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# Inter-American Bar Association: Resolutions of the XXXIV Conference

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## REPORT

### THE INTER-AMERICAN BAR ASSOCIATION (IABA): RESOLUTIONS\* OF THE XXXIV CONFERENCE

(May 24-29, 1998 - Lima, Peru)

#### COMMITTEE III: ADMINISTRATIVE LAW

*Resolution 1: Establish a Regulated System for  
Payment of Foreign Debts*

WHEREAS:

That, countries in the Americas are often faced with the obligation to pay debts owed by the State, while at the same time they are faced with the impossibility of honoring those obligations within their established budgets; and,

That, in certain cases, countries do not use state assets to repay debts to loan institutions even through those debts have been recognized by judicial or administrative decision,

RESOLVES:

To recommend to the governments of the countries of America that if they have not yet done so, that they establish a regulated system for the payment of Foreign Debts that have been administratively or judicially recognized against the State.

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\* All of the resolutions are translations from the original Spanish text, with the exception of Resolution No. 13, which was in English.

## COMMITTEE IV: CIVIL LAW AND PROCEDURE

*Resolution 2: Uniformity in the Procedural Rules Which Are Applicable to the System of Impugnation*

## WHEREAS:

That improvement of the system of impugnation in Latin America is a continuing necessity, because impugnation constitutes a fundamental tool in the process of guaranteeing individual rights;

That the essence of the law of impugnation consists in finding a point of equilibrium between justice and legal security; and

That the increasing integration of the countries of the Americas suggests the need for the development of uniform rules of procedure with respect to methods of impugnation,

## RESOLVES:

To support the adoption of uniform rules in the countries of Latin America concerning the admissibility and procedure for the system of impugnation, including remedies and appeal, as part of their Constitutional framework.

## COMMITTEE VII: MILITARY LAW

*Resolution 3: Teaching International Humanitarian Law in the Armed Forces*

## WHEREAS:

That the teaching and dissemination of International Humanitarian Law (IHL) in the Armed Forces is a requirement in those countries that are signatories to the Geneva Convention of 1949 and its 1977 Protocols;

That in order to fulfill this obligation, signatory countries should consider incorporation of IHL into the educational and instructional curriculum of their Armed Forces;

That an instruction program on how to teach IHL in the Armed Forces of the countries of the Americas was considered by Committee VII, Military Law, during its sessions at the IABA's Conference XXXIV; and

That copies of this instruction program should be sent by the IABA to the Ministries of Defense and to similar institutions of the countries of the hemisphere in order to encourage fulfillment of the obligations imposed by the Geneva Conventions,

**RESOLVES:**

1. To recommend to the countries of the Americas that they incorporate the systematic teaching of IHL into the educational and instructional curriculum for their Armed Forces and for other similar institutions.

2. To send a copy of the above-mentioned Instruction Program for the Teaching and Dissemination of the IHL in the Armed Forces to the Ministries of Defense and to other similar government institutions in the countries of the Americas.

*Resolution 4: Modernization of the Systems of  
Administration of Military Justice*

**WHEREAS:**

That, given the new roles and missions of the Armed Forces and the often outdated norms related to the administration of military justice, it can be said that, often, the administration of military justice is not efficiently handled;

That, at the same time, there has been a substantial evolution in military doctrine with respect to the guarantees that must be provided in each criminal process;

That, the situation described in the paragraphs above is of such importance and relevance as to affect individual rights and the effective administration of justice; and

That, there is no good reason to justify the continuance of this situation,

## RESOLVES:

To recommend to the governmental authorities of the countries of the Americas and to the leaders of their Armed Forces, the realization of joint, international studies for the purpose of revising the norms within their systems of administration of military justice in order to meet today's requirements.

COMMITTEE VIII: DEVELOPMENT AND INTEGRATION LAW, IN  
JOINT SESSION WITH THE INTER-AMERICAN ACADEMY OF  
INTERNATIONAL AND COMPARATIVE LAW

*Resolution 5: Promotion of the International  
Instruments on Human Rights*

## WHEREAS:

That in 1998, the 50th Anniversary of the Universal Declaration of the Rights of Man is being celebrated; and

That the efforts made by the United Nations during these fifty years to protect human rights and the dignity of the individual should be recognized,

## RESOLVES:

To recommend to the governments of the Americas that they make substantial efforts to implement the promotion and dissemination of the international instruments on Human Rights at all levels in their countries, paying particular attention to the International Decade of Indigenous Peoples of the World and the Decade of Education on Human Rights.

COMMITTEE VIII: DEVELOPMENT AND INTEGRATION LAW, IN  
JOINT SESSION WITH COMMITTEE VI, CRIMINAL LAW AND  
PROCEDURE

*Resolution 6: Eradication of Government Corruption in  
the Americas*

WHEREAS:

That corruption is a matter of extreme governmental concern because dishonesty, bribery, extortion, embezzlement, use of undue influence, unjust enrichment, and other such conduct, is daily increasing in the Americas;

That human ethics require a moral change that can and must be accomplished; and

That without responsibility, respect, and national honesty, a new America in which justice and social well-being thrives cannot be achieved,

RESOLVES:

1. To suggest that in future Conferences, the IABA develop a proposed system of preventive measures intended to eradicate, as far as possible, corruption in the Americas with the support of a free and a responsible press.

2. To recommend to the countries of the Americas that they exalt the values of their national culture, transmitting to their citizens the concepts of loyalty, honesty, respect, solidarity and other virtues which constitute the morality of their peoples, thereby avoiding those elements which have deteriorated public morals.

3. To recommend to the countries of the Americas that they stimulate administrative integrity, efficiency, and responsible compliance by establishing efficient and modern controls with fixed, administrative sanctions and individual penalties for those who violate them.

COMMITTEE XI: NATURAL RESOURCES AND ENVIRONMENTAL  
LAW

*Resolution 7: Establishment of a Hemispheric Network  
of Officials and Experts in Environmental  
Law*

WHEREAS:

That the Heads of the countries of the Americas and the government representatives who met at the Summit of the Americas for Sustainable Development which was held in Santa Cruz de la Sierra, Bolivia in December, 1996, agreed to cooperate in the creation of a hemispheric network of officials and experts in environmental law and in its execution and maintenance;

That the Unit for Sustainable Development and the Environment of the General Secretariat of the Organization of American States, with support and cooperation from the OAS Secretariat for Legal Affairs, has established a project to create this network in consultation and association with existing networks, associations, and institutions; and

That it is appropriate to praise the work of the OAS because its leadership is essential in the creation of the hemispheric network of officials and experts in environmental law,

RESOLVES:

To recommend the establishment of an open and participatory network of officials and experts that has the capacity:

1. To integrate environmental considerations, as well as social and economic factors;
2. To ensure that adverse environmental effects are identified, prevented, minimized, or mitigated;
3. To promote the reform and modernization of national laws in order to reflect sustainable development concepts;
4. To support the exchange of experiences and knowledge regarding environmental law and sustainable development;

5. To support the integration of civil society into the design and implementation of environmental norms;
6. To support the development of effective national enforcement mechanisms; and
7. To establish rules and principles of international law in this area.

## COMMITTEE XII: HUMAN RIGHTS

### *Resolution 8: The Responsibility of Lawyers and Their Organizations with Respect to Human Rights*

#### WHEREAS:

That some of the countries of the Americas have, at various times and in various ways, suffered infringements on human rights, including individual social, economic, and cultural rights, and that lawyers and their organizations are significant protagonists in the defense of fundamental individual and collective values;

That the system of basic fundamental rights is an indispensable value which must be defended, thereby making certain acts on the part of states unacceptable, such as the creation of special courts that infringe on the judicial power of the nation;

That in the 50th anniversary of the Universal Declaration of the Rights of Man and the American Declaration of Rights and Duties, it is fitting to pay homage to those who drafted and promoted these documents and also to those who gave their lives for their implementation; and

That in this way, respect for human rights can be maintained in effect,

## RESOLVES:

To urge lawyers and their bar associations to:

1. Maintain a continuous and permanent study of human rights, not only individual but also societal, economic and cultural rights, so as achieve a thorough understanding, taking into account the testimony of those who have experience in this area and who generously share their experience.

2. Encourage attorneys, with their colleagues and their international organizations, to denounce any apparent violations of the system of human rights.

3. To assume the defense of persons affected by the violation of their fundamental rights, as committed by authorities, whether as the accused or the victim, bringing cases as part of their professional practice to national courts and also to international tribunals, if appropriate.

4. To keep in mind the fact that the rights of the victims, as well as the rights of the accused, must be considered.

## COMMITTEE XIV: LABOR LAW AND SOCIAL SECURITY

*Resolution 9: Portability of Pension Funds*

## WHEREAS:

That the crisis of social security systems based on administered state pension plans has given way to the formalization of private pension plans as a valid alternative for solving such problems; and

That the need to analyze the existing situation in relation to the growing interrelation of workers from different countries makes it necessary to establish legal mechanisms which ensure the social security rights of workers who migrate from one country to another,

## RESOLVES:

To recommend the ratification, modification, or preparation, as appropriate, of international or regional treaties to ensure that social security benefits systems based upon private pension

funds are compatible with the basic rights recognized within the framework of social security systems in the various countries in order to make the transfer of pension or retirement funds viable.

COMMITTEE XVII: TELECOMMUNICATIONS, SCIENCE AND  
TECHNOLOGY LAW

*Resolution 10: Implementation of Logical,  
Nondiscriminatory Regulations in the  
Telecommunications Sector*

WHEREAS:

That Governments of the countries of Latin America need to attract private investment in the telecommunications sector in order to improve services and to lower prices for the users;

That investors evaluate the risks of investing in a country including the risks of conflicting regulatory laws; and

That investors and financial institutions prefer laws and regulations which are logical and nondiscriminatory and which do not favor those possessing a dominant position,

RESOLVES:

To recommend to the countries of the Americas that they promulgate and implement logical, non-discriminatory regulations in the telecommunications sector so as to promote investment in that sector.

*Resolution 11: Regulation and Improvement of  
Telecommunications Services*

WHEREAS:

That many countries in Latin America are opening their telecommunications sectors to competition; and

That these actions mean that regulatory agencies must establish management systems to control the behavior of operators so as to ensure maximum benefits for the users,

**RESOLVES:**

To urge the countries of the Americas to develop regulatory systems that are impartial and nondiscriminatory and that take into account the following:

1. The service rendered;
2. The economic control of the market by the operator;
3. The economic realities involved in rendering services;
4. The price of the service to the user;
5. The level of investment in the operator's infrastructure;
6. The quality of service; and
7. Compliance with the terms of the operator's licenses.

**COMMITTEE XVIII: CORPORATE AND INSTITUTIONAL COUNSEL**

*Resolution 12: Harmonization of Rules for the  
Repayment of International Loans*

**WHEREAS:**

That currently, no system is available which harmonizes the procedural and fundamental rules which would make it possible to efficiently recover an international loan,

**RESOLVES:**

To recommend to the countries of the Americas that they harmonize their rules governing repayment of international loans.

## COMMITTEE XX: WOMEN'S RIGHTS

*Resolution 13: Ratification, Adherence, and  
Implementation of the Convention on the  
Elimination of All Forms of  
Discrimination Against Women*

## WHEREAS:

That the execution, ratification, or adherence to the Convention on the Elimination of All Forms of Discrimination Against Women by all the countries of the Americas is crucial for these countries in order to achieve the goals of the Convention,

## RESOLVES:

1. To urge all countries of the Americas to take all necessary action to ratify and adhere to the Convention on the Elimination of All Forms of Discrimination Against Women so that it becomes a truly universal document.
2. To urge all countries of the Americas to work together in fulfilling all of the obligations undertaken by ratification and adherence to the Convention.

THE INTER-AMERICAN ACADEMY OF INTERNATIONAL AND  
COMPARATIVE LAW IN JOINT SESSION WITH COMMITTEE VIII,  
DEVELOPMENT AND INTEGRATION LAW, AND COMMITTEE XII,  
HUMAN RIGHTS

*Resolution 14: Creation of an International Criminal  
Court*

## WHEREAS:

That in the course of this year, in the City of Rome, Italy, part of the United Nations Organization will consider the creation of a International Criminal Court for the judgment of certain crimes; and

That this initiative will constitute a great advance in the effective international guarantee of prevention and condemnation of such crimes,

RESOLVES:

1. To support the creation, by means of a multilateral treaty, of a Permanent International Criminal Court, whose competency is complementary to the national criminal justice systems, and whose initial competence includes genocide, war crimes, and crimes against humanity.

2. To urge the governments of the Americas to become actively involved in negotiating and revising this instrument.

3. To promote, in the widest possible manner, legal studies and investigations with respect to the Court and its future influence.

YOUNG LAWYERS SECTION

*Resolution 15: Training Young Lawyers in the Era of Globalization*

WHEREAS:

That economic globalization is a reality within our hemisphere;

That there is an increasing number of bilateral and multilateral agreements among countries in the region; and

That recently graduated young lawyers lack specific training in the normative and procedural disciplines of laws relating to globalization, the knowledge of which is indispensable for legal practice within the framework of globalization,

RESOLVES:

1. To recommend to the law school faculties in the hemisphere that have not yet done so that they incorporate into their required courses, legal courses related to globalization such as Public and Private International Law, International Business or Commercial Law, and Alternative Dispute Resolution.

2. To recommend to law school faculties in common law countries that they offer Civil Law courses and to recommend to

law school faculties in Civil Law countries that they offer Common Law courses.

ADMINISTRATION OF JUSTICE SECTION

*Resolution 16: Judicial Reforms*

WHEREAS:

That the crisis affecting judicial systems makes it necessary to confront the need for their reform in those countries which have not yet done so, and as such, it is appropriate to include judges, bar association leaders, and others involved in the judicial systems such as Department of Justice (including prosecutors and public defenders), and to give those participants the same guarantees and security that corresponds to judges;

That those accused in criminal cases merit special attention, the judgment of which must be made in courts which are presided over by judges who are attorneys where constitutional guarantees such as due process and the requirements imposed by International Agreements such as protection against double jeopardy are fully respected;

That it is necessary for all members of the judicial system to be concerned about their inadequate relationship with the news media and also with the inappropriate manner in which the news media often portrays the judicial system;

That with respect to the foregoing, civic education must be promoted for all citizens, encouraging respect for the Rule of Law, including the effective separation of powers and the independence of the judiciary;

That in addition, there is concern for the growing number of administrative tasks for which judges are responsible and which take valuable time which could be better used for judicial functions; and

That the administration of justice could be substantially improved through the use of alternative methods of dispute resolution which, among other benefits, could provide some relief to the Judicial System,

## RESOLVES:

1. To recommend that in all judicial reform there should be substantive participation by the judges and officials of the judicial system.
2. To recommend that criminal cases must be presided over by judges who are lawyers, thus guaranteeing due process and ensuring the right of appeal.
3. To recommend that the judicial branch establish mechanisms for providing the news media with adequate information in order to help achieve an accurate description of the judiciary.
4. To recommend to national courts the creation of organs which have responsibility for the administrative functioning of the courts so that judges may concentrate their efforts on their judicial functions.
5. To recommend that in those countries in which it has not yet been done, that the Department of Justice (prosecutors and public defenders) be arranged hierarchically, providing for a career service and for stability.
6. To recommend the promotion of public education in order to encourage respect for the Rule of Law, including dissemination of those values linked to the effective separation of powers and of judicial independence.
7. To recommend that measures be adopted through all possible legal means which encourage use of alternative methods of dispute resolution.