arising from any of the acts mentioned in this Article;

e) Participation as co-perpetrator, accomplice, accessory or any other means in the commission, attempted commission, association or involvement in the commission of any of the acts mentioned in this Article.

ARTICLE V
CHARACTER OF THE ACT

For the purposes of the application of this Convention, the fact that the assets arising from the act of corruption may have been intended for political purposes is not in itself sufficient to endow such act with the character of a political crime or crime connected with a political crime.

ARTICLE VI
DOMESTIC LEGISLATION

The Signatory States shall adopt legislative measures or those of some other type to facilitate cooperation between them, in terms of this Convention, for the prevention and sanction of acts of corruption in the exercise of public office.

The Signatory States shall do their utmost to ensure that their laws - insofar as they do not already do so - sanction not only acts of corruption that have an effect in their own territory, but also those carried out by persons subject to the jurisdiction thereof with regard to those exercising public functions in any other Signatory State.

ARTICLE VII
EXTRADITION

In compliance with the treaties and laws applicable thereto, each Signatory State agrees to hand over persons whose extradition is required by the Applicant State as being accused, tried or sentenced by the competent court authority for acts of corruption penalized in the legislation of the Applicant State with a period of imprisonment of no less than one year.

ARTICLE VIII
REFUSAL OF EXTRADITION

The Respondent State may refuse to grant extradition in cases determined by the applicable treaties or domestic laws. When the Respondent State refuses to grant extradition as it considers itself competent under its own legislation to try the person whose extradition is required, or because such person is a citizen thereof, it should try the person and advise the Applicant State of the final outcome of the case.

ARTICLE IX
PROVISIONAL DETENTION

When the Applicant State requests the detention of a person whose extradition has been applied for, the Respondent State may implement this measure or any other it may deem adequate to guarantee the appearance of the person during the extradition procedures, in compliance with the provisions of domestic law and treaties applicable thereto.

ARTICLE X
BASIS FOR EXTRADITION

The Signatory States that make extradition conditional on the existence of a Treaty may consider this Convention as the juridical basis for extradition with regard to the acts of corruption mentioned in art. VII.

ARTICLE XI
MEASURES REGARDING ASSETS

In compliance with the treaties and laws applicable thereto, the Respondent State will comply with the requirements stipulated by the competent legal authority in the Applicant State that is investigating, trying or has handed down a sentence in a case trying an act of corruption in order to:

a) identify within its territory the assets arising directly or indirectly from the act of corruption;
b) implement precautionary measures consisting of a preventive ban, embargo or other similar action;
c) implement the final sentence handed down in the Applicant State with regard to its effects on the assets located in its territory, including the confiscation or seizure and restitution thereof.

ARTICLE XII
JURIDICAL COOPERATION AND ASSISTANCE

The Signatory States shall render the utmost reciprocal juridical assistance, in compliance with the treaties and laws applicable thereto, in order to obtain proof, as well as other acts necessary to facilitates juridical cases and actions regarding acts of corruption in the exercise of public functions.

ARTICLE XIII
BANK CONFIDENTIALITY

The Signatory States shall note invoke bank confidentiality to refuse the cooperation covered by this Convention when so required by a competent juridical authority.

The Applicant State agrees not to use information received and protected by bank confidentiality for any purpose other than the case for it was required, and to maintain the confidentiality thereof should its laws so permit.

ARTICLE XIV
SUSPENSION OR REFUSAL

1. Any Signatory State may declare this Convention suspended, either wholly or in part, with regard to another Signatory State whose Government has been declared in violation of the effective exercise of representative democracy by the competent agency of the Organization of American States.

2. The Respondent State may consider itself not obliged to provide the cooperation required in the application of this Convention when the Government of an Applicant State has been declared in violation of the effective exercise of representative democracy by the competent agency of the Organization of American States.

3. The Respondent State may consider itself not obliged to provide the cooperation required in the application of this Convention when it has well-founded reasons for considering that the Respondent State has violated the Human Rights of the accused, tried or sentenced person.

ARTICLE XV
INTERPRETATION

None of the norms and standards of this Convention shall be interpreted as preventing the Signatory States from offering the reciprocal cooperation covered by this Convention under the provisions of other bilateral or multilateral treaties either in effect or signed in future thereby, or in compliance with the practices applicable thereto, insofar as this ensures more effective cooperation for complying with the purpose outlined in Article II of this Convention.

ARTICLE XVII
PROVISOS

Each State may formulate provisos to this Convention, whenever this involves one or more specific provisions, and provided that such are not incompatible with the purpose and objective of this Convention.

(THE USUAL CLOSING PROVISIONS FOLLOW HERE)

CJI/SO/II/doc.42/95
14 August 1995
Original: Spanish

JURIDICAL DIMENSION OF INTEGRATION AND INTERNATIONAL TRADE

SETTLEMENT OF DISPUTES IN THE CENTRAL AMERICAN COMMON MARKET

(presented by Dr. Mauricio Gutiérrez Castro)

PRELIMINARY COMMENTS

In view of the title of the topic which I will now attempt to develop, I feel that clarity demands some preliminary comments, as the Central American Common Market and the Central American Integration System or CAIS are not effectively the same, either chronologically or conceptually.

The Central American Common Market preceded the Central American Integration System, and was set up by the Treaty of Managua, falling under the General Central American Economic Integration Treaty signed on 13 December 1960. The Central American Integration System or CAIS, with the Protocol of Tegucigalpa, gave rise to the Charter of the Organization of Central American States (OCAS), signed in Tegucigalpa on 13 December 1991 by Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama, in effect for the first four of these nations from 1 February 1993.

The Protocol of Managua refers only to the commercial and economic aspects of Central American integration, and implemented - as clearly outlined by Honduran legal expert Dr. Roberto Ramirez - vital aspects of integration such as the Central American Common Market, including the Common Customs Tariff for Free Trade for various items produced in Central America, a privileged situation for setting up Central American companies or corporations which could develop large-scale industries in various sectors that would also strengthen the economic development of the region.

From the monetary aspect, several aspects of integration were fostered, such as the Central American Monetary Council, the Central American Monetary Fund, the Central American *Peso,* equivalent to one U.S. dollar, the replacement of the dollar in trade operations by the Central American *Peso,* with the Central Banks handling the clearing and settlement operations thereof and only the outstanding balances among them being paid in U.S. dollars.

The Central American Common Market did not in fact have a true supra-national juridical order. The resolutions of its agencies had no legal value until approved by the respective Governments, which was without doubt an obstacle to the smooth development of the Common Market, as the States did not wish to give up their sovereignty, as there was no political framework for doing so, and no juridical institutions to maintain and develop this. In conclusion, there was integration only in trade within the Central American Common Market, with no real system for the settlement of disputes.

In contrast, the current Central American Integration System (CAIS) set up an entire system for the settlement of disputes in a central court, as this stipulates that the solutions thereof □of any nature whatsoever shall be handled by a court: the Central American Court of Justice.

It would not be out of place to recall here that today□s Central American Court of Justice dates back to the Central American Court of Justice or Court of Cartago, which was set up by one of the Conventions signed in Washington in 1907, and which was the first permanent international judicial agency, although its existence and work are almost unknown, not due to a lack of intrinsic value in its institutions and resolutions, but rather because of the international tendency to measure the importance of juridical institutions by the size and power of the States that constitute them.

As Salvadorian international law expert Alfredo Martinez Moreno quite rightly indicated, there are two points in the Charter of the Central American Court of Justice that draw attention: its extremely broad sphere of competence and the fact that individuals may be involved in its cases.

In fact, with the exception of the new Central American Court of Justice, we find no international court either before or after this original Central American court, with such a broad sphere of competence, as in the Convention that set it up the signatory States agreed to "submit thereto all disputes or issues that may arise among them of any nature, and regardless of the origin thereof". We close this introduction by recalling that during its ten years of existence the Court heard nine cases, six involving individuals against States, and three between Governments.

Backed by both these experiences, when the Central American Integration System (CAIS) was set up, efforts were made to endow it with a global framework, creating an institution that could settle disputes.

In contrast to the Common Market which focuses on commercial and economic affairs, as already mentioned, the basic objective of the Central American Integration System is to convert Central America into a region of Democracy, Development, Peace and Liberty based mainly on respect, protection and promotion of human rights.

This System strives to foster global integration that will surpass the emphasis of the 1970s on commercial aspects in the MERCOMUN Common Market - as stated clearly by the Secretary-General of the Central American Integration System, Dr. Roberto Herrera Cáceres "in Central America, as in South America, the integrationalist experiences of the past have shown that integration needs a political context, because it is not an isolated or independent process".

The Central American Integration System involves a core structure consisting of the Meeting of Presidents, the Council of Ministers, the Executive Committee and the General Secretariat, to which is linked an Advisory Committee. It set up the Central American Court of Justice, and incorporated the Central American Parliament, respecting its Charter Treaty, and also included as one of its agencies the Meeting of Vice-Presidents and the Presidents-Elect.

The Central American Court of Justice, according to its Charter, is taken as representing the national conscience of Central America, and is also the depository and custodian of the values that constitute Central American nationality. It was commissioned to guarantee respect for the law in both the interpretation as well as the implementation of the Protocol of Tegucigalpa, and its supplementary instruments or deeds arising therefrom, and is also the principal permanent judicial agency of the Central America Integration System, whose regional jurisdiction and sphere of competence are mandatory for the States thereof.

Article 35 of the above-mentioned Protocol clearly defines the juridical framework of the Central American Integration System. Article 35. This Protocol and its supplementary and derived instruments shall prevail over any other Pact, Agreement or Protocol signed among the Member States, either bilaterally or multilaterally, covering matters related to Central American Integration.

It also states that "all disputes over the application or interpretation of the provisions contained in this Protocol and other instruments mentioned in the previous paragraph shall be submitted to the Central American Court of Justice".

Finally, it should be recalled that the temporary provisions of the Protocol stipulated that as long as the Court was not fully set up, all disputes over the application or interpretation of its provisions should be heard by the Central American Judicial Council.

The Central American Judicial Council is the executive agency of the Meeting of Central American Law Courts, and consists of the Chief Justices thereof.

CENTRAL AMERICAN COURT OF JUSTICE ITS SPHERE OF COMPETENCE AND OTHER POWERS

As indicated above, the current Central American Court of Justice is one of the principal agencies of the Central American Integration System (CAIS) with the purpose of implementing juridical security as the guardian of the Protocol of Tegucigalpa, its supplementary instruments and derived deeds, guaranteeing respect for the law in the interpretation and execution of the above-mentioned normative act (Articles 12 and 35 of the Protocol of Tegucigalpa), under the Charter of the Organization of Central American States (OCAS). However, as we will see, this Court goes beyond being merely a community court, or one focused on Integration Law. We thus feel it is important to offer a brief overview of the sphere of competence of this Court from the material viewpoint, meaning its various functions, or rather the issues which it hears, in order to understand what type of court it is when it exercises the powers conferred on its by Article 22 of its Charter, which will help us achieve a better understanding thereof.

A study of the sphere of competence and other faculties conferred on this court by Articles 22 and 23 of its Charter shows that the Central American Court of Justice is:

1. International Regional Court

It mandatorily hears disputes that may arise among the Member States, as well as at the request of the parties involved, if this covers territorial conflict, border skirmishes or offshore disputes (Article 22-a). It also acts as an international court, but with voluntary jurisdiction, hearing and settling disputes or matters that may arise between one Central America State and any other, when submitted thereto by common agreement (Article 22-h). Finally, it has an advisory function appropriate to an international court as "the State may consult the Court on an illustrative basis on the interpretation of any international conventional treaty in effect, as well as with regard to conflict between treaties or with the Domestic Law of each State". (Art. 23).

2. Community or Integration Court

We have already seen that under the Protocol of Tegucigalpa, the Court will guarantee respect for the law both in interpretation as well as the implementation of this Protocol, its supplementary instruments and derived deeds. As such, it is responsible for:

a) Hearing annulation cases and those involving failure to comply with the agreements of the agencies of the Central American Integration System (Art. 22-b);

b) Examining at the request of any interest party the legal, regulatory, administrative or any other type of provision laid down by a State when they affect the pacts, treaties and any other normative act of law of Central America Integration, or the agreements or resolutions of the agencies and entities thereof (Art. 22-c);

c) Acting as an Advisory Agency for the agencies or entities of the Central American Integration System with regard to the interpretation and application of the Protocol of Tegucigalpa on alterations in the Charter of the Organization of Central American States (OCAS), and the supplementary instruments and deeds arising therefrom (22-c);

d) Deciding on any pre-judicial consultation submitted by any judge or law court that is hearing a case awaiting a verdict, forwarded in order to obtain uniform interpretation or application of the norms and standards that underwrite the juridical arrangements of the CAIS (Art. 22-k);

e) Examining issues submitted thereto directly and individually by anyone affected by the agreements of the agency or CAIS entities.

As a Community Court, it also has the duty to carry out comparative studies of the Legislative Systems of Central America in order to foster the harmonization thereof, and prepare draft uniform laws to further the Juridical Integration of Central America.

This task is carried out either directly or through specialized agencies or institutes, such as the Central American Judicial Council and the Central America Integration Law Institute (Art. 22-l).

3. Arbitration Court

Although the distinction between a law court *stricto sensu* and an arbitration court is neither always nor solely due to the issue in question, we include it because this changes the nature of the court, particularly as we are carrying out an in-depth study of this topic. The corresponding provision is relevant here: “To hear and hand down a decision should it decide to do so, as an arbitration judge on issues that the parties have submitted to it as the competent court. It may also hand down decisions, hear and settle a case *ex aequo et bono*, should the parties involved therein so agree”. (Art. 22-Charter).

4. Interior Administrative Court

To hear as the court of final appeal the administrative resolutions issued by the agencies or entities of the Central American Integration System that directly affect a member of the staff thereof, and whose replacement has been refused (Art. 220-j).

5. Internal State Court

The Central American Court of Justice in our view acquires this nature when it exercises the faculty of acting as a Court of Permanent Consultation for the Supreme Court of Justice of the States, with an illustrative nature (Art. 22-d); when it examines and settles conflicts between the branches of Government in a single State, at the request of the injured party, and when court decisions are not in fact respected (Art. 22-f).

Although this provision is basically designed to settle disputes among the branches of Government of a specific Sate, it above all has a character that to some extent safeguards the Judiciary and the Courts, as we will see below, as these guarantee law and the right of man, but in turn is the weakest branch of Government. It also has an important aspect that has not been highlighted, which is that this power may only be held by a Court in a State or a Constitutional Court located outside the Fundamental Powers of the State, as is the case with the Constitutional Courts that did not exist in 1907, when this provision was established for the Court of Cartago, or the Supreme Court of Justice of a federal State, which is a similar case thereto. If we review the Constitutions of Central America, we note that none of them assign the Supreme Court this faculty, except in the case of the Constitution of El Salvador, for example, which empowers it to settle disputes that may arise between the legislative and the executive branches of Government. In case of a veto based on unconstitutionality, this should be resolved by the Constitutional Chamber of the Supreme Court of Justice. Apart from this case, and in keeping with the other Central American nations, control is subject to a declaration of unconstitutionality of the laws, decrees and regulations (Art. 174, Constitution, El Salvador); the Law (Art. 164, Constitution, Nicaragua); (Art. 10, Constitution, Costa Rica); the laws by form and content, (Art. 184, Constitution, Honduras); the laws, decrees, agreements, resolutions and other constitutional acts by basis and form (Art. 203, Constitution, Panama); and examination and decision by the Court of Constitutionality of the laws, regulations or provisions of a general nature that may contain constitutional flaws (Art. 267, Constitution, Guatemala).

Apart from the above, the Constitutions mentioned merely condemn or waive the mandatory nature of illegal orders or those issued by authorities usurping public functions, as they do not have a general norm for settling disputes among branches of Government, as is the case of the Central American Court and various Constitutions of Federal States, such as that of Mexico (1917), which states in Art. 105: “Only the Supreme Court of Justice of the nation may hear disputes that may arise among the branches of Government of a single State and among Government agencies in the Federal District”.

In view of the above, we can conclude that the Central American region is already to some extent a Federal State.

The background to the provision under comment is found since the 1907 Court: in the Convention for setting up a Central American Court of Justice, an Attached Article appears at the end. “The Central American Court of Justice shall also rule on conflicts that may arise between the Legislative, Executive and Judiciary, when the court sentences and resolutions handed down by the National Congress are in fact not respected”. As this releases the bench from respect for the additional resolutions of National Congress, which is after all a constant conflict or may give rise to disputes among the branches of Government, this sphere of competence is clearly the same. This was the concept outlined by the Central American Judicial Council when it prepared the Draft Charter for the Court.

On the other hand, there is no doubt that the content of juridical norms and standards is determined by the historical requirements and needs of the time when they are drawn up. With the appearance of incipient democracy in the region and the consequent increase in power of its Legislative Assemblies - as we have no Parliament - most disputes have the Judiciary as one of the parties thereto, normally the injured party. Another contributory factor is also the fact that, apart from Guatemala - with its Constitutional Court - the Judiciary is responsible for constitutional justice, which in itself brings it up against the other branches of Government, particularly the Legislative. On the other hand, the “partidocracy” system in the congresses of Central America frequently usurps or tries to infringe on the power of administering justice, usually through special commissions empowered with the right to hear specific cases, with recommendations issued

under full right of law, carrying out political analyses of court decisions, with refusals to comply with the decisions of the Supreme Court on constitutional issues, or they may even try to remove Magistrates from the Courts and the Chambers, and even the Justices as well, in order to share out judicial appointments or terms of office like booty.

The Judicature or Magistrature Councils in Central America are frequently a tool of control exercised by the Legislative over the Judiciary.

This gave rise to a cooperative defense movement among the Judiciaries of Central America, with inter-court agreements setting up institutions that at least offer the courts some means of moral defense to protect themselves, in the lack of an impartial agency to hear and settle pressures and criticisms aimed thereat. This situation had a happy ending, with the re-appearance of the Central American Court of Justice, empowered to settle disputes or conflicts among the branches of Government of a single State.

The Central American System of Meetings of Supreme Courts of Justice, which set up the Central American Judicial Council, consisting of the Chief Justices of these courts, offered a foretaste of a Central American Court. During the Second Meeting of Courts held in San Salvador, a step forward was taken by stating that: over the past few years, in various measures implemented by some of our countries, acts have been noted by other agencies or branches of Government of State that, notwithstanding the provisions of the Constitution and other secondary laws covering integration, period of election, composition, organization, duties and responsibilities, attempt to invade the sphere of competence of the agency or Judiciary, trying to annul the constitutional principle of the division of powers, which is the essence of a constitutional democratic State set up under law whereby it is agreed that:

a) With the purposes indicated, at the request of the Branch of Government or the Judicial Agency interested, the Central American Judicial Council shall meet on an urgent basis to analyze the situation in questions and denounce to the international community the acts of other Powers of State that threaten or adversely affect its economic or functional independence.

A more institutional step took place at this same meeting by attributing the Central American Judicial Council the power to:

b) Set up a Central American Honor Court to examine either itself or through a commission appointed for this purpose, and hear special cases in order to hand down decisions on the suitability or lack of fitting procedures to issue judgments or handle national juridical arrangements and with moral effects in cases submitted to its consideration by any of the above-mentioned courts, as having banned any decision or activity by national or foreign groups.

This is, above all, a measure designed to protect the Judiciary against pressure in concrete cases, seeking through the qualification and study thereof by the Central American Judiciary Council, issuing a decision on the legality thereof in order to counter such pressures and strengthen the Courts to safeguard their independence, internally, while externally to reinforce them in national and international opinion. An opportunity has already occurred to prove the advantages offered by the validity of these mechanisms, with positive results.

This being the case, it was quite logical that the Central America Juridical Council should then include in Article 22-f of its Draft Charter for the Central American Court of Justice, with a very minor variation, in our view, the Annex Article of the Pact of Washington which sets up the earlier Central American Court. On the other hand, the Central American Judicial Council continues to exist, today legally, and is recognized by the Protocol of Tegucigalpa, which is why we exhort the

current Supreme Justices of the courts of Central America to forge ahead with this struggle, as the juridical mechanisms which are now in effect do not exclude the addition of a moral approach in concrete cases.

In view of the above, it is appropriate to proceed with the study of concrete provisions, on the basis of the Charter of the Central American Court of Justice, as well as procedural developments in its Code of Procedures: Charter II of the Charter of the Court - Competence and Other Faculties, contained in Article 22, Item f, which reads as follows: Article 22: - The sphere of competence of the Court shall be: f) to hear and settle, at the request of the injured party, disputes that may arise among the basic Agencies and Powers of the States, and when court decisions are not respected. On the basis of this article and item, the Court has a double power: 1) To hear and settle disputes among fundamental Agencies or Powers of a single State, and to hear and settle cases in which court decisions are not respected. This latter case is in fact a special class of dispute that arises when a Branch of Government that should comply with or implement a court decision refuses to do so, thus proving our statement that, although the first part of the provision is worded in generic terms “Disputes among Branches of Government”, it is impregnated with a clear purpose of protecting Court activities, considered both formally and materially.

As stipulated by its Charter, the Court may only hear cases at the request of a Basic Agency or Branch of Government that is the injured party. This is confirmed and clarified by Article 3-b of its Order of Procedures, which determines the case subjects: Article 3. Case subjects shall be: b) the Basic Agencies or Branches of Government of the Member States in cases covered by the Charter of the Court.

If we take into account the provisions in the last part of Article 63 of the Order, which stipulates that: “The decision of the court shall be based on the public law of the respective State”, whereby we should have recourse to the Constitution of each State to see which Branch of Government or Agency was assigned the characteristic of being Basic, as in modern constitutionalism, the classical tripartite division of power into Legislative, Executive and Judiciary no longer operates mathematically. However, this still rules in most constitutions and always includes them, although there are cases in which others are included. Thus, The Legislative, Executive and Judiciary would be maintained as the basic branches of Government in El Salvador, Honduras and Panama. In Costa Rica and Nicaragua, in addition to the three classical branches of Government, the Court is included separately; and in Nicaragua the Electoral Branch is covered by the following provision: Article 7 - Nicaragua Constitution. The Branches of Government are: the Legislative, the Executive, the Judiciary and the Electoral.

A special situation is offered by the Guatemala Constitution, which has no express norms or standards covering the Government, indicating its basic branches or agencies (Title IV). With the exception of those covered in the following chapters, under the heading of Agencies, as follows: Chapter II. Legislative Agency. Chapter III. Executive Agency, and Chapter IV, Judiciary Agency. On the other hand, in Chapter VI, Constitutional Guarantees and Protection of the Constitutional Order, Chapter IV, the Court of constitutionality appears, whose essential function is the protection of the Constitutional Order. In our view, this is a Basic Branch of Government for our purposes, and is thus which enters most frequently into conflict with the other branches of Government, and is also the Court that runs into the most resistance in implementing its decisions, due to its general transcendence and its political juridical character. On the other hand, we cannot forget that they have been separated from the Judiciary, although formally, in the case of the Constitutional Courts, basically they are still always Courts, with limited competence in constitutional matters.

The injured party should be taken as being the Basic Branch of Government or Agency that has been adversely affected by another Basic Agency or Branch of Government of the same State, and this harm or damage shall consist of two elements: material and juridical. The former is taken as meaning any damage, harm, adverse effect or prejudice suffered by this Branch of Government in its juridical sphere, or that or its members as such; while the latter - the juridical element - requires that the damages should have been caused or produced on the occasion of or through a violation of the guarantees covered in the Constitution.

We should also take into account that we are not theorizing about what Law should be, but rather trying to offer a reasonable - although abstract - interpretation of Positive Central America Law which is contained in the Charter, Regulations and Order of the Court, and that under this Charter, the disputes of concern to us arise under Chapter V, entitled: Constitutional Disputes , whose decisions, according to the final part of Article 63, should be based on the Public Law of the respective State, meaning basically on its Constitutional Law.

On the other hand, we feel that it is not necessary for the offense that prompted the complaint to be definitively provoked, as this may be brought against acts that are being committed or are to be committed, as the procedure for Constitutional Disputes is not only a means for resolving them through corresponding compensation for the material and constitutional damages caused, but also for preventing harm to the Branch of Government and the Constitution. These future acts that could cause damage should be imminent, rather than merely future possibilities. Additionally, the submission of the complaint prior to the execution of a imminent act is the ideal of this guarantee court procedure, as this opens way for pre-judicial or precautionary measures covered in Article 31 of the Charter, which states: The Court may stipulate the pre-judicial or precautionary measures that it considers appropriate to safeguard the rights of each of the parties, from the moment when a claim is admitted against one or more States. It may thus establish the situation in which the parties in contention should remain, at the request of any of them, in order to avoid any further harm and to ensure that the cases remain in the same State until the corresponding decision is handed down thereon.

An issue of major importance is that which arises when the employees of a State Agency are removed from their positions by another or others in an apparently unconstitutional manner, replaced by other staff, a situation that is not unusual, particularly in Latin America, with regard to Supreme Courts of Justice. Do Judges removed from power have the active procedural capacity to intervene in the corresponding plea?

In this case, could they be reinstated, notwithstanding the fact that other Judges may have been appointed to their positions? In principle, we tend towards an affirmative reply, as we believe that the elements in each concrete case should be taken into account: the length of time gone by, speed in bringing the plea, vulgarity or wisdom, and the powers of the court to decide on its sphere of competence, together with that of nor proceeding with a plea that lacks a reasonable basis.

CASES BEFORE THE COURT

We have already mentioned that prior to the Central American Court of Justice entering into operation, disputes arising were heard by the Central American Judicial Council. The Supreme Courts of Justice of Central America thus worked to set up the Central American Judicial Council as an *ad-interim* Central American Court of Justice, preparing its Order of Procedures. This took place during the IV meeting of the Court held in Managua from 9 - 11 September 1992. In a moving ceremony, the institutional life of the *ad-interim* Central American Court of Justice began; meanwhile, the Pact covering the Charter of the Central American Court of Justice was being signed, ratified, deposited and entering into effect. It has been in force since 2 February 1994 for El Salvador, Honduras and Nicaragua.

During the existence of the Central American Judicial Council as the *ad-interim* Central American Court of Justice, various consultations were submitted thereto. Curiously enough, in one of them - in view of the possibility of actually meeting - modern means of communication were used, including the Fax, and a resolution was thus handed down by a majority plus one of its members.

The cases submitted thereto were: One on the System of Jurisdiction, competence, immunity and privileges of the Organization of the Central American States (OCAS); another of the state of the assets thereof; a third on a technical decision regarding the Draft Protocol for the General Treaty on Central American Economic Integration; and finally on the inclusion of the opinion of the Court in the Draft General Treaty on Central American Economic Integration.

Fulfilling its functions as a Permanent Court of the Central American Integration System, the Central American Court of Justice has heard and handed down decisions in the following cases:

1) Case brought by Mr. Ricardo Duarte Moncada against the Government of the Republic of Nicaragua, City of Managua Municipal District and the Central American Economic Integration Bank. In this case, the Court declared itself incompetent, as according to its Charter it cannot examine issues involving human rights, which fall under the sphere of competence of the Inter-American Human Rights Court.

2) Consultation Submitted by Mr. Carlos Orbin Montoya, Ambassador of the Republic of Honduras in Nicaragua. With regard to the requirements for notarization, for legal purposes. In brief, the Ambassador requested an opinion on whether or not the State of Nicaragua had legal backing for its administrative and judicial authorities not to require notarization in order to ensure the legal effects of acts and contracts signed in a Central American nation without having gone through a notarization process.

The Court declared that this Consultation was unfounded, as it did not fall within its sphere of competence, as Article 23 of the Pact of the Charter of the Central American Court of Justice limited it to hearing cases regarding the interpretation of any international pact or treaty in effect, and also with regard to disputes arising among signatory States thereof, or the Domestic Law of each State.

3) Request for Advisory Opinion regarding the Juridical Situation of the Protocol of Tegucigalpa, requested by the General Secretary of CAIS, Dr. Roberto Herrera Cáceres.

In brief, a legal opinion was requested from the Court, on the following issues:

- In the juridical ranking of the Central American treaties and other binding acts in terms of integration, what is the hierarchy that corresponds to the Protocol of Tegucigalpa under the Charter of the Organization of the American States, with regard to set of treaties, pacts, protocols, agreements and other binding juridical acts, both prior to and after the entry into effect of the Protocol of Tegucigalpa?

- What is the normative relationship of the supplementary instruments or deeds arising from the Protocol of Tegucigalpa with regard thereto?

- Within the context of the juridical ranking and the normative relationships arising therefrom, what is the juridical situation of the Alliance for Sustainable Development adopted by the Presidents of the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua,

Panama and the representative of the Prime Minister of Belize (Managua, Nicaragua, 12 October 1994?)

The Court declared this request admissible due to the sphere of competence applying thereto, under Article 22, Item e) of its Charter (we recall that according thereto it may: Act as an agency of consultation for the agencies or entities of the Central American Integration System for the interpretation and application of the "Protocol of Tegucigalpa altering the Charter or the Organization of Central American States (OCAS)", and the supplementary instruments and acts arising therefrom. This means that it acted in this case as a community or integration court, according to our earlier classification).

On behalf of Central America, this Court issued the following opinion:

1) The juridical situation of the Alliance for Sustainable Development adopted by the Presidents of the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and the representative of the Prime Minister of Belize in Managua, Nicaragua, Central America on 12 October 1994, with regard to its juridical ranking, and in compliance with the juridical order established in item e) of Article 15 of the Protocol of Tegucigalpa is that of an "Agreement or Pact" adopted by the States for those in which the above-mentioned Protocol is in effect, by the Supreme Agency of the Central America Integration System (CAIS), and within the same system in the exercise of its duties and responsibilities as established in Articles 14, 15, 30 and 31 of the above-mentioned Protocol, which is juridically mandatory for the above-mentioned States.

2) For States in which the Protocol of Tegucigalpa is not in effect, and for those that have not yet stipulated their adherence thereto, which signed the Alliance for Sustainable Development, it is understood that they sign an agreement with the Supreme Agency of the Central America Integration System (CAIS), which doctrine called a "Pact in simplified form" or "Guidelines", compliance with which is mandatory, whereby countries failing to comply therewith incur responsibilities under international customs, norms and standards.

3) The ranking corresponding to the Alliance for Sustainable Development, according to the juridical order established in the Protocol of Tegucigalpa is that of an "Agreement or Pact" derived from the above-mentioned Protocol and adopted by the Supreme Agency of the integration system, for itself and with other States, which due to its above-mentioned nature and lower position in the hierarchy does not modify, cancel, replace or reduces the power of the Protocol of Tegucigalpa.

4) Request for an Illustrative Advisory Opinion regarding the Start and Conclusion of the Term of Office of the Members of the Central American Parliament (Parlacen), submitted by the Honorable Supreme Court of Justice of the Republic of Honduras.

Briefly, the Supreme Court of the Republic of Honduras requested the Court, as the Permanent Court of Consultation of the Supreme Courts of Justice of Central America to hand down an illustrative opinion on the following points:

Point One: What is the moment, fact and act that determines the start of a term of office for exercising the functions of the members of the Central American Parliament?

Point Two: Can the preparatory meetings for the former implementation of the Central American Parliament be calculated during the period for which they were elected?

Point Three: With regard to the start and finish of the term of office of the members of this Parliament, which juridical instrument is applicable thereto? a) Internal Regulations of the Parliament; b) The Convention regulating the Parliament; c) The decision of the respective National Congress applying Domestic Law of each signatory State?

Point Four: What is the applicable juridical instrument for establishing whether or not there are causes for incompatibility regarding the exercise of functions as a member of the Central American Parliament?

The Court admitted this request on the basis of Article 2 item d), as falling under its sphere of competence, to act as a Permanent Court of Consultation for the Supreme Courts of Justice of the Member States, of an illustrative character. Acting in this case as we see it as though it were a Domestic State Court, according to the classification on which we based its functions previously.

The Court issued the following resolution:

Point One: The fact or act that determines the start of the period for the exercise of the functions of the Member of the Central American Parliament is the formal implementation of this Parliament, which should take place on the 28 October every five years, as from 1991 onwards, based on the provisions of Article 98 of the Regulations of the Central American Parliament approved by its Plenary Assembly, exercising the duties and responsibility granted thereto by Article 10 item f) of the treaty setting up the Central American Parliament and other political instances.

Point Two: With regard to this query, the reasons and provisions expressed in the previous paragraph are valid, with regard to the juridical arrangement set up by the treaty establishing the Central American Parliament, its Protocols and the Regulations approved by the Plenary Assembly thereof, clearly establishing that the term of office of the members elected thereto in accordance with the national legislation of the Member States is valid as from the formal implementation of the Central American Parliament, which should take place every five years. With regard to the second point brought forward by the Honorable Supreme Court of Justice of Honduras as transcribed above, the Court consequently, on behalf of Central America, issued its opinion in the following manner: The preparatory meetings for the formal opening of the Central American Parliament, PARLACEN, may not be counted as part of the term of office of the members elected thereto, in compliance with the provisions of Article 6 of the Protocol setting up the Central American Parliament.

Point Three: As stated above, the international treaties which by the sovereign express will of the signatory States thereto, create a juridical situation of obligation for such, involving compliance therewith in good faith from the moment when they enter into effect, meaning after signature, ratification and deposit thereof, a situation that in case of dispute shall prevail over that instituted by domestic legislation or secondary law, and which cannot be modified unilaterally by any of the signatory States thereto. In the constitutional arrangements of the Republic of Honduras, as has been mentioned, this status is perfectly accepted. With this established, on behalf of Central America and with regard to Point Three brought forward by the Honorable Supreme Court of Justice of Honduras, the Court issued the following opinion: With regard to the start and conclusion of the term of office of the representatives of the Central American Parliament, PARLACEN, the instrument immediately applicable thereto is the Regulation Approved by the Plenary Assembly thereof under the duties and responsibilities assigned thereto by letter f) of Article 10, and the provisions of Article 13, both part of the Treaty setting up the Central American Parliament and other instances and Protocols thereof.

Point Four: With regard to the issue of incapacity and incompatibility for the exercise of the functions of members of the Central American Parliament, PARLACEN, the Treaty setting it up regulates this situation in Articles 3 and 4, expressly stipulating the incapacity during their term of office for employees of international agencies and also accepting any other incompatibilities established by national legislation for the position of member of parliament, or representative. On behalf of Central America, and in reply to the fourth point brought forward by the Honorable Supreme Court of Justice of Honduras, the Court thus issued the following opinion: The juridical instrument applicable for establishing causes of incapacity or incompatibility for members of the Central American Parliament, PARLACEN, is a treaty setting up the Central American Parliament and other instances thereof.

ORGANIZACION DE LOS ESTADOS AMERICANOS
SECRETARIA GENERAL

OEA/Sec.Gral.
CJI/doc. 2/94 rev. 1
6 julio 1995

TEMARIO ANOTADO DEL COMITE JURIDICO INTERAMERICANO

Período ordinario de sesiones
agosto 1995

(Documento preparado por el Departamento de Desarrollo y Codificación del Derecho Internacional de la Subsecretaría de Asuntos Jurídicos)

Para el uso del Comité Jurídico Interamericano

TEMARIO ANOTADO DEL COMITE JURIDICO INTERAMERICANO

Período ordinario de sesiones
Agosto 1995

El temario que el Comité Jurídico Interamericano aprobara para su período ordinario de sesiones de marzo de 1995 (CJI/RES.II-22/94) comprendía:

1) Dimensión jurídica de la Integración y del Comercio Internacional
2) La democracia en el Sistema Interamericano
3) Perfeccionamiento de la Administración de Justicia en las Américas
4) Derecho de Información
5) Derecho Ambiental
6) Solución pacífica de las controversias
7) Cooperación internacional para reprimir la corrupción
8) Aspectos jurídicos de la deuda externa
9) Cooperación internacional para enfrentar el terrorismo internacional

Estos puntos fueron considerados por el Comité Jurídico en su período de sesiones de marzo de 1995 y constituyen el temario de su sesión de agosto de 1995.

El Departamento de Desarrollo y Codificación del Derecho Internacional de la Subsecretaría de Asuntos Jurídicos de la Secretaría General de la OEA ha preparado el presente documento que incluye antecedentes e información sobre los distintos puntos del temario a ser considerados por el Comité Jurídico Interamericano en su período ordinario de sesiones de agosto de 1995 a los efectos de facilitar la consideración de los mismos.

I.- DIMENSIÓN JURÍDICA DE LA INTEGRACIÓN Y DEL COMERCIO INTERNACIONAL.

El Comité Jurídico, al aprobar el temario para su período ordinario de marzo de 1995, resolvió que este punto se subdivida en cuatro aspectos:

a) Método de solución de controversias en los esquemas regionales y subregionales de integración y libre comercio
b) Facilitación de la actuación internacional de personas naturales y jurídicas
c) Mercado de valores bursátiles. Marco normativo de los principios que se consideren básicos en su regulación en el hemisferio.
d) Efectos jurídicos internacionales de la insolvencia

El estudio del primero de estos aspectos tiene su origen en los trabajos que, a partir de 1990, llevara a cabo, primero, bajo el título de "Obstáculos Jurídicos a la Integración" y luego de "Dimensión Jurídica de la Integración". El estudio de los otros tres subtemas se habían llevado, hasta entonces, bajo el tema "Puesta en práctica de la Iniciativa de las Américas", por lo que daremos sus antecedentes en forma conjunta.

a) Método de solución de controversias en los esquemas regionales y subregionales de integración y libre comercio.

En 1988, en su decimoctavo período ordinario de sesiones (San Salvador), la Asamblea General de la OEA, por recomendación del Consejo Permanente, resolvió [AG/RES.944 (XVIII-O/88)]

> Recomendar al Comité Jurídico que lleve a cabo un inventario de los obstáculos jurídicos que sería necesario remover para que la integración pueda ser más efectiva en el continente americano.

Al año siguiente la Asamblea General reiteró su solicitud al Comité, recomendándole le asigne prioridad al tema en su agenda de trabajo [AG/RES.1019 (XIX-0/89)], lo que fue nuevamente solicitado en el período ordinario de sesiones de 1990 [AG/RES.1034 (XX-0/90)]. En ese último período (Asunción, 1990), la Asamblea General también aprobó una Declaración ("Declaración de Asunción") la que, entre otras cosas, dice que

> "La Organización apoyará decididamente los esfuerzos tendientes a eliminar todos los obstáculos a la integración, cualquiera fuera su naturaleza"

El Comité designó al Dr. Manuel A. Vieira como relator del tema y en su período de sesiones de agosto de 1990, el Comité Jurídico aprobó, por resolución CJI/RES.II-13/90, un primer "Informe sobre obstáculos jurídicos que retardan una integración más efectiva a nivel continental". Del mismo transcribimos algunos párrafos:

> "... si bien, en ciertos Estados podría hablarse de que existan obstáculos jurídicos para la integración, éstos no son en sí insalvables. Serían los obstáculos naturales, políticos y económicos, cuya superación depende de una fuerte decisión política apoyada por la opinión pública los que ejercen una más fuerte resistencia..... No obstante estas consideraciones, el Comité procedió a un análisis de aspectos de orden jurídico que, con mayor o menor dificultad, necesitarían ser modificados o merecerían, en principio, especial atención.
> .....Por su naturaleza jurídica, uno de los principales problemas internos es el constitucional y ello se traduce en la dificultad de aceptar legalmente las decisiones de organismos con funciones supranacionales..... Dentro de otro plano, pero paralelamente a los obstáculos de carácter constitucional antes referidos, se encuentran los problemas derivados de la actitud incompatible asumida por algunos Estados dentro de su ámbito interno para impulsar y dar vigencia efectiva a los compromisos internacionales destinados a desarrollar los procesos de integración de los cuales puedan ser miembros. .....
> .... En el análisis de los obstáculos que sería necesario remover ..... debe hacerse una diferenciación entre aquellos que actualmente se confronta con los que irán surgiendo en la medida que la integración obtenga una mayor efectividad.
> ..... Dentro de este esquema que ya se avizora en los años noventa, el Derecho desempeñará una función más importante. La armonización de los diversos sistemas jurídicos prevalecientes en el hemisferio deberá ser tema prioritario.....
> ..... El Comité entiende que, con el propósito de ayudar a la integración, se debe proseguir en los esfuerzos para lograr la regulación jurídica adecuada en temas tales como el transporte internacional, los seguros, contratos internacionales y las empresas conjuntas a nivel bilateral o continental...."

Al ser considerado este informe por la Comisión de Asuntos Jurídicos y Políticos del Consejo Permanente, "la mayoría de las delegaciones ratificaron su apoyo al estudio de los problemas jurídicos referentes a la integración... y frente al enfoque que debe darse al tema, diversas delegaciones estimaron que, dada su extensión, era necesario precisar su alcance", agregando que "el examen general de este problema debía considerarse terminado y pasarse a una nueva etapa consistente en el estudio de problemas o aspectos concretos que están comprendidos dentro de esta temática" (AG/doc.2683/91).

En su vigésimo primer período ordinario de sesiones (Santiago, 1991), la Asamblea General, por resolución AG/RES.1104 (XXI-O/91), denominada "Obstáculos Jurídicos a la Integración", resolvió

> Solicitar al Consejo Permanente que, con carácter urgente, ... identifique y examine cuáles serían los asuntos prioritarios para la elaboración de soluciones normativas coordinadas, al servicio de la integración económica y social de la región, y asigne, en cuanto lo estime pertinente, a los otros órganos competentes de la OEA la realización de estudios y la elaboración de documentos sobre tales asuntos y coordine con ellos la acción al respecto.

Y, al considerar el Informe Anual del Comité, la Asamblea General, en ese mismo período de sesiones, resolvió [AG/RES.1129 (XXI-O/91)]

> Recomendar al Comité Jurídico Interamericano que considere los aspectos jurídicos que en materia de integración se especifican en las observaciones y recomendaciones del Consejo Permanente y en su informe anual, asi como lo dispuesto en la resolución CP/RES.559 (851/91) *(Nota: resolución relativa a la "Iniciativa para las Américas")*, con relación al tema "Obstáculos jurídicos que sería necesario remover para que la integración pueda ser más efectiva en el continente americano"

En cumplimiento de la primera de estas dos resoluciones de la Asamblea General, el Consejo Permanente constituyó un Grupo de Trabajo sobre Obstáculos Jurídicos a la Integración, que inició sus trabajos el 31 de octubre de 1991. Dicho Grupo preparó un Cuestionario a los Gobiernos a fin de conocer sus puntos de vista acerca del papel que le cabría a la OEA en los procesos de integración en curso. Posteriormente, el Grupo preparó un cuestionario dirigido a los diversos mecanismos y a las organizaciones regionales y subregionales de integración. Ambos cuestionarios. Las respuestas recibidas fueron publicadas en los respectivos documentos informativos del Grupo de Trabajo.

En cumplimiento a la segunda de estas resoluciones de la Asamblea General, el Comité Jurídico aprobó el siguiente punto de su temario:

> Obstáculos jurídicos que sería necesario remover para que la integración pueda ser más efectiva en el Continente Americano
>
> a) Elaboración de un cuadro comparativo de los textos constitucionales y la consecuencia jurídica que trae consigo el desarrollo de los procesos de integración
> Relator: Dr. Jorge Reinaldo A. Vanossi
>
> b) Transporte internacional
> Relator: Dr. Juan Bautista Rivarola
>
> c) Seguros
> Relator: Dr. Manuel A.Vieira
>
> d) Contratos internacionales
> Relator: Dr. José Luis Siqueiros
>
> e) Empresas conjuntas
> Relator: Dr. Francisco Villagrán-Kramer

En su período de sesiones de marzo de 1992, el Comité conoció los informes relativos al cuadro comparativo de los textos constitucionales, a las empresas conjuntas, e hizo un primer intercambio general acerca del informe preliminar sobre transporte internacional.

Con relación a las empresas conjuntas, el Comité, por resolución CJI/RES.I-7/92, además de resolver el mantenimiento del tema en su agenda, lo que fuera aprobado ese mismo año por la Asamblea General de la OEA,

> ".... se inclina por recomendar que los Estados miembros del Sistema Interamericano examinen las variantes existentes, a fin de incorporar a sus legislaciones, en aquellos casos que fuere procedente, disposiciones que faciliten la constitución de empresas conjuntas en el país y su reconocimiento y operación en los otros países"

Por resolución CJI/RES.I-6/92, el Comité hizo suyo el informe presentado por el Relator sobre la elaboración de un cuadro comparativo de los textos constitucionales y lo sometió a consideración del Consejo Permanente.

La Asamblea General de la OEA, en su vigésimo segundo período ordinario de sesiones (Nassau, 1992), resolvió

> Solicitar al Consejo Permanente, al Comité Jurídico Interamericano y a la Secretaría General que prosigan coordinando las actividades a efectos del análisis político y técnico de la dimensión jurídica de la integración regional
> [AG/RES.1163 (XXII-O/92)]

En su siguiente período de sesiones (agosto, 1992) el Comité Jurídico, por resolución CJI/RES.II-21/92, hizo suyo el informe final presentado por el relator del punto "Empresas conjuntas" y resolvió

> Que el tema, por ahora, no reclama la adopción de una convención interamericana pero estima que el informe podría ser analizado por los gobiernos mismos a fin de decidir si incorporan o no a sus legislaciones nacionales disposiciones legales aplicables a las empresas conjuntas.

propuesta ésta que fue acogida por la Comisión de Asuntos Jurídicos y Políticos del Consejo Permanente de la OEA al conocer el Informe Anual del Comité.

En ese mismo período de sesiones, el Comité conoció, también, un extenso informe preliminar sobre el transporte internacional.

La Asamblea General de la OEA, en su vigésimo tercer período ordinario de sesiones (Managua, 1993), reiteró su solicitud

> al Consejo Permanente de la Organización, al Comité Jurídico Interamericano y a la Secretaría General que prosigan coordinando las actividades pertinentes a efectos de dinamizar y profundizar el análisis político y técnico de la dimensión jurídica de la integración regional.

Por su parte, el Consejo Permanente de la OEA, a recomendación del Grupo de Trabajo sobre Obstáculos Jurídicos a la Integración, solicitó al Comité Jurídico, en sesión celebrada el 28 de octubre de 1992, que formule los comentarios y observaciones que pudiera tener en torno al

Cuestionario a los gobiernos preparado por el Grupo, teniendo en cuenta las respuestas recibidas. En su período de sesiones de marzo de 1993, el Comité encomendó a los Dres. Siqueiros y Fried la preparación de un informe que diera cumplimiento a esta solicitud del Consejo Permanente.

En su período de sesiones de agosto de 1993, el Comité conoció un informe del Dr. Siqueiros y un informe del Dr. Fried.

El Dr. Siqueiros, en su informe, formula una serie de consideraciones, una de las cuales tiene relación con la denominación del tema. Dice el relator:

> "No creo que el concepto de obstáculos jurídicos sea muy afortunado..... sus componentes *per se* no son obstáculos jurídicos o impedimentos que hayan de removerse para alcanzarla (la integración). Lo que se desea es mejorar su normatividad, actualizarla o armonizarla".

y analiza, luego, las cuestiones sometidas a consideración de los Gobiernos. El Comité hizo suyo este informe y resolvió, CJI/RES.II-15/93,

> Eliminar de la agenda el tema específico de referencia, sin perjuicio de continuar estudiando todos aquellos aspectos concernientes a la dimensión jurídica de la integración

También, en relación a este mismo tema, el Comité resolvió iniciar estudios sobre la legislación en materia de quiebra e insolvencia (CJI/RES.II-13/93).

En ese mismo período de sesiones, al fijar el temario de su próximo período, el Comité incorporó el tema "Dimensión Jurídica de la Integración", centrándolo en los "Métodos de solución de controversias en los esquemas subregionales de integración y libre comercio":

i. Acuerdo de Cartagena
ii. Pacto de Caricom
iii. Mercosur
Relatores: Drs. Ramiro Saraiva Guerreiro y Miguel Angel Espeche Gil
iv. Tratado de Libre Comercio de América del Norte (TLCAN)
Relatores: Drs. José Luis Siqueiros y Jonathan F.Fried

En su período de sesiones de enero de 1994, el Comité conoció los informes de los relatores Drs. Saraiva Guerreiro, Siqueiros y Fried y resolvió (CJI/RES.I-4/94)

> Continuar la realización de estudios especiales sobre los regímenes jurídicos en materia de solución de controversias adoptados en el ámbito de los siguientes esquemas de integración económica:
> a) Acuerdo de Cartagena (Grupo Andino)
> b) Sistema de Integración Centroamericano y Mercado Común Centroamericano (MCCA)
> c) Comunidad del Caribe (CARICOM)
> d) Programa de Integración Económica del Grupo de los Tres (G-3)
> e) Asociación Latinoamericana de Integración (ALADI)
> f) Acuerdos bilaterales de libre comercio y de complementación económica suscritos en el ámbito de ALADI

De conformidad con el punto anterior, el Comité:

a) examinará los estudios especiales antes mencionados,
b) realizará un estudio comparativo de los regímenes estudiados sobre solución de controversias,
c) preparará conclusiones sobre las orientaciones básicas y los elementos relevantes de dichos regímenes,
d) preparará recomendaciones relativas al perfeccionamiento de tales regímenes, asi como a la conveniencia del desarrollo de regímenes de este tipo en aquellos esquemas de integración económica en que sea pertinente, y como un aporte de carácter técnico al desenvolvimiento del derecho internacional económico y al derecho de la integración económica y como base para un futuro trabajo del Comité sobre la materia.

Al establecer el temario para su próximo período de sesiones (agosto, 1994), resolvió, para su punto 3, "Dimensión jurídica de la integración" designar a los siguientes relatores:

a) Acuerdo de Cartagena, al Dr. Alberto Zelada Castedo
b) Pacto del Caricom, al Dr. Philip T. Georges
c) Mercosur, continúan los Drs. Ramiro Saraiva Guerreiro y Miguel A. Espeche Gil
d) Tratado de Libre Comercio de América del Norte, continúan los Drs. José Luis Siqueiros y Jonathan T. Fried
e) Régimen jurídico de solución de conflictos en Tratados Bilaterales de Libre Comercio y Complementación Económica, al Dr. Alberto Zelada Castedo
f) Mercado Común Centroamericano, al Dr. Mauricio Gutierrez Castro
g) G-3 (México, Venezuela y Colombia), al Dr. Luis Herrera Marcano

Al considerar el Informe Anual del Comité, la Comisión de Asuntos Jurídicos y Políticos del Consejo Permanente tomó nota de estas resoluciones del Comité y expresó su satisfacción por el propósito de estudiar los métodos de solución de controversias en algunos esquemas de integración cuyos procesos están en curso en la región (CP/doc.2479/94), recomendaciones que hizo suyas el Consejo Permanente.

La Asamblea General, en su vigésimo cuarto período ordinario de sesiones (Belém, 1994), resolvió [AG/RES.1266(XXIV-0/94)]

> "instar al Comité Jurídico Interamericano a que otorgue máxima prioridad al estudio en curso sobre todos los aspectos de la dimensión jurídica de la integración, en particular con respecto a los métodos para resolver controversias en la integración y los acuerdos de libre comercio, conforme a la resolución CJI/RES. I-4/94 y alentar al Comité a cooperar en estos asuntos con la Comisión Especial de Comercio, y tomar nota de su resolución CJI/RES.II-15/93, por la que se elimina de su temario el punto sobre "obstáculos jurídicos a la integración"

En su período ordinario de agosto de 1994, el Comité conoció los informes de los Dres.Siqueiros (ALADI), Gutiérrez Castro (SICA), Georges (CARICOM), Herrera Marcano (Grupo de los 3) y Zelada Castedo (ámbito de ALADI). Estos informes se suman a los anteriormente presentados por los Dres. Saraiva Guerreiro y Espeche Gil (MERCOSUR) y por los Dres. Siqueiros y Fried (NAFTA). Por considerar que "dichos relatorios permiten que este Comité pueda obtener una visión general del enfoque y metodología de estos esquemas resolutorios de controversias en la dimensión jurídica de la integración", el Comité Jurídico resolvió efectuar una recopilación de los trabajos presentados para lo que integró un Grupo de Redacción integrado por todos los relatores y coordinado por el Dr.Siqueiros el que "formulará una Nota Introductoria...

[que] destacará las analogías, compatibilidades y las posibles discrepancias que pudiesen existir entre los distintos esquemas de la región" (CJI/RES.II-13/94). Por esta misma resolución el Comité resolvió mantener el tema en su Agenda "a efecto de que en su próximo período de sesión en marzo de 1995, en coordinación con la Comisión Especial de Comercio, pueda realizar los estudios adicionales y adoptar las tareas que se estimen más apropiadas".

CJI: Marzo de 1995

En su período de sesiones de marzo de 1995, el Comité Jurídico consideró la Nota Introductoria presentada por el Dr.Siqueiros. Al discutir el texto presentado, el Comité lo aprobó y formuló una serie de conclusiones (CJI/RES.I-1/95) referidas a los diversos mecanismos y procedimientos de solución de controversias estudiados, reconociendo la existencia de diferentes ritmos en los procesos de integración pero guiados por el objetivo de la búsqueda de una más extensa integración a nivel continental. Estas conclusiones contienen diversas recomendaciones relativas a la estructura de estos mecanismos, a su relación con procedimientos establecidos en otros acuerdos, a las controversias con terceros Estados[1].

Por último, en esta misma resolución, el Comité Jurídico resolvió "llevar las presentes conclusiones, asi como las reflexiones que contiene la Nota Introductoria y los relatorios anexos al conocimiento de la Comisión Especial de Comercio (CEC)", y dejó constancia de su disposición "para colaborar con la citada Comisión en los diversos aspectos de la dimensión jurídica de la integración, además de la coordinación de sus esfuerzos en análisis adicionales o posteriores dentro de esta materia".

AG: Junio de 1995

La Asamblea General, en su vigésimo quinto período ordinario de sesiones (Montrouis, Haiti, junio de 1995), al considerar el Informe Anual del Comité Jurídico, resolvió (AG/doc.3268/95):

> "Recomendar al Comité Jurídico Interamericano, la difusión, en los términos previstos en su resolución CJI/RES.II-13/94, de los trabajos por él preparados sobre el tema "Métodos de solución de controversias en los esquemas regionales y subregionales de integración y libre comercio", asi como la Nota Introductoria de los mismos, e instar además al Comité a incluir en sus estudios la consideración del principio de la nación más favorecida y su aplicación en las Américas, y otras formas de favorecer a los países de menor desarrollo."

b) Facilitación de la actuación internacional de personas naturales y jurídicas
c) Mercado de valores bursátiles
d) Efectos jurídicos internacionales de la insolvencia

El 27 de junio de 1990, el Presidente Bush anunció su propuesta conocida como "Iniciativa para las Américas" en la que se propone iniciar el proceso tendiente a la creación de una amplia zona de libre comercio.

El 22 de agosto del mismo año, el Consejo Permanente de la OEA constituyó un Grupo de Trabajo ad hoc encargado del estudio de dicha Iniciativa. En el Informe de los trabajos de dicho Grupo hasta el 29 de noviembre de 1990 (CP/doc.2133/91 rev.1) se señala, entre otros puntos, que

[1] Dr. Fried emitió un voto de abstención razonado al no aprobar la recomendación referida al acceso de las personas privadas a la solución de controversias internacionales.

"además de los aspectos políticos y económicos de la Iniciativa para las Américas, ella envolvía diversas cuestiones de índole jurídico...

Se sugirió en el Grupo que entre esos aspectos de naturaleza jurídica hay algunos respecto de los cuales la OEA cuenta con los mecanismos apropiados para su análisis y codificación..."

Por resolución CP/RES.559 (851/91) de 11 de abril de 1991, el Consejo Permanente de la OEA encomendó al Comité Jurídico Interamericano los siguientes estudios sobre aspectos jurídicos de la Iniciativa para las Américas:

"1. La creación de un marco de facilitación jurídica para el funcionamiento a nivel internacional de los sujetos de derecho individuales y de los sujetos colectivos (personas jurídicas).
2. Empresas conjuntas, a efectos de elaborar normas para las asociaciones de capital y de personas jurídicas.
3. Elaboración de normas para la regulación de negocios jurídicos internacionales que lo requieran.
4. Arbitraje entre Estados y entre agentes económicos privados entre sí y con los Estados, respecto de los negocios jurídicos internacionales cuyo objeto fuere de naturaleza privada."

Dicha solicitud fue explicitada en una visita que hiciera al Comité el Representante del Uruguay ante la OEA, Embajador Didier Opertti.

La Asamblea General de la OEA, en su vigésimo primer período ordinario de sesiones (Santiago de Chile, 1991), por resolución AG/RES.1109 (XXI-O/91), luego de declarar que la Organización debe apoyar y coadyuvar activamente al desarrollo rápido de la Iniciativa, solicitó al Consejo Permanente

"2. ...que elabore un plan de acción para apoyar e impulsar la Iniciativa para las Américas..."

En su período de sesiones de agosto de 1991, el Comité Jurídico Interamericano reformuló su temario a efectos de incorporar el tema y, en cumplimiento de lo solicitado por el Consejo Permanente, designó relatores para los cuatro aspectos jurídicos allí indicados. Por resolución CJI/RES.II-2/91, el Comité incorporó, además, dos nuevos aspectos:

1. Formas de impedir prácticas monopolísticas como consecuencia del proceso de privatización de empresas estatales.

2. Normas relativas a la emisión y comercialización de títulos de sociedades anónimas, el papel de tales normas y el desarrollo del mercado de capitales.

Por esta misma resolución, el Comité resolvió constituir un Grupo de Trabajo a fin de que elabore un proyecto de programa para el tratamiento en conjunto del tema "Puesta en práctica de la Iniciativa para las Américas", y señale los asuntos más importantes y las prioridades en su estudio.

En su período de sesiones de marzo de 1992, por resolución CJI/RES.I-2/92, al que acompaña una Exposición de Motivos, el Comité resolvió emprender estudios adicionales sobre

1. Normas y pautas para la reglamentación y supervisión de los mercados de valores en que se comercializan y venden valores emitidos por empresas privadas, con el fin de aumentar la eficiencia de estos mercados y fomentar la inversión de personas particulares y entidades privadas en dichas empresas, promoviendo asi el desarrollo de los mercados de capital y ofreciendo a las empresas privadas la oportunidad de obtener financiamiento adecuado por intermedio de dichos mercados.

2. Un estudio de legislación, reglamentaciones y políticas existentes y previstas en materia de competencia en los Estados americanos, con atención particular a la preservación de los beneficios públicos de la privatización y a la prevención de prácticas monopólicas y restrictivas en los negocios.

En ese mismo período de sesiones el Comité hizo suyo el Informe presentado por el Dr. Villagrán-Kramer sobre el tema "Empresas conjuntas, a efectos de elaborar normas para la asociación de capital y de personas jurídicas" (CJI/RES.I-7/92 y CJI/RES.I-10/92), y mantuvo el tema en su agenda. El Comité manifestó que

> "se inclina por recomendar que los Estados miembros del Sistema Interamericano examinen las variantes existentes, a fin de incorporar a sus legislaciones, en aquellos casos en que fuere procedente, disposiciones que faciliten la constitución de empresas conjuntas en el país y su reconocimiento y operación en los otros países."

En cuanto al tema "Arbitraje entre los Estados y entre agentes económicos entre sí y con los Estados respecto de negocios jurídicos internacionales cuyo objeto fuera de naturaleza privada", el Comité hizo suyo el Informe presentado por el Relator, Dr. Siqueiros, y adoptó una serie de conclusiones sobre el punto (CJI/RES.I-4/92 y CJI/RES.I-11/92). Asimismo, acordó mantener el tema en su agenda.

También en este período de sesiones, el Comité conoció el Informe verbal del Dr. Herrera Marcano, Relator del punto "Creación de un marco de facilitación jurídica para el funcionamiento a nivel internacional de los sujetos de derecho individuales y de los sujetos colectivos (personas jurídicas)".

El estado del cumplimiento por el Comité de los mandatos del Consejo fue presentado por el Dr. Rubin al Grupo de Trabajo del Consejo Permanente encargado de estudiar la "Iniciativa para las Américas", el 11 de marzo de 1992 (CP/doc.2260/92 rev.1).

En su período de sesiones de agosto de 1992, el Comité hizo suyo el Informe presentado por el Dr. Siqueiros sobre la "Elaboración de normas para la regulación de negocios jurídicos que lo requieran, i) Contratos internacionales" (CJI/RES.II-18/92), al considerar que éste refleja un amplio estudio panorámico de la regulación jurídica internacional, y reconociendo que

> "hasta en tanto se identifiquen aquellos contratos internacionales cuya normatividad sea inexistente o insuficiente, la utilización de las capacidades y servicios institucionales de la OEA, incluyendo a este Comité Jurídico, podría conducir hacia duplicaciones innecesarias en este campo."

En el mismo período de sesiones, el Comité hizo suyo el Informe Final presentado por el Dr. Villagrán-Kramer sobre el tema relativo a las Empresas conjuntas (CJI/RES.II-21/92) y resolvió

> "que el tema, por ahora no reclama la adopción de una convención interamericana pero estima que el informe podría ser analizado por los gobiernos mismos a fin de decidir si incorporan o no a sus legislaciones nacionales disposiciones legales aplicables a las empresas conjuntas."

En cuanto al estudio del tema relativo a los mercados de valores, el Comité resolvió (CJI/RES.II-19/92)

> "crear un Grupo de Trabajo, integrado por los doctores Seymour J.Rubin y Juan Bautista Rivarola a fin de formular los lineamientos de un código modelo sobre Mercado de Valores Mobiliarios."

Por último, en el mismo período de sesiones, el Comité, en lo que respecta al tema de la facilitación de la actuación a nivel internacional de los sujetos de derecho individuales y colectivos, resolvió (CJI/RES.II-30/92), sobre la base del Informe de su Relator, Dr. Herrera Marcano, y junto con mantener el tema en su agenda,

> "solicitar al Secretario General que disponga lo necesario para que la Subsecretaría de Asuntos Jurídicos compile las normas vigentes en los Estados miembros en lo referente a ingreso y permanencia de hombres de negocios extranjeros."

La Comisión de Asuntos Jurídicos y Políticos del Consejo Permanente, al conocer el Informe Anual del Comité, concordó con las anteriores resoluciones, y presentó el respectivo Informe que el Consejo hizo suyo y remitió a la Asamblea General (AG/doc.2965/93).

La Asamblea General de la OEA, en su vigésimo tercer período ordinario de sesiones (Managua, 1993), resolvió, luego de acoger las observaciones y recomendaciones que el Consejo Permanente hiciera al Informe Anual del Comité Jurídico,

> "Recomendar al Comité Jurídico que continúe el estudio del tema "Mercado de Valores", teniendo en cuenta que un adecuado funcionamiento de los mercados de valores de la región requiere que cada país cuente con un sistema bursátil bien organizado y en pleno desarrollo que permita expandir las transacciones, tanto en cada uno de los países como en el ámbito regional" [AG/RES.1210 (XXIII-0/93)]

En su período de sesiones de agosto de 1993, el Comité, luego de considerar los informes parciales presentados por los doctores Rubin y Rivarola, resolvió (CJI/RES.II-14/93) unificar en un solo tema los puntos que, en su temario anterior, se referían a los mercados de valores. El mismo quedó descrito de la siguiente forma:

> "Mercados de valores bursátiles. Marco normativo de los principios que se consideren básicos en su regulación en el hemisferio".

Asimismo, con relación al mismo tema, y en la misma resolución, el Comité designó como relatores a los Drs. Rubin y Siqueiros, solicitó a la Secretaría General la asesoría de expertos y reiteró la necesidad de requerir información a los Estados miembros que tengan regulados sus mercados de valores.

En su período de sesiones de enero de 1994, el Comité reafirmó la importancia de que, en lo referido a los mercados de valores bursátiles, se establezca un diálogo entre Gobiernos y profesionales mediante la organización de encuentros y seminarios, u otras formas de

intercambio promovidas por el CJI (CJI/RES.I-5/94). En este mismo período de sesiones, el especialista estadounidense, Dr. A.A.Sommer Jr. fue recibido por el Comité y expuso sobre distintos aspectos relativos a los mercados bursátiles. También, en este período, y de acuerdo con lo que le fuera solicitado, la Subsecretaría de Asuntos Jurídicos presentó al Comité una recopilación de leyes de los Estados americanos sobre el tema.

En lo que respecta al tema relativo a la facilitación de la actuación internacional de las personas naturales y jurídicas, el Comité conoció, en su período de sesiones de enero de 1994, un segundo Informe de su Relator, el Dr. Herrera Marcano. Dicho informe contiene dos conclusiones:

> 1) Conviene esperar que se disponga de la normativa resultante de la Ronda Uruguay del GATT antes de adoptar decisiones acerca del futuro tratamiento del tema en el Comité,
>
> 2) Convendría que la Secretaría General, a través de la Subsecretaría de Asuntos Jurídicos, insistiera en indagar las razones por las cuales no se han producido ratificaciones a la Convención Interamericana sobre Personalidad y Capacidad de las Personas Jurídicas, asi como en obtener la legislación de un número representativo de Estados miembros en materia de ingreso de personas de negocio.

En su resolución CJI/RES.I-6/94, el Comité, de acuerdo con estas conclusiones, resolvió mantener el asunto en su temario.

De acuerdo con la evolución reseñada, el Comité, para el período ordinario de sesiones de agosto de 1994, aprobó como punto 1 del mismo:

> 1. Puesta en práctica de la "Iniciativa para las Américas"
>
> a) Facilitación de la actuación internacional de personas naturales y jurídicas.
> Relator: Dr. Luis Herrera Marcano
>
> b) Mercado de valores bursátiles. Marco normativo de los principios que se consideren básicos en su regulación en el hemisferio.
> Relatores: Drs. Seymour J. Rubin y José Luis Siqueiros

La Comisión de Asuntos Jurídicos y Políticos del Consejo Permanente de la OEA, al considerar el Informe Anual del CJI, al analizar lo referido a los Mercados de valores bursátiles, acordó "instar al CJI para que estudie el marco normativo de los principios que se consideran básicos en la regulación de los mercados de valores bursátiles en el hemisferio, en la forma propuesta por el Comité" (CP/doc.2479/94)

La Asamblea General de la OEA, en su vigésimo cuarto período ordinario de sesiones (Belem, 1994) resolvió [AG/RES.1266(XXIV-0/94)]

> "recomendar al Comité Jurídico Interamericano que, habida cuenta del incremento del intercambio regional, continúe sus estudios acerca de los mecanismos más apropiados para la facilitación de la actuación internacional de personas naturales y jurídicas, de acuerdo con su resolución CJI/RES.I-6/94"

e

> "instar al Comité Jurídico para que, de acuerdo con su resolución CJI/RES.II-14/93, mantenga en su temario, en la forma por él propuesto, el estudio de los "Mercados de valores bursátiles. Marco normativo de los principios que se consideren básicos en su regulación en el hemisferio".

En el período ordinario de sesiones de agosto de 1994, el Dr. Herrera Marcano, relator del tema "creación de un marco de facilitación de la actuación de las personas naturales y jurídicas", presentó un memorandum en el que se señala que "la evolución reciente demuestra que el asunto tiene un interés especial en relación con los nuevos regímenes de libre comercio que están siendo negociados en el Continente". En consideración a lo expresado, el Comité incluyó el estudio de este tema en el ámbito de los estudios que viene realizando sobre los esquemas de integración.

En ese mismo período de sesiones, y con relación al estudio sobre los Mercados de valores bursátiles, el Grupo de Trabajo integrado por los relatores del tema presentó un Informe en el que se proponen distintas actividades, contactos, mecanismos de cooperación, a fin de propiciar la difusión de sus trabajos. El Comité asi lo acordó, definiendo una serie de acciones a ser emprendidas asi como una lista de organizaciones e instituciones a ser contactadas (CJI/RES.II-23/94). Los relatores designados por el Comité son los Dres.Rubin, Siqueiros y Fried.

También en su período de sesiones de agosto de 1994, el Dr.Rubin anunció que enviaría para el próximo período de sesiones un Informe sobre los efectos jurídicos de la insolvencia. El Comité designó como relatores del tema a los Dres.Rubin, Siqueiros y Fried.

Estos dos últimos temas fueron incorporados al referido a los procesos de integración, el que pasó a denominarse "Dimensión jurídica de la Integración y del Comercio Internacional".

AG: Junio de 1995

En su período ordinario de sesiones de 1995 (Montrouis, Haiti), la Asamblea General resolvió (AG/doc.3268/95):

> "Instruir al Comité Jurídico Interamericano a que continúe sus trabajos para promover la divulgación y el debate de la normativa adecuada para aumentar la confiabilidad y estabilidad de los mercados de valores de los Estados miembros, en colaboración con el Banco Mundial, el Banco Interamericano de Desarrollo, la Asociación Internacional de Abogados y otras entidades mencionadas en el informe del Comité, de conformidad con la resolución CJI/RES.II-23/94."

II.- LA DEMOCRACIA EN EL SISTEMA INTERAMERICANO

Como indicáramos en el capítulo VI, en 1989 el Dr. Seymour J.Rubin propuso la inclusión en la agenda del Comité del tema "Estudio de la legitimidad en el Sistema Interamericano y la interrelación de las disposiciones de la Carta de la OEA sobre: autodeterminación, no intervención, democracia representativa y protección de los Derechos Humanos". Los relatores, Drs. Rubin y Villagrán-Kramer, presentaron un primer informe en agosto de 1991.

En agosto de 1992, los relatores presentaron un nuevo informe (CJI/SO/I/ doc.13/91 rev.2) el que comprende las siguientes partes: Introducción. Primera Parte. El régimen anterior al Protocolo de Cartagena de Indias. 1. El primer esquema regional americano. 2. La Carta de la ONU y sus efectos. 3. La Carta de Bogotá de 1948. 4. Fortalecimiento y ejercicio efectivo de la democracia y su relación con los derechos humanos. 5. Los alcances del principio de no

intervención. Segunda Parte. El Protocolo de Cartagena de Indias. Tercera Parte. El Compromiso de Santiago con la democracia y la renovación del sistema regional. 1. Naturaleza del Compromiso de Santiago. 2. Alcance del Compromiso de Santiago. Cuarta Parte. Aplicación del principio de legitimidad, 1991-1992. El Comité resolvió considerar el tema en una próxima sesión sin que, hasta la fecha, lo haya incluído nuevamente en su temario.

En marzo de 1993, el Dr. Eduardo Vio Grossi propuso la inclusión del tema "La Democracia en el Sistema Interamericano". El Comité acordó incorporarlo a su temario y designó como relator al miembro proponente.

El Dr. Vío Grossi presentó, en agosto de 1993, un primer informe preliminar que comprende una introducción, una primera parte sobre el derecho aplicable, una segunda parte relativa a la acción de los Estados y una tercera parte referida a la acción de la OEA (CJI/SO/II/doc.10/93). En enero de 1994, el relator presentó un segundo informe preliminar (CJI/SO/ doc.11/94) en el que se analizan algunos aspectos de la primera parte del primer informe y manifestó su intención de presentar un tercer informe preliminar que contenga un análisis de todos los aspectos indicados en el primero de los informes.

La Comisión de Asuntos Jurídicos y Políticos del Consejo Permanente de la OEA, al considerar el correspondiente informe anual del CJI, instó al Comité a proseguir el estudio del tema "en la medida en que se refiere a uno de los pilares básicos del sistema interamericano" (CP/doc. 2479/94), y la Asamblea General de la OEA, en su vigésimo cuarto período ordinario de sesiones (Belém, 1994), resolvió [AG/RES. 1266(XXIV-O/94)]

> "exhortar al Comité Jurídico Interamericano para que prosiga sus estudios sobre la Democracia en el Sistema Interamericano, teniendo en cuenta que se trata de uno de los temas fundamentales de la Organización"

En el período ordinario de sesiones de agosto de 1994, el Dr. Vío Grossi presentó el Informe titulado "La Democracia en el Sistema Interamericano". El Comité felicitó al Relator y resolvió "remitir al Secretario General dicho Informe así como el acta resumida de la sesión en la cual fue considerado a fin de que lo ponga a disposición de los órganos de la Organización a los que corresponda tratar el tema" (CJI/RES.II-12/94). En la misma resolución, el Comité decidió continuar con el análisis del tema y "solicitar al relator que informe acerca de la evolución que el tema pueda experimentar hasta esa fecha".

CJI: Marzo de 1995

El Relator, en el período de sesiones de marzo de 1995, presentó un Informe Complementario sobre la Democracia en el Sistema Interamericano (CJI/SO/I/doc.7/95 rev.1). Luego de su consideración, en una extensa resolución (CJI/RES.I-3/95)[2], el Comité Jurídico constató y enumeró los principios y normas que la Organización y sus Estados miembros observan en relación al ejercicio efectivo de la Democracia Representativa y resolvió proponer a los correspondientes órganos de la Organización diversas medidas tendientes al efectivo desarrollo progresivo del Derecho Internacional en relación a la Democracia Representativa. Asimismo, el Comité resolvió continuar con el estudio del tema, haciendo especial énfasis en los siguientes aspectos:

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2 Los Dres. Fried, Espeche Gil y Zelada Castedo concurrieron a la aprobación de esta resolución con votos razonados que se adjuntaron a la misma.

a) identificar y tipificar el eventual hecho ilícito internacional contra el ejercicio efectivo de la Democracia Representativa y estudiar la responsabilidad que de él se puede derivar para el Estado y los individuos;

b) la posible ilicitud internacional por las acciones que distorsionen o pretendan distorsionar los resultados electorales, tanto por coartar la libertad de expresión del sufragio como por afectar la autenticidad del escrutinio electoral;

c) la relación entre el ejercicio efectivo de la Democracia Representativa, la Paz y Seguridad Internacional, y los Derechos Humanos; y

d) el alcance jurídico de las medidas o gestiones que pueda adoptar la OEA en vista del restablecimiento del ejercicio efectivo de la Democracia Representativa.

AG: Junio de 1995

La Asamblea General de la OEA, en su vigésimo quinto período ordinario de sesiones (Montrouis, Haiti, junio de 1995), por resolución AG/doc.3268/95, exhortó al Comité Jurídico a que "continúe con el estudio de la Democracia en el Sistema Interamericano, dando particular atención al análisis de su evolución más reciente en la Región".

III.- PERFECCIONAMIENTO DE LA ADMINISTRACIÓN DE JUSTICIA EN LAS AMÉRICAS

En 1985, el Comité Jurídico Interamericano aprobó la resolución CJI/RES.I-02/85, "Perfeccionamiento de la Administración de Justicia en las Américas", por la que, en su carácter de órgano asesor de la OEA en asuntos jurídicos,

> Reconociendo la importancia de la administración de justicia para el imperio del derecho, la preservación de los derechos humanos y de la paz,

y,

> Tomando en cuenta que una administración de justicia autónoma, eficiente y moral es la mejor garantía para alcanzar un desarrollo equilibrado que reduzca las desigualdades dentro de un clima de libertad,

resolvió solicitar informaciones a los Estados miembros de la OEA, a través de la Secretaría General de la OEA, "sobre el progreso de los esfuerzos por parte de los correspondientes gobiernos y grupos privados, tales como asociaciones jurídicas en pro del perfeccionamiento de la administración de justicia en las Américas", y designar a los Drs. Seymour J. Rubin y Roberto MacLean Ugarteche como relatores del tema.

El mismo año, en su período ordinario de sesiones del mes de agosto, por resolución CJI/RES.II-11/85, el Comité, luego de considerar lo informado por los relatores, resolvió recomendar al Secretario General la convocatoria de un seminario con magistrados, jueces y especialistas y señaló la conveniencia de encuentros con sociedades de derecho internacional y con asociaciones de jueces y de abogados.

En enero de 1986, CJI/RES.I-04/86, el Comité, luego de considerar

> la comunicación del Secretario General de la Organización de los Estados Americanos, de fecha 23 de agosto de 1985 relativa a la buena acogida manifestada en los distintos Estados miembros de la Organización .....

y

> los informes de los co-Relatores sobre el tema, en los que se menciona no sólo las manifestaciones de interés de parte de organizaciones legales nacionales e internacionales

resolvió proseguir con el propósito de convocar un seminario sobre el punto y sugirió su posible temario, lo que reiteró en su siguiente período de sesiones (CJI/RES.II-11/86) asi como en el período de sesiones de enero de 1987 (CJI/RES.I-02/87).

Los días 7 y 8 de agosto de 1987, en la ciudad de Rio de Janeiro, en los locales de la Fundación Getulio Vargas, se llevó a cabo el Seminario sobre "Perfeccionamiento de la Administración de Justicia en las Américas", patrocinado por el Comité Jurídico, y en el que participaron, además de los miembros del Comité Jurídico, expertos de distintos países de la región.

Como consecuencia de este encuentro, ese mismo mes, por resolución CJI/RES.II-18/87, el Comité decidió mantener el tema en su agenda y solicitar a los co-Relatores que adopten las medidas necesarias para la formación de un grupo de trabajo que los asesore, integrado por expertos en diversos campos del derecho. En la Exposición de Motivos que acompaña esta resolución, se detallan los contactos hechos hasta la fecha por los co-Relatores asi como un comentario general sobre el mencionado Seminario.

En agosto del año siguiente, también en la ciudad de Rio de Janeiro, se celebró un segundo Seminario sobre el mismo tema del que participaron instituciones de distintos países americanos asi como la Federación Interamericana de Abogados, la Fundación Interamericana de Abogados y Presidentes de Asociaciones de Magistrados. En este encuentro se coincidió en que, para el desarrollo de la democracia, es necesario un mejoramiento en la administración de justicia y que sería importante propiciar la investigación tanto de problemas tradicionales (mejor capacitación de jueces y abogados) como de medios alternativos de solución de conflictos (conciliación, mediación, arbitraje). También se coincidió en la necesidad de mejorar el intercambio de información. En función de estas sugerencias, el Comité, por resolución CJI/RES.II-1/88, propuso el temario de un tercer Seminario.

En agosto de 1989, el Comité resolvió (CJI/RES.II-1/89)

> Recomendar el establecimiento de una asociación interamericana de carácter privado que trabaje en estrecha colaboración con los órganos gubernamentales e intergubernamentales y de común acuerdo con la Secretaría General de la Organización de los Estados Americanos, con el propósito de facilitar en el ámbito hemisférico el debate y examen de métodos y actividades relativos al perfeccionamiento de la Administración de la Justicia en las Américas.

y propuso que dicha asociación se denominase "Asociación Interamericana para la Administración de Justicia (AIAJ)".

La Asamblea General de la OEA, en su decimonoveno período ordinario de sesiones (Washington, 1989), resolvió [AG/RES.1019 (XIX-0/89)]

> Tomar nota de la resolución sobre perfeccionamiento de la administración de justicia en las Américas y recomendar al Comité que continúe considerando el tema e informe a la Asamblea los resultados del mismo.

El año siguiente, el Comité reiteró la importancia que le acordaba al estudio del perfeccionamiento de la Administración de Justicia en las Américas y solicitó a los relatores "que prosigan en sus esfuerzos sobre este tema" (CJI/RES.II-4/90). La Asamblea General de la OEA, por su parte, en su vigésimo primer período ordinario de sesiones (Santiago, 1991) instó al Comité a continuar con la consideración del tema [AG/RES.1129 (XXI-0/91)].

En agosto de 1991, el Comité Jurídico, por resolución CJI/RES.II-7/91, decidió que los relatores del tema

> deberán proseguir en sus esfuerzos y buscar financiamiento, tanto público como privado, para la elaboración de una serie de relatorios y para la cooperación, principalmente en los siguientes sectores:
> - Acceso a la justicia de personas carentes y sin recursos;
> - Métodos alternativos de solución de controversias;
> - Mayor capacitación de jueces y otros funcionarios de la administración de la justicia, inclusive los árbitros;
> - Instruir a los interesados acerca de las vías de acceso a los tribunales o a métodos alternativos para solución de controversias.

A partir de ese período, el Dr. Rubin quedó como único Relator del tema.

La Asamblea General de la OEA, en su período ordinario de sesiones celebrado en Nassau, en 1992, reiteró la recomendación al Comité de proseguir con el estudio del tema [AG/RES.1166 (XXII-0/92)].

El Comité, al establecer, en agosto de 1992, su agenda de trabajo, dispuso:

> Perfeccionamiento de la Administración de Justicia en las Américas
> Relator: Dr. Seymour J. Rubin
>
> a) Facilitación del acceso a la Justicia
> b) Derechos humanos y aplicación tardía de la Justicia
> c) Protección y garantía de los jueces y abogados en el ejercicio de sus funciones
> d) Simplificación de procedimientos judiciales
> e) Designación de Magistrados y funcionarios de Justicia

Posteriormente, el Comité designó al Dr. Manuel A. Vieira como Relator para el punto b), "Derechos humanos y aplicación tardía de la Justicia".

En febrero de 1993, el Banco Interamericano de Desarrollo organizó un Seminario sobre Administración de Justicia que se celebró en San José de Costa Rica al que concurrió el Dr. Philip Telford Georges como observador designado por el Comité Jurídico.

En su período de sesiones de agosto de 1993, el Comité reiteró la necesidad de continuar con el estudio del tema (CJI/RES.II-17/93) y, al elaborar el temario de sus próximas sesiones, agrupó diversos puntos del tema, enunciándolos de la siguiente forma:

> a) Facilitación del acceso a la Justicia. Simplificación de procedimientos judiciales.
> b) Derechos humanos y retardo de Justicia.
> c) Designación de magistrados y funcionarios de Justicia. Protección y garantía de los jueces y abogados en el ejercicio de sus funciones.

Para el punto a) fue designado Relator, el Dr. Seymour J. Rubin; para el punto c), el Dr. Jonathan T. Fried; y, en el período siguiente de sesiones, para el punto b), el Dr. Luis Herrera Marcano.

Al considerar, en abril de 1994, el Informe Anual del Comité, la Comisión de Asuntos Jurídicos y Políticos del Consejo Permanente de la OEA, señaló "la importancia que, para el fortalecimiento en general de las instituciones fundamentales del Estado, tiene el tema de la Administración de Justicia", y "acordó solicitar al Comité Jurídico que continúe sus estudios sobre el tema, cooperando con las distintas instituciones que actúan en esta materia" (CP/doc. 2479/94).

La Asamblea General de la OEA, en su vigésimo cuarto período ordinario de sesiones (Belem, 1994), resolvió [AG/RES.1266(XXIV-0/94)]

> "solicitar al Comité Jurídico Interamericano que, de conformidad con su resolución CJI/RES.II-17/93, continúe sus estudios sobre el perfeccionamiento de la Administración de Justicia en las Américas y procure cooperar, en esta materia, con instituciones gubernamentales, intergubernamentales y no gubernamentales que actúen en este campo"

En ese mismo período de sesiones, la Asamblea General encomendó al Consejo Permanente el estudio de los distintos aspectos que permitan el perfeccionamiento de la administración de la justicia, considerando, entre otros aspectos, "que ya el Comité Jurídico Interamericano ha venido realizando estudios al respecto" [AG/RES.1272(XXIV-0/94)].

En agosto de 1994 el Comité Jurídico conoció el Informe presentado por el Relator, Dr.Fried, relativo a la protección y garantías a los jueces y abogados en el ejercicio de sus funciones el que fue remitido al Consejo Permanente de la OEA con la recomendación de que dicho órgano "considere la posibilidad de mantener bajo examen continuo, mediante informes periódicos y publicación de información, los problemas que en los Estadosa Miembros puedan amenazar la independencia del Poder Judicial, impidan la protección adecuada a los jueces y abogados en el ejercicio de sus funciones, así como las medidas que se hubiesen adoptado para hacer frente a esos problemas" (CJI/RES.II-19/94).

Con posterioridad, el Relator envió una versión revisada, la que también fuera distribuida al Consejo Permanente y otros órganos de la Organización.

CJI: Marzo de 1995

En ocasión de este período de sesiones, el Comité celebró reuniones con el Presidente del Grupo de Trabajo del Consejo Permanente sobre Administración de Justicia, Emb. Julio César Jaureguy, de Uruguay, asi como con representantes del Banco Mundial y del Banco Interamericano de Desarrollo que están trabajando en esta temática.

El Comité resolvió (CJI/RES.I-4/95) reafirmar su cooperación con otros órganos de la Organización y en particular con el mencionado Grupo de Trabajo del Consejo Permanente y continuar con el estudio del tema en su próxima sesión.

AG: Junio de 1995

La Asamblea General, en ocasión de su vigésimo quinto período ordinario de sesiones (Montrouis, Haiti, junio de 1995), resolvió (AG/doc.3268/95) "solicitar al Comité Jurídico

Interamericano que prosiga sus estudios sobre el perfeccionamiento de la Administración de Justicia y la independencia del Poder Judicial en las Américas y que, en coordinación con el Consejo Permanente, distribuya en los Estados miembros sus informes al respecto".

En ese mismo período de sesiones, la Asamblea General resolvió "encomendar al Consejo Permanente para que, a través de su Grupo de Trabajo sobre Administración de Justicia y, en coordinación con el Comité Jurídico Interamericano y la Secretaría General, desarrolle las acciones necesarias a los efectos de lograr el mejor conocimiento y difusión, en los Estados miembros, de las normas jurídicas internacionales emanadas del Sistema Interamericano y, en particular, de los instrumentos de los cuales la Secretaría General de la OEA es depositaria" (AG/doc.3265/95). Asimismo, la Asamblea General resolvió, también, "encomendar al Grupo de Trabajo sobre Administración de Justicia que en colaboración con la Secretaría General y con el Comité Jurídico Interamericano, y dentro de las disponibilidades presupuestarias, organice, en coordinación con instituciones nacionales e internacionales vinculadas al tema, seminarios y talleres regionales que, con la participación de jueces, abogados y universitarios, posibiliten un mejor conocimiento mutuo de la administración de justicia en los distintos países con vistas a lograr una mayor cooperación judicial regional".

IV.- DERECHO DE INFORMACIÓN

Al establecer el temario de su período ordinario de sesiones de enero de 1980, se introdujo el tema "Libertad de expresión e información" y se designó relator del mismo al Dr.Orrego Vicuña quien, en el período de sesiones siguientes fue reemplazado por el Dr.Materno Vásquez.

El nuevo relator presentó, en el período ordinario de sesiones del Comité de enero de 1981 un informe preliminar titulado "Derecho de información". El Comité tomó nota del mismo y resolvió mantener el tema en su agenda (CJI, "Recomendaciones e Informes", vol.XIII, 1981, p.5). En enero de 1982, el Dr.Materno Vásquez formuló ante el Comité una amplia exposición en la que dió cuenta de las novedades producidas en el tema (CJI, "Recomendaciones....", vol.XIV, 1982, p.16).

Al Dr. Materno Vásquez le sucedieron, sucesivamente, como relatores del tema, los Dres.Aja Espil, Ortiz Martin y Vanossi.

En su período ordinario de sesiones de agosto de 1991, el Dr.Vanossi presentó un informe preliminar el que contiene un anteproyecto de Declaración sobre el Derecho a la Información. El Comité consideró dicho texto y resolvió encargar al relator, junto con el Dr.Villagrán-Kramer, la preparación de un nuevo documento que tuviere en cuenta las opiniones vertidas en el Comité. Dicho documento, titulado "Proyecto de Declaración del Comité Jurídico Interamericano sobre el Derecho a la Información" fue presentado por los Dres. Vanossi y Villagrán-Kramer en agosto de 1992. El Comité resolvió, entonces, mantener este tema en su agenda (CJI/RES.II-25/92). Al culminar el mandato de ambos miembros, el Comité mantuvo el tema en su agenda y designó como relator al Dr.Rivarola Paoli.

En 1993, al conocer el temario del Comité Jurídico, la Comisión de Asuntos Jurídicos y Políticos del Consejo Permanente resaltó la importancia del tema y la Asamblea General de la OEA, en su vigésimo tercer período ordinario de sesiones (Managua, 1993), al considerar el Informe anual del Comité Jurídico, resolvió:

> Acoger la recomendación del Comité Jurídico de continuar la consideración del tema "Derecho de Información", dada la importancia que éste reviste para los Estados miembros. [AG/RES.1210(XXIII-0/93)]

En agosto de ese mismo año, el relator presentó un extenso informe. El Comité resolvió, luego de agradecer y felicitar al Dr. Rivarola, mantener el tema en su agenda (CJI/RES.II-22/93).

Nuevamente, al conocer el temario del Comité Jurídico, la Asamblea General, en su vigésimo cuarto período ordinario de sesiones (Belém do Pará, 1994), resolvió [AG/RES.1266(XXIV-0/94)]

> Recomendar al Comité Jurídico Interamericano que mantenga en su agenda el estudio del Derecho de Información.

Debido al término del mandato del Dr.Rivarola, el Comité, en su período de sesiones de agosto de 1994, designó como relator al Dr.Gutiérrez Castro.

CJI: Marzo de 1995

El Dr.Gutiérrez Castro presentó, durante el período de sesiones de marzo de 1995, un Informe verbal sobre el tema. El Comité Jurídico resolvió (CJI/RES.I-8/95) mantener el tema en su agenda. "encargando a los otros miembros del Comité Jurídico que para esa oportunidad [agosto de 1995] puedan formular las observaciones que estimen pertinentes respecto a los aspectos del derecho de información que requieren atención prioritaria".

AG: Junio de 1995

En su vigésimo quinto período ordinario de sesiones (Montrouis, Haiti, junio de 1995), la Asamblea General resolvió (AG/doc.3268/95) "solicitar al Comité Jurídico Interamericano que mantenga en su temario el estudio del Derecho de Información".

V.- DERECHO AMBIENTAL

En su período de sesiones de julio-agosto de 1979, a propuesta del Dr. González Gálvez, el Comité Jurídico incorporó en su agenda el tema "Formas para el desarrollo del derecho ambiental". En su siguiente período de sesiones, enero-febrero de 1980, el Relator designado, Sir William Douglas, presentó un Informe preliminar, y la entonces Consultoría Jurídica de la OEA preparó un documento de identificación temática. Por resolución del 7 de febrero de 1980, el Comité resolvió

> Solicitar al relator que continue con los estudios relativos a la contaminación ambiental y sus consecuencias ecológicas, con vista a la preparación de un proyecto de convención sobre la materia.

En agosto de 1982, el nuevo relator del tema, Dr. Galo Leoro Franco, presentó un documento en el que, luego de reseñar la documentación recopilada, concluye en la conveniencia de proseguir con el estudio de la materia.

En el período de sesiones de julio-agosto de 1986, el Dr. Leoro presentó un segundo documento en el que se abordan distintos aspectos vinculados a los mecanismos jurídicos para la protección del medio ambiente.

En agosto de 1987, el Comité Jurídico Interamericano, luego de la conferencia que allí dictara el Dr. Victor H. Martínez, Vicepresidente de la Nación Argentina, y cuyo texto aparece publicado en las páginas 169 y siguientes del volumen correspondiente a ese año de Informes y Recomendaciones del CJI, aprobó la resolución CJI/RES.II-19/87. Entre sus consideraciones, el Comité indicó

> Que después de suscrita la Convención para la Protección de la Flora, de la Fauna y de las Bellezas Escénicas de los Países de América, del año 1940, se registra en otros continentes una evolución hacia nuevos principios y mecanismos de cooperación intraregionales en materia de conservación de la naturaleza

y resolvió

> Señalar la necesidad de propiciar la convocación de una conferencia especializada, a fin de crear el Sistema Interamericano de Conservación de la Naturaleza.

La Asamblea General de la OEA, en su decimoctavo período ordinario de sesiones (San Salvador, 1988), y considerando la recomendación anterior del Comité, resolvió

> Encomendar a la Secretaría General que realice un estudio multidisciplinario tendiente a la preparación de un proyecto de convenio a fin de crear un sistema interamericano de conservación de la naturaleza y por intermedio del Consejo Permanente lo presente a la Asamblea General en su decimonoveno período ordinario de sesiones.
> [AG/RES.948 (XVIII-O/88)]

El plazo acordado al Consejo Permanente fue prorrogado por la Asamblea General en su siguiente período ordinario de sesiones [AG/RES.1016 (XIX-0/89), lo que reiteró un año después [AG/RES.1050 (XX-0/90).

También, en el período de sesiones de agosto de 1988 del CJI, el Relator, Dr. Leoro, manifestó al Comité que su próximo informe contendría

> "el Proyecto de Declaración o Resolución que podría ser adoptado, de ser tal el caso, por la propia Asamblea General de la OEA como una inicial contribución a la búsqueda de soluciones en el campo de la contaminación transfronteriza, que es lo fundamental de este asunto"
> (CJI, Informes y Recomendaciones 1987, p.87 a p.93)

En agosto de 1988, el Relator presentó al CJI su tercer informe, que incluye un Proyecto de Declaración Americana sobre Medio Ambiente. El Comité, en agosto del año siguiente, adoptó dicho Proyecto de Declaración (CJI/RES.II-2/89) y, por resolución CJI/RES.II-9/89, aprobó el "Informe del Comité Jurídico Interamericano sobre el Proyecto de Declaración Americana sobre Medio Ambiente". Esta última resolución contiene una síntesis de los estudios llevados a cabo por el Comité sobre la materia asi como un comentario del articulado del Proyecto de Declaración.

En su decimonoveno período ordinario de sesiones (Washington, 1989), la Asamblea General de la OEA, al considerar el Informe Anual del CJI, resolvió

> Tomar nota de la "Declaración Americana sobre Medio Ambiente" adoptada por el Comité Jurídico Interamericano así como del respectivo informe y encomendar al Consejo Permanente que proceda al examen del tema.
> [AG/RES.1019 (XIX-0/89)]

En su vigésimo período ordinario de sesiones (Panamá, 1990), la Asamblea General, por resolución AG/RES.1050 (XX-0/90), decidió encomendar al Consejo Permanente la constitución de un grupo de trabajo con el fin de estudiar las formas que podría utilizar la OEA para trabajar

más eficientemente en la protección del medio ambiente, el que debería presentar sus conclusiones y recomendaciones al Consejo Permanente antes del 31 de diciembre de 1990.

El Consejo Permanente presentó su Informe a la Asamblea General, la que, en su vigésimo primer período ordinario de sesiones (Santiago, 1991), resolvió adoptar el "Programa Interamericano de Acción para la Conservación del Medio Ambiente" [AG/RES.1114 (XXI-0/91)]. Entre otras cosas, en él se dispone, en el Capítulo III "Medidas de acción para la cooperación regional",

> r. Solicitar al Comité Jurídico Interamericano que prepare, con la cooperación de la Secretaría General, catálogos de referencia de legislaciones ambientales nacionales.
>
> t. Promover la actualización, en cooperación con el Comité Jurídico Interamericano y con la Secretaría General, de la Convención para la Protección de la Flora, de la Fauna y de las Bellezas Escénicas Naturales de los Países de América (1940) introduciendo nuevos temas como la preservación de la biodiversidad; y estudiar la posibilidad de elaborar un convenio interamericano para la conservación del medio ambiente.

En el mismo Capítulo, se recomienda al Consejo Permanente que establezca una Comisión Permanente para que, entre otros cometidos, coordine, evalúe y efectúe el seguimiento de las medidas de acción de este Programa. En cumplimiento de este mandato, el Consejo Permanente, el 8 de julio de 1991, instaló la Comisión del Medio Ambiente.

En su período de sesiones de agosto de 1991, el Comité Jurídico,

> Habiendo considerado el informe que su Presidente presentó al Comité sobre aspectos que merecen pronta atención, inclusive el relativo al Derecho Ambiental en las Américas,

resolvió (CJI/RES.II-9/91)

> Conceder prioridad a la consideración del tema:
> "El proceso tendiente al establecimiento de un Derecho Ambiental en las Américas"
> Relator: doctor Galo Leoro F.

El relator presentó su Informe en el período de sesiones de marzo de 1992 el que fue adoptado por el Comité (CJI/RES.I-5/92), que resolvió, también,

> Mantener el tema en su agenda a fin de continuar su examen a la luz de los resultados de la Conferencia Mundial de las Naciones Unidas sobre Medio Ambiente y Desarrollo.

y designó al relator para que represente al Comité en esta Conferencia, a celebrarse en el mes de junio de ese año en la ciudad de Rio de Janeiro (CJI/RES.I-9/92). El doctor Leoro informó al Comité de su participación en dicho Conferencia en el período de sesiones posterior a la celebración de la misma.

Al ser considerado el Informe del Comité por la Comisión de Asuntos Jurídicos y Políticos del Consejo Permanente, varias delegaciones señalaron la conveniencia de que, dentro de esta

temática, el Comité abordara los aspectos jurídicos que se derivan de la responsabilidad internacional de los Estados por daños ambientales ocasionados por contaminación transfronteriza. Dicho informe fue aprobado por el Consejo Permanente y sometido a consideración de la Asamblea General, la que, en su vigésimo segundo período ordinario de sesiones (Nassau, 1992) resolvió [AG/RES.1166 (XXII-0/92)]

> Acoger y transmitir al Comité Jurídico Interamericano las observaciones y recomendaciones que el Consejo Permanente de la Organización hizo a su informe anual.
>
> Acoger la recomendación del Comité Jurídico de continuar la consideración del tema "El proceso tendiente al establecimiento de un derecho ambiental de las Américas" (CJI/RES.I-5/92), teniendo en cuenta, entre otros elementos, los resultados de la Conferencia de las Naciones Unidas sobre el Medio Ambiente y el Desarrollo.

En su periódo de sesiones de agosto de 1992, acogiendo la recomendación del Consejo Permanente, el Comité incorporó a su temario el punto: "Responsabilidad en materia de Derecho Ambiental", designando como relator, también para este asunto, al doctor Galo Leoro.

La Asamblea General de la OEA, en su vigésimo tercer período ordinario de sesiones (Managua, 1993), luego de considerar las recomendaciones que, a propuesta de la Comisión del Medio Ambiente, le sometiera el Consejo Permanente, resolvió [AG/RES.1241 (XXIII-0/93)]

> Solicitar al Comité Jurídico Interamericano la actualización del documento sobre "El desarrollo sobre un Derecho Ambiental en las Américas" a la luz de los resultados de la Conferencia de las Naciones Unidas sobre el Medio Ambiente y el Desarrollo (CNUMAD) y las deliberaciones sobre Desarrollo Sostenible de las Naciones Unidas"

En esta misma resolución, la Asamblea General solicitó al Consejo Permanente, a través de su Comisión del Medio Ambiente, que estudie y decida sobre la conveniencia de actualizar la Convención de 1940, y estudie y decida sobre la conveniencia de adoptar una Declaración Americana sobre el Medio Ambiente. Con relación al primer punto, la Comisión consultó a los Estados miembros y ya ha recibido las primeras respuestas.

Por su parte, la Subsecretaría de Asuntos Jurídicos recopiló, en un catálogo periódicamente actualizado, la legislación ambiental de los Estados miembros asi como de los tratados vigentes en la materia y presentó a la Comisión del Medio Ambiente del Consejo Permanente un cuadro sinóptico de las diversas declaraciones en materia ambiental.

En su período de sesiones de agosto de 1993, el relator presentó su informe sobre "Responsabilidad en el Derecho Ambiental". El mismo fue aprobado y hecho suyo por el Comité, el que resolvió remitirlo a la Secretaría General a fin de que lo haga llegar al Consejo Permanente (CJI/RES.II-19/93).

En el siguiente período, enero de 1994, el relator presentó la actualización del documento sobre "El desarrollo de un Derecho Ambiental en las Américas". En la resolución CJI/RES.I-3/94, por la que el Comité remite este trabajo al Consejo Permanente, se decidió, asimismo

> Solicitar al Consejo Permanente, por intermedio de la Comisión del Medio Ambiente, establezca, de ser posible, el alcance y las modalidades de la

> cooperación del Comité para la realización de los trabajos a que hace referencia el literal t) del Capítulo III del "Programa Interamericano de Acción para la Conservación del Medio Ambiente", adoptado por la Resolución AG/RES.1114 (XXI-0/91).
>
> Mantener en su agenda el tema sobre derecho ambiental, con el propósito de discutir y adoptar, en su próximo período ordinario de sesiones, un plan de trabajo específico al respecto, tomando en consideración el aporte que podría brindar el Comité a los esfuerzos para el desarrollo progresivo del derecho internacional sobre medio ambiente en el Continente y, en particular, a aquellos que efectúan los órganos de la Organización para la preparación de una Declaración o Acta sobre el medio ambiente o, eventualmente, para la elaboración de una Convención Interamericana sobre el Medio Ambiente.

La Comisión de Asuntos Jurídicos y Políticos, al conocer el informe anual del Comité Jurídico tomó nota, con satisfacción, del cumplimiento del mandato del Consejo Permanente referido a la "responsabilidad en el derecho ambiental", recibió la actualización al documento sobre "el desarrollo de un Derecho Ambiental en las Américas" y concordó con lo solicitado por el Comité en cuanto a la necesidad de que el Consejo Permanente, al formular los encargos sobre los puntos a que hace el literal t) del Capítulo III del "Programa Interamericano de Acción para la Conservación del Medio Ambiente". Por último, la Comisión de Asuntos Jurídicos y Políticos manifestó su acuerdo con el Comité en mantener el tema en su agenda (CP/doc.2479/94). El Consejo Permanente acogió estas recomendaciones.

La Asamblea General, en su vigésimo cuarto período ordinario de sesiones (Belem, 1994), resolvió [AG/RES.1266(XXIV-0/94)]

> "recomendar al Consejo Permanente que establezca, de ser posible, el alcance y las modalidades de la cooperación que solicite del Comité Jurídico Interamericano para la realización de los trabajos referentes al Derecho Ambiental"

En su período ordinario de sesiones de agosto de 1994 el Comité resolvió mantener el estudio del tema en su Agenda a la espera de futuras solicitudes del Consejo Permanente a través de su Comisión del Medio Ambiente.

VI.- SOLUCIÓN PACÍFICA DE LAS CONTROVERSIAS

La Asamblea General de la OEA, en su primer período ordinario de sesiones (San José, Costa Rica, 1971), resolvió

> Encargar al Comité Jurídico Interamericano que, a la luz de lo dispuesto en el artículo 26 de la Carta, estudie los tratados y convenciones que integran el sistema interamericano de paz.....
> [AG/RES.54 (I-0/71)]

En setiembre de 1971, el Comité elaboró un Dictamen sobre el Fortalecimiento del Sistema Interamericano de Paz (ver, CJI, "Recomendaciones e Informes", 1967-1973, p.392 y siguientes), en el que concluye:

> ..... que el mejor medio para consolidar y perfeccionar el Sistema Interamericano de Paz es el Pacto de Bogotá, por lo que debería ser ratificado por los Estados que aún no lo han hecho.

En respuesta a este Dictamen, el Gobierno de Ecuador formuló una serie de observaciones, expresando que el Pacto de Bogotá contiene aspectos negativos que han contribuído a su no aplicabilidad y a la renuencia de ciertos Estados a ratificarlo.

El Comité, en vista de estas observaciones, emitió, con fecha 13 de febrero de 1973, un nuevo Dictamen (ver, Idem. p.556 y siguientes) en el que se pronunció por

> mantener su Dictamen de setiembre de 1971 sobre Fortalecimiento del Sistema Interamericano de Paz

La Asamblea General de la OEA, en su decimotercer período ordinario de sesiones (Washington, 1983), aprobó la resolución AG/RES.680 (XIII-0/83). En ella, la Asamblea

> Tomando nota de que, conforme a tratados y convenciones interamericanas vigentes, tales como el Pacto de Bogotá de 1948, existen numerosos procedimientos para propiciar la solución pacífica de controversias .....

resolvió

> Encomendar a la Secretaría General que, con el asesoramiento del Comité Jurídico Interamericano, prepare un estudio acerca de tales procedimientos y de las acciones adicionales que pudieran tomarse para promoverlos, actualizarlos o ampliarlos.....

En cumplimiento de esta resolución, la Secretaría General preparó el documento titulado "La Solución Pacífica de Controversias dentro del marco jurídico-institucional de la Organización de los Estados Americanos".

En su período ordinario de sesiones de julio/agosto de 1984, el Comité aprobó una extensa resolución sobre el tema. A ésta le acompañan un Anexo preparado por el Relator Dr. Sergio Gonzalez Galvez, el voto razonado disidente del Dr. Roberto MacLean Ugarteche y los votos razonados concurrentes de los Drs. Galo Leoro Franco y Luis Herrera Marcano (ver su texto en: CJI, "Informes y Recomendaciones", 1984). En esta resolución el Comité decidió

> Pronunciarse por la conveniencia de encauzar su trabajo en esta materia a "las acciones adicionales que pudieran tomarse para promover, actualizar y ampliar tales procedimientos"

y recomendó una serie de medidas tendientes a fortalecer el sistema de solución pacífica de controversias dentro del marco jurídico institucional de la OEA.

Por otra parte, ya a partir de 1973, la Asamblea General de la OEA había creado una Comisión Especial para proponer la reestructura y las reformas necesarias para actualizar el Sistema Interamericano. Dicha Comisión, en sucesivos períodos de la Asamblea General, propuso reformas a los distintos instrumentos que conforman el Sistema. En 1984, por resolución AG/RES.745 (XIV-0/84), la Asamblea General, en su decimocuarto período ordinario de sesiones (Brasilia, 1984), resolvió

> Encomendar al Consejo Permanente que, ... con el asesoramiento del Comité Jurídico Interamericano, prepare los proyectos de reformas de los instrumentos básicos de la Organización de los Estados Americanos con la mira de fortalecer los mecanismos institucionales de cooperación interamericana.

> En agosto de 1985, el Consejo Permanente encomendó al Comité Jurídico Interamericano un examen del Tratado Americano de Soluciones Pacíficas (Pacto de Bogotá) tomando en cuenta las reservas que le han formulado los Estados signatarios del mismo, así como las razones que podrían tener algunos Estados para no ratificarlo, a fin de determinar si, para asegurar su viabilidad, se requiere formular reformas a dicho instrumento

Inmediatamente, el Comité designó al Dr. Galo Leoro como Relator quien, ese mismo mes, presentó un pormenorizado informe. El Comité, por resolución CJI/RES.II-13/85 emitió un largo dictamen en el que se analiza el articulado del Pacto de Bogotá y se recomiendan enmiendas al mismo (ver el texto del Dictamen asi como los votos razonados de distintos miembros del CJI en "Informes y Recomendaciones, 1985, páginas 60 a 101).

El Gobierno de Colombia presentó, a su vez, un proyecto de tratado interamericano de soluciones pacíficas, por lo que la Asamblea General, en su decimosexto período ordinario de sesiones (Ciudad de Guatemala, 1986) resolvió [AG/RES.821 (XVI-0/86)] solicitar observaciones al mismo por parte de los Estados miembros de la Organización y encomendó su estudio al Consejo Permanente. Luego de este estudio, la Asamblea General, en su decimoséptimo período ordinario de sesiones (Washington, 1987), por resolución AG/RES.877 (XVII-0/87), resolvió

> Encomendar al Comité Jurídico Interamericano que actualice el estudio de las razones por las cuales un mayor número de Estados no son Partes del Tratado Americano de Soluciones Pacíficas "Pacto de Bogotá"

En vista de este mandato, el Comité resolvió (CJI/RES.II-10/88)

> Pedir a la Secretaría General de la OEA que se dirija a los correspondientes Estados miembros de la Organización, con el objeto de solicitarles que se dignen darle a conocer, para trasmitirlas a este Comité, las razones que tuvieren para no ser hasta ahora Partes del Tratado Americano de Soluciones Pacíficas (Pacto de Bogotá)

En el mismo período de sesiones, el Comité designó como co-relatores a los Drs. Galo Leoro Franco y Luis Herrera Marcano, los que presentaron un primer Informe que fuera examinado extensamente por el Comité el 24 de agosto, el que aprobó un Informe Provisional (CJI/RES.II-11/88). En dicho Informe, el Comité expresó que

> .... Dada la importancia del tema y su naturaleza eminentemente política ya que la ratificación de un tratado corresponde enteramente a un acto propio de la soberanía del Estado, que si bien detrás del mismo pueden existir motivos de orden jurídico, no sería posible al Comité Jurídico Interamericano asumir la responsabilidad, sin algún fundamento objetivo de responder a esta legítima preocupación de la Asamblea General.....
>
> ..... la mayoría de los Estados no ratificantes no han formulado declaraciones que permitan por ese medio el examen de sus respectivas posiciones.....
>
> ..... solamente con las respuestas que, de este modo, se recibieren de dichos Estados sería dable al Comité Jurídico Interamericano, al estudiarlas, llegar a conclusiones actualizadas generales y especiales sobre esta situación que, en verdad, es preocupante.....

La Asamblea General tuvo en cuenta estas observaciones del Comité, prorrogó su mandato para el estudio del tema y le solicitó que

> ... tenga en cuenta, además de los documentos que existen en la Organización, los demás antecedentes sobre la materia [AG/RES.1019 (XIX-0/89)]

En su período de sesiones de agosto de 1989, el Comité trató nuevamente el tema y constató que solamente tres Estados habían contestado, por lo que el Comité acordó solicitar al Secretario General que reitere a los Estados se sirvan remitir sus respuestas con la mayor urgencia posible.

El año siguiente, al volver a considerar el tema, el Comité, considerando, por una parte, que no se obtuvieron nuevas respuestas de los Estados, y, por otra parte, que su opinión jurídica fue expresada en su dictamen del año 1985,

> .... el Comité considera que el tema no debe continuar en su agenda (CJI/RES.II-7/90)

Al ser examinada esta resolución por la Comisión de Asuntos Jurídicos y Políticos del Consejo Permanente de la OEA, varias delegaciones expresaron

> "su interés en que el Comité continúe con el estudio *in genere* del tema "Soluciones pacíficas de las controversias", "con el objeto de lograr que todos los Estados miembros cuenten con mecanismos y procedimientos efectivos para tal fin" (CP/doc.2157/91)

El Consejo Permanente hizo suyo el informe de la Comisión y la Asamblea General, en su vigésimo primer período ordinario de sesiones (Santiago, 1991), resolvió "acoger y transmitir al Comité Jurídico Interamericano las observaciones y recomendaciones que el Consejo Permanente de la Organización hizo a su informe anual" [AG/RES.1129 (XXI-0/91)].

Desde entonces, el Comité incluyó, en su temario, la "Solución pacífica de las controversias" y designó como relator al Dr. Galo Leoro Franco.

En su período ordinario de sesiones de agosto de 1994, el Dr. Leoro Franco presentó un Informe titulado "Solución Pacífica de las Controversias. Una visión general". El Comité resolvió "remitir dicho Informe al Secretario General para que lo ponga a disposición de los órganos de la OEA como contribución para el análisis y la adopción de las decisiones en el tema", a la vez que decidió mantener el tema en su Agenda (CJI/RES.II-15/94).

AG: Junio de 1995

La Asamblea General, en su vigésimo quinto período ordinario de sesiones (Montrouis, Haiti, junio de 1995), resolvió (AG/doc.3268/95) "recomendar al Comité Jurídico Interamericano que mantenga en su temario, a los efectos de continuar con su examen, el estudio de los distintos métodos de solución pacífica de controversias".

VII.- COOPERACIÓN INTERNACIONAL PARA REPRIMIR LA CORRUPCIÓN

Para su consideración en el período ordinario de sesiones de agosto de 1992, el Comité Jurídico incorporó a su temario el punto "Primera aproximación al enfoque jurídico de la corrupción en las Américas", designando como relator al Dr. Jorge Reinaldo A.Vanossi, quien presentó un informe preliminar (CJI/SO/II/doc.2/92).

La Comisión de Asuntos Jurídicos y Políticos del Consejo Permanente de la OEA, al considerar el Informe anual correspondiente del Comité, acordó recomendarle que continúe con el estudio del tema (CP/doc.2380/93).

Al haber concluído el mandato del Dr. Vanossi como miembro del Comité, la relatoría del tema fue encomendada al Dr. Miguel Angel Espeche Gil (CJI/RES.II-23/93).

En el período de sesiones de agosto de 1994, el Comité mantuvo el punto en su temario modificando su denominación anterior ("Enfoque jurídico de la corrupción en las Américas") por la de "Cooperación internacional para reprimir la corrupción".

CJI: Marzo de 1995

El Dr.Espeche Gil, en ocasión del período de sesiones de marzo de 1995, presentó un informe sobre el tema. El Comité Jurídico resolvió (CJI/RES.I-7/95) mantener el tema en su agenda y encomendar al Relator que, a los efectos de un futuro dictamen o estudio, informe sobre los distintos proyectos de convención que, sobre el tema de la corrupción, sean sometidos a la Organización.

El Comité Jurídico celebró, en esta oportunidad, reuniones con el Presidente del Grupo de Trabajo del Consejo Permanente sobre "Probidad y Etica Cívica", Emb. Edmundo Vargas Carreño, de Chile, asi como con el Representante Permanente de Venezuela ante la OEA, Emb.Sebastián Alegrett, quien, en nombre de su Gobierno, sometiera a consideración de la Organización, un Proyecto de Convención Interamericana contra la Corrupción.

AG: Junio de 1995

La Asamblea General, en su vigésimo quinto período ordinario de sesiones (Montrouis, Haiti, junio de 1995), resolvió (AG/doc.3268/95) "solicitar al Comité Jurídico Interamericano que otorgue prioridad a la formulación de comentarios y observaciones al Proyecto de Convención sobre la Corrupción, que le presentará el Presidente del Grupo de Trabajo sobre Probidad y Etica Cívica". Ello se complementa con lo resuelto por la Asamblea General en ese mismo período de sesiones, por resolución AG/doc.3287/95, en que se solicita al Presidente del mencionado Grupo de Trabajo del Consejo Permanente la preparación de un proyecto de convención interamericana contra la corrupción y se encomienda al Comité Jurídico Interamericano "que, en su período de sesiones de agosto del presente año, formule sus observaciones" a dicho proyecto.

VIII.- ASPECTOS JURÍDICOS DE LA DEUDA EXTERNA

Al iniciarse el período de sesiones de julio-agosto de 1989, el Presidente del Comité, Dr. Vanossi, en su Informe (CJI/RES.II-5/89), señaló que, con fecha 18 de mayo de 1989, había recibido una nota del Dr. Rubin informándole de las deliberaciones que, sobre los aspectos jurídicos de la deuda externa, habían tenido lugar en la Asamblea del Instituto Hispano-Luso-Americano de Derecho Internacional, y, en particular, sobre la posibilidad de solicitar una opinión consultiva de la Corte Internacional de Justicia relativa a la validez o no de las alzas unilaterales de las tasas de interés por parte de los acreedores asi como sobre la eventual responsabilidad de los Estados a que pertenecen estos bancos. Sobre el mismo punto, el Presidente dio cuenta de una nota que, en igual sentido, le fuera enviada por la Cancillería argentina, asi como de la comunicación de la Subsecretaría de Asuntos Jurídicos de la OEA señalándole que el tema había sido tratado por el Consejo Permanente de la OEA.

Los Drs. Rubin y MacLean Ugarteche propusieron que el estudio de los aspectos legales de la deuda externa fuera incorporado al temario del Comité, el que resolvió incluirlo, designando como relatores del mismo a los proponentes y al Dr. Villagrán-Kramer.

En agosto de 1990, el Dr. Villagrán-Kramer presentó un trabajo titulado "Notas para el Estudio de la Deuda Externa" y manifestó que "para continuar adecuadamente la consideración del tema era necesario que el Comité precisara el enfoque, la naturaleza y alcance del pronunciamiento que podría llegar a hacer sobre este asunto". A continuación, el Comité tuvo un amplio debate sobre el tema (ver, CJI, "Informes y Recomendaciones", 1990, páginas 82 y 83), en el que se estableció un consenso entre los miembros "en cuanto a la necesidad de llegar a concretar términos de referencia claros que posibilitarán abordar esta cuestión de una manera tal que permitiera al Comité llegar a un resultado final positivo".

En 1993, el Comité reincorporó el tema en su agenda, designando como relator al Dr. Miguel Angel Espeche Gil. En el período de sesiones de agosto de ese mismo año, el relator presentó un informe titulado "Aspectos jurídicos de la deuda externa" (CJI/SO/II/doc.2/93 rev.2) y el Comité,

> .....DADA la persistencia del problema de la deuda externa que afecta en conjunto a todos los países del Sistema Interamericano
>
> .....TENIENDO EN CUENTA la necesidad de que se respeten las normas del Derecho internacional público y del derecho privado, en la búsqueda de soluciones que permitan la armonización de todos los intereses legítimos en juego, removiendo obstáculos al desarrollo sostenido y al bienestar de los pueblos del Continente; Y
>
> CONSIDERANDO que merecen estudio y análisis las iniciativas propiciadas en entidades académicas, parlamentos y foros internacionales, tales como la que proyecta la interposición del procedimiento consultivo ante la Corte Internacional de Justicia, siendo aconsejable que se profundice en esa temáticaa en pos de soluciones justas y equitativas al problema,

resolvió (CJI/RES.II-18/93):

> 1. Continuar el examen del tema y solicitar al relator que mantenga al Comité actualizado sobre los avances de su desarrollo.
>
> 2. Anexar el informe titulado "Aspectos Legales de la Deuda Externa" a la presente resolución.
>
> El Dr. Herrera Marcano adjuntó una explicación de su voto afirmativo,
>
> ... en el entendido que al anexarse a ella el informe del relator, no se está produciendo un pronunciamiento del Comité sobre su contenido...

En enero de 1994, el Dr. Espeche Gil informó al Comité acerca de la evolución reciente del tema asi como de la celebración, en setiembre de 1993, de un Seminario sobre el punto que se celebrara en Brasilia, convocado por el Parlamento Latinoamericano.

Al considerar el Informe anual del Comité Jurídico, la Comisión de Asuntos Jurídicos y Políticos del Consejo Permanente de la OEA tomó nota de lo resuelto por el Comité (CP/doc.2479/94).

En agosto de 1994, el relator, Dr.Espeche Gil, informó sobre la evolución del tema y presentó información complementaria sobre el Seminario celebrado en Brasilia en 1993.

CJI: Marzo de 1995

En el período de sesiones de marzo de 1995, el relator presentó un nuevo informe sobre el tema. El Comité Jurídico resolvió (CJI/RES.I-5/95) "mantener el tema en su agenda a fin de continuar el examen del mismo".

IX.- COOPERACIÓN INTERNACIONAL PARA ENFRENTAR EL TERRORISMO INTERNACIONAL

El Dr. Espeche Gil, en el período ordinario de sesiones de agosto de 1994, presentó al Comité Jurídico un documento titulado "Cooperación interamericana para enfrentar el terrorismo internacional". En el mismo se reseñan las actividades del Comité en el tema, las que se remontan a las que sirvieran de base, en 1970, para la preparación de la "Convención Para Prevenir y Sancionar los Actos de Terrorismo configurados contra las personas y la extorsión conexa cuando éstos tengan trascendencia internacional" (Washington, 1971). Dadas las nuevas actividades terroristas, el Dr. Espeche Gil propuso un nuevo examen del tema. El Comité incluyó el punto en su temario para el próximo período de sesiones y designó como relator al miembro proponente.

CJI: Marzo de 1995

El Dr.Espeche Gil presentó, en el período de sesiones de marzo de 1995, un informe titulado "Cooperación interamericana para enfrentar el terrorismo internacional". El Comité resolvió (CJI/RES.I-6/95) "mantener esta materia en el Temario del Comité con el objeto de continuar su estudio en el próximo período de sesiones, estimando que las varias vías de análisis señaladas en el Informe merecen detenido estudio".

En esa misma ocasión, el Comité fue informado por la Presidente del Grupo de Trabajo sobre Terrorismo del Consejo Permanente, Emb.Beatriz Ramacciotti, del Perú, del estado de los estudios que allí se están realizando.

AG: Junio de 1995

La Asamblea General, en su vigésimo quinto período ordinario de sesiones (Montrouis, Haiti, junio de 1995), resolvió (AG/doc.3268/95) "instar al Comité Jurídico Interamericano a que prosiga el estudio de los medios jurídicos de cooperación interamericana para combatir el terrorismo".

X.- OTROS ASUNTOS

La Asamblea General, en su vigésimo quinto período ordinario de sesiones (Montrouis, Haiti, junio de 1995) aprobó la resolución "Procedimientos para la elaboración y adopción de instrumentos jurídicos interamericanos en el ámbito de la Organización de los Estados Americanos" (AG/doc.3269/95) por la que se resuelve:

> Encomendar a la Secretaría General que prepare un proyecto de directrices sobre la totalidad del proceso de preparación de instrumentos jurídicos interamericanos para revisión y comentarios del Comité Jurídico Interamericano, que se someterán al Consejo Permanente, el cual presentará un informe a la Asamblea General en su vigésimo sexto período ordinario de sesiones.

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