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Inter-American Bar Association

JOHN O. DAHLGREN*

I. MEETING OF THE COUNCIL IN MEXICO CITY, MAY 7-9, 1980

This year the Inter-American Bar Association is commemorating its 40th Anniversary. The Association was founded on May 16, 1940, during the Eighth American Scientific Congress held in Washington, D.C., May 10-18.

Under the auspices of the Barra Mexicana-Colegio de Abogados, the Council of IABA held a most successful and constructive meeting at the Aristos Hotel, Mexico City, May 7-9. This was the first meeting of the Council since our XXI Conference held in Puerto Rico last August. Speakers at the Inaugural Session included the Hon. Agustin Tellez Cruces, Chief Justice of the Supreme Court of Mexico, the Hon. Oscar Flores, the Attorney General of Mexico, and the Hon. Benjamin Civiletti, the Attorney General of the United States. In commemoration of the 40th Anniversary, Dr. Natalio Chediak, a founder of IABA, made remarks on the history and accomplishments of the Association.

We are most grateful to our host, the Barra Mexicana-Colegio de Abogados, its President, Lic. Luis Alvaro Espinosa Barrios, and to Lic. José Luis Siqueiros, Chairman of our Executive Committee, Lic. Ricardo H. Zavala and other Mexican colleagues for their warm hospitality and excellent arrangements for the meeting.

A. XXII Conference Site

We regretfully advise that the XXII Conference will not be held in Buenos Aires, Argentina. At its meeting in Mexico, the Council gave careful consideration to the Conference dates—November 24-29, 1980—which were proposed on April 16 by the Colegio de Abogados de Buenos Aires, and suggested a few months postponement because of its concern over the shortage of time for the overall planning and administrative work involved. We have recently been advised by the Colegio de Abogados de Buenos Aires that, much to its regret, it found it necessary to withdraw its invitation to

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hold the Conference this year in Buenos Aires, primarily because of a change next December in the present Board of Directors that extended the invitation, it feels it does not have the authority to transfer this commitment to the new Board. It is anticipated that a new site will be selected by the Executive Committee in the near future and that the XXII Conference will be held around May or June of 1981.

B. Council Members

We were saddened by the passing of our Council members Drs. Alberto L. de Guevara, Perú, and Luis José Santa María, Chile. Both were distinguished members of the legal profession and left many friends in our Association.

On recommendation of the delegations from their respective countries, the following were added to the Council: (1) *Argentina*—Dr. Manuel V. Ordoñez, President of the Colegio de Abogados de Buenos Aires; (2) *Chile*—Dr. Mario Tagle Valdes, to replace Dr. Luis José Santa María; and (3) *Puerto Rico*—Lic. Luis F. Camacho.

C. Themes for the XXII Conference

One of the important matters decided at the meeting in May was the central theme for the upcoming XXII Conference. The central theme will be "Inter-American Judicial Cooperation."

Subtopics relevant to the central theme include: (a) transmittal of letters rogatory; (b) procedures for letters rogatory; (c) application of Inter-American and foreign law; (d) Extradition; (e) extraterritorial validity of penal judgements; (f) greater judicial cooperation; and (g) judicial assistance in connection with arbitration of disputes. Other topics will also be considered by the various committees once they have been approved by the Committee.

D. Council Resolution

The following is a translation of a resolution adopted by the Council on May 9, during its recent meeting in Mexico City:

WHEREAS:

The rules of international behavior are the legal essence of harmonious co-existence among civilized nations, and strict observance of them is imperative if international law is to become fully effective;

On December 15, 1979 the International Court of Justice handed down a resolution condemning events which had occurred in the Is-

lamic Republic of Iran, and ordered that necessary measures be taken towards the release of the dipolmatic officials held hostages. The government of Iran has failed entirely to comply with said resolution,

Therefore, the Council of the Inter-American Bar Association

RESOLVES

1. To express its deep concern over the fact that those occurrences violate some of the most fundamental principles of International Law and because a State has disregarded the decision of the highest Court of Justice in the World.

2. To suggest to the Bar Associations, members of the Inter-American Bar Association, that, in the manner they deem most appropriate, they lend their backing to this expression of support for the Rule of Law in relations among the nations of the World.

3. To send copies of this resolution to the parliaments and foreign ministries of the American Republics, and to appropriate international organizations.

II. THE ANDEAN COURT OF JUSTICE

A. *Introduction*

The following address was delivered by H.E. Ricardo Crespo Zaldumbide, the Ambassador of Ecuador to the United States, at a luncheon jointly held by the Inter-American Bar Association and the Committee on Inter-American Bar Relations of the Bar Association of the District of Columbia, on February 8, 1980, at the National Lawyers Club. His remarks should be of interest to IABA members and others interested in Inter-American legal developments.

B. *Remarks of Señor Crespo Zaldumbide*

The Andean Common Market (ANCOM) is almost eleven years old. The efforts of the member countries toward a closer integration of their economies have obtained positive results and a good number of decisions have been issued by ANCOM's Committee, the legislative body of the organization.

The objectives of the Andean nations, however, were not merely those of establishing a regional trade system and common tariffs. The purpose was deeper; it was a commitment to harmonize their economic, social, and political policies in order to accelerate the process of development and to maintain a common attitude in their relations with the industrialized world.

The events of the last two years were the most significant in the life of ANCOM. The five nations have achieved a strong presence on the international scene, and their efforts in pursuit of solutions for complex and delicate political issues within the hemisphere have been successful. The meeting in Bogota, on August 3, 1978, of the Presidents of Colombia, Bolivia, Ecuador, and Venezuela, and the personal representative of the President of Peru, as well as the declaration which followed, constitutes the first significant step of this period. The Presidents expressed the concern of the Andean nations with respect to the realities of the new international economic order, emphasizing the necessity of speeding up the integration process so that the member countries will be able to improve their position vis-à-vis the industrialized world. This implied the urgent implementation of pending projects, the establishment of a judicial body with jurisdiction over the member countries and authority to settle the controversies that would emerge out of the application of ANCOM legal norms, and to interpret the law. In this manner and through the means of an international treaty the creation of an Andean Court of Justice was recommended.

On May 28, 1979, the tenth anniversary of the Cartagena Agreement, and overlooking the same scenery of that beautiful Colombian city, the Presidents of Bolivia, Colombia, Ecuador, Peru, and Venezuela convened again in order to review the results of the decade. Among the various resolutions adopted, the two most important were the so-called "Cartagena Mandate," a sixty-eight point declaration which reiterates the philosophy of ANCOM; and the approval of the treaty which established the Andean Court of Justice. Because of the importance of the Cartagena Mandate, I would like to offer a brief analysis of that document before I proceed to an examination of the treaty which established the Court.

The Cartagena Mandate contains the following central points:

- (1) The model of integration adopted by the Andean nations represents the historic currents of social and economic development in Latin America;
- (2) Andean integration is defined as a first step in the process of Latin American unification, and a necessary precondition for the attainment of economic development and a strong position in dealing with the industrialized world;
- (3) The definition of integration is not restricted to economic aspects, but is an effort inspired by cultural and moral values which has the goal of the development of high cultural and scientific standards in our societies and the incorporation of the poor into the

process of economic development. As a consequence, integration is considered a social and political concept;

- (4) The solidarity derived from the integration process is in no manner affected by the different political systems in Latin America;
- (5) Relations between rich and poor nations should be based on the practice of an international social justice;
- (6) The Andean nations are considered the pioneers in most of the issues now under consideration in the North-South dialogue, which reinforces the necessity of a long-term policy in foreign affairs;
- (7) A strategy is defined for the coming years which basically consists of the reinforcement of the political and economic objectives of the integration process, and the immediate implementation of concrete projects;
- (8) The Cartagena Mandate recommends the immediate implementation of a treaty to establish the Andean Court of Justice.

The idea of having a judicial entity with jurisdiction among different countries in Latin America is not new. For a number of years a Court of Justice existed in Central America. Beginning with the Pan-American Conference held in this city of Washington in 1907, the creation of an Inter-American Court of Justice was considered, as a sort of counter-part of the International Court of Justice, but with the particular purpose of applying the rules of the so-called American International Law. A concrete project was presented by the delegation of Costa Rica at the Fifth Pan-American Conference, held in Santiago, Chile in March, 1923.

Notwithstanding the additional effort of various specialized committees and eminent scholars, the Inter-American Court never came into existence. Too much rhetoric was the characteristic of the Pan-American Conferences, and the purposes were too idealistic. At that time, Latin America was still in the process of political consolidation. Economic issues were not yet the important ones.

This is why we must arrive at the conclusion that the Andean Court of Justice now comes into existence as an immediate consequence of the Andean integration process and as the most essential instrument for its further implementation.

The treaty which approved the court is an international treaty, subject to ratification. So far, Peru, Bolivia, and Ecuador have deposited the ratification instruments. Those from Colombia and Venezuela are still pending. The treaty is divided into six chapters, which contain sixty-eight articles and a final transitory provision.

Chapter one deals not exactly with the Court's organization, but with the juridical order of the Cartagena Agreement. ANCOM's structure is, for the first time, legally defined in order of precedence, as follows: First, the agreement and its additional protocols and instruments; second, the treaty which creates the court; third, the decisions of the committee; and fourth, the resolutions of the board. The decisions of the committee have the force of law among the member countries once they become effective. Consequently, it is extremely important to know when the effectiveness occurs. So far, each country has applied its own domestic law, and since each decision of the committee has been subject to the corresponding approval by each member country, the rule has been that the date the domestic law or decree approves the decision constitutes the effective date.

The treaty contains some different dispositions on this issue. First, there is a distinction between when the decisions become mandatory and when they become applicable. Although the treaty contains no express explanation about the difference between the two concepts, we may conclude that the mandatory character deals with the existence of the decision and the applicability refers to its execution. The same treaty then, establishes that the decisions become *mandatory* on the date of their approval by ANCOM's committee. But they become *applicable* on the date of their publication in ANCOM's official gazette. Furthermore, since some decisions need an express incorporation into the domestic legislation of the member countries, the treaty also contemplates this possibility and provides that in such cases the effective date will be that of the domestic law or decree which approves the decision. With respect to the resolutions of ANCOM's board which pertain to particular cases, the effective date must be determined by a special regulation to be issued by the board.

Since the beginning of the Cartagena Agreement one of the basic problems has been how to enforce the norms which constitute the juridical order of the agreement on each member country. The treaty reinforces this obligation, already established in the agreement, and says that each country must take the corresponding measures in order to insure compliance with ANCOM's legal norms and should refrain from enacting legislation which might obstruct the implementation of said norms.

This clarification of what constitutes the juridical structure of the Cartagena Agreement, and the procedure for its implementation, is one of the main achievements of the treaty. Moreover, it has been issued at the most appropriate moment, ten years after the date

ANCOM was born, when it was possible to see the positive aspects deserving reaffirmation and the negative aspects for which clarification was necessary.

The treaty establishes the Court as the judicial branch of the Cartagena Agreement, subject to the other provisions of the treaty. The legal domicile of the court is the city of Quito. The Court is composed of five justices who shall be nationals of the respective countries and should comply with international standards of high moral qualities and intellectual capabilities. In order to appoint the justices, delegates from each country, especially appointed for the purpose, will select names from the lists submitted. Each country has the right to submit three candidates. The appointment is for a period of six years. The justices enjoy all the diplomatic privileges and immunities established by the Vienna Convention.

And now, let us consider the most important aspect: the competence of the court. The treaty describes two legal actions: an action of nullity and an action of non-fulfillment. The action of nullity can be brought before the court by a member country, by the committee, by the board, by a natural person, or by a legal entity; through this action the court is asked to declare null and void a decision of the committee, or a resolution of the board. There is only one legal ground for this declaration and that is the breach, by virtue of a decision or a resolution, of any one of ANCOM's legal norms. This action must be brought before the Court within one year following the date the corresponding decision or resolution enters into force. The treaty does not explain whether, for this purpose, the decision or the resolution enters into force on the date of its approval, on the date of its actual publication in ANCOM's official gazette, or in those instances when internal legislation is needed, on the date such legislation is officially enacted. We may conclude that the period of one year runs from the date the corresponding decision or resolution becomes effective in the country where the plaintiff has his legal domicile if such plaintiff is a natural person or a legal entity. If the plaintiff is the committee or the board, the period should run from the date the decision or the resolution is approved.

It is still premature for an analysis of the scope of this action of nullity since the Court has not yet begun its functioning, but the provisions of the treaty suggest certain questions. Can a natural person or a legal entity claim damages, apart from the nullity of the decision or the resolution, if a substantial loss has occurred? If so, what is the extent of said damages? Can such person or legal entity file a suit in the domestic courts, against the committee or the board,

based on a judgement issued by the Court? Or is the action of nullity restricted to a simple declaration? These and other considerations appear to be relevant at this stage, and it is assumed that the Court itself will have to make, in due course, a clear delimitation of this action of nullity.

The action of non-fulfillment has another side. Its purpose is to require the member countries to comply with the obligations derived from ANCOM's legal norms. When the board considers that a member nation has not complied with one of the norms, the board will notify said country in writing. With the answer, or in the absence of one within the prescribed period, the board will issue a resolution. If such resolution goes against the country and the country persists in not fulfilling the obligation, the board will file a suit before the Court.

The action of non-compliance can also be brought before the board by a member country against another member country. The procedure here is the same, except that if the board does not issue a resolution within three months from the date the claim was filed or if the resolution goes against the country bringing the complaint, that nation can file a suit directly with the Court. If the Courts' decision finds non-compliance by the "defendant" nation, the affected country must comply with the decision within three months from the date of legal notification. If the country disregards the decision, then the Court, with the advice of the board, can restrict partially or totally the benefits granted to said country under ANCOM. An interesting aspect of the procedure is that the Court's decision can be subject to revision within one year of the effective date if a fact which could have affected the decision, had it been known, is later discovered.

The third important aspect of the competence of the Court is the pre-judicial interpretation. This means that any one of the domestic courts of the member nations can address the Andean Court for an interpretation if a norm which pertains to the ANCOM legal system is under consideration in a judicial proceeding in the domestic court. There is no doubt that such official interpretations will create the necessary precedents for a further definition of what is already being described as "integration law."

We may conclude by saying that the establishment of the Andean Court of Justice has reaffirmed the integration process, the existence of the Andean legislation, and has proven the willingness of the Andean nations to surrender part of their sovereignty in order to submit themselves to an independent jurisdiction.

Bolivar's dream in 1826 about a "nation of republics" in Latin America is taking form. The need to develop our economies in order to meet undeferable social demands constitutes the basic incentive. The Andean Court proves that the integration movement is now deeply inlaid within the framework of the law. Thank you.

Washington, D.C.
February 8, 1980