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REPORT

THE INTER-AMERICAN BAR ASSOCIATION: RESOLUTIONS* OF THE XXXV CONFERENCE

(June 5-11, 1999 - Mexico City, Mexico)

COMMITTEE II: CONSTITUTIONAL LAW

Resolution 1

WHEREAS:

That, there is a consensus in the countries of the Western Hemisphere and in the International Community that the "family is the basic unit of society and as such should be strengthened";

That, this consensus is reflected in various national constitutions and conferences such as the World Summit for Children, the Conference on Environment and Development, the World Conference on Human Rights, the International Conference on Population and Development, the World Summit for Social Development, the Fourth World Conference on Women, and the Second Conference on Human Settlements;

That, this consensus transcends cultural and religious boundaries;

* All of the resolutions are translations from the original Spanish text, with the exception of Resolution Nos. 8-10, which were in English.

That, many of the problems confronting society and the difficulty of individuals in complying with constitutional norms has its origin in the breakdown of the family;

RESOLVES:

1. To urge the governments of the countries of the Americas that have not yet done so, to take measures to protect and strengthen the family as the fundamental unit of society through means deemed appropriate under the legal system of each country.

2. To urge the governments of the countries of the Americas to avoid any policy or program that could threaten the rights of the family and the relationships between parents and children.

COMMITTEE IV: CIVIL LAW AND PROCEDURE

Resolution 2

WHEREAS:

That, the Treaty of Asunción and the various Mercosur Protocols have generated a movement toward an economic community or union, making it important to analyze the solutions reached by the European Union in order to harmonize national and community law; and

That, it is necessary to establish a system for the harmonization of national and community norms in order to bring about effective and uniform judicial protection of private rights through community law;

RESOLVES:

To encourage the formation of study groups in centers of specialized research for the purpose of discovering ways to harmonize the domestic law of each Mercosur member state with community law, thereby facilitating effective judicial protection of individual citizens of member countries while at the same time respecting the distinctive characteristics of the domestic law of each country.

Resolution 3

WHEREAS:

That, in most of the countries of the Americas, the administration of justice is characterized by delay;

That, the length of judicial proceedings is due in large part by the failure to observe the time limits established by the laws of the respective countries; and

That, observance of the aforementioned time limits would contribute to the completion of judicial proceedings within the time periods established by existing legislation;

RESOLVES:

1. To recommend to the countries of the Americas that that they take effective measures so that their judges comply with and require compliance with the time limits established by applicable procedural law so that the adjudicatory process is be more effective.

2. To recommend to the lawyers of the countries of the Americas that that they urge that their cases proceed expeditiously so that the adjudicatory process will be more effective.

Resolution 4

WHEREAS:

That, legal and judicial protection of incompetent and semicompetent persons (such as insane persons, alcoholics, and drug addicts) is far behind medical advances in those fields;

That, in many countries of the Americas, the number of persons with diminished capacity has increased;

That, the laws of most of the countries of the Americas provide for adjudication of incompetency or semicompetency through voluntary proceedings, and only in contentious proceedings when there is a controversy between the parties; and

That, this system often adversely affects the interests of the individual who is the subject of the proceeding;

RESOLVES:

To recommend to the countries of the Americas that they establish investigatory procedures for the adjudication of incompetency and semicompetency in contentious cases, so that the courts can have a greater opportunity to obtain and objectively evaluate evidence concerning the necessity for commitment and the possibility of rehabilitation.

Resolution 5

WHEREAS:

That, most of the countries of the Americas have adopted mediation as a pre-judicial, alternative method for the resolution of conflicts; and

That, the professional formation of most lawyers takes place within adversary or confrontational systems; and

That, the participation of the lawyer in the aforementioned pre-judicial proceedings is of the utmost importance for the protection of the interests of the client, who will benefit from the reduction of time and expense resulting from the avoidance of litigation;

RESOLVES:

1. To recommend to the lawyers of the Americas that they inform their clients of the benefits to be obtained through the prompt resolution of conflicts through pre-judicial, alternative dispute resolution procedures.

2. To recommend to the lawyers of the Americas that when they participate in alternative dispute resolution proceedings, they attempt to put aside the competitive focus that they use in judicial proceedings.

3. To recommend to the lawyers of the Americas that they direct their negotiating efforts toward a just agreement which protects the rights and interests of their clients.

COMMITTEE VIII: DEVELOPMENT AND INTEGRATION OF LAW,
AND COMMITTEE XVI, INTELLECTUAL PROPERTY:
OBSERVATIONS ON INTELLECTUAL PROPERTY RIGHTS

Resolution 6

WHEREAS:

That, in connection with the protection of intellectual property rights, it is essential to have legislation which provides protection to these rights and which establishes adequate procedures for their enforcement;

That, taking into account both of these objectives, the TRIPS Treaty of the World Trade Organization ("WTO") has established minimum standards of mandatory compliance for all member countries;

That, in the matter of enforcement, Article 4 of TRIPS establishes three procedural processes: effective measures against infringement; speedy recourse to prevent infringement, and an appeal procedure that operates with efficacy so as to discourage new violations;

That, prevention must be focused primarily on preventing the entry of infringing goods into commercial networks, and that TRIPS contains provisions regarding border measures directed at preventing customs clearance of such merchandise;

That, in order to minimize the risk of abuses, judicial authorities are authorized by TRIPS to require complainants to produce reasonable evidence and to provide a bond;

That, various legislatures have not yet adopted or put in place adequate procedures granting the holders of intellectual property rights access to speedy and effective measures to prevent infringements, thus meaning that infringers are able to continue infringing during judicial proceedings, with or without posting a bond, therefore not complying with TRIPS and detracting from the effectiveness of intellectual property rights; and

That, the failure to protect intellectual property rights not only affects the holders of those rights, but also may affect the public by allowing unfair competition and falsification of products,

RESOLVES:

1. To urge the countries of the Americas to enact procedural laws aimed at preventing infringement of intellectual property rights, and which provide speedy and effective recourse in accordance with the mandatory minimum standards of TRIPS.

2. To urge the countries of the Americas to take account of the fact that prevention should particularly focus on blocking the entry of infringing merchandise into commercial networks.

3. To urge the countries of the Americas to take measures to prevent continuation of infringement of intellectual property rights during judicial proceedings; and, in order to avoid abuses, to require their courts to require complainants to supply evidence of the alleged infringement and to provide a sufficient bond or guarantee in order to protect the respondent.

Resolution 7

WHEREAS:

That, intellectual property rights, particularly patents for inventions and trademarks, are essentially national or territorial in nature, since these rights must be granted individually in each country in which they are intended to be exercised, complying with the requirements, procedures, and obligations in force in each such country;

That, the economic and social policies prevailing in each country determine the particular situation of each market, in connection, for example, with the costs, taxes, salaries, regulations and prices in each market, to which the holders of intellectual property rights must necessarily adapt themselves in order to market their products;

That, it is necessary to acknowledge that market conditions vary from country to country, including those regions that have begun to attempt to create a common market but that are still far from having achieved, by means of regional economic and social policies, a homogeneous or truly common market;

That, the right to import goods is one of the exclusive rights granted to the holder of an intellectual property right;

That, the international treaties that regulate intellectual property, the Paris Convention and TRIPS, do not provide for regional or international exhaustion of the exclusive rights granted by intellectual property rights.

That Decision 344 of the Andean Pact Tribunal provides for a system of exhaustion of international intellectual property rights that contradicts the general principles of intellectual property rights and that is highly inconvenient for the Member countries of the Andean Pact.

RESOLVES:

1. To urge each country of the Americas to comply with the principles and mandatory minimum standards of protection established by TRIPS, while maintaining the national or territorial character of intellectual property rights.

2. To urge each country of the Americas to take note of the fact that the holder of the intellectual property right is entitled to oppose so-called parallel imports by unauthorized persons if the holder of the intellectual property right enjoys intellectual property protection in the country in which the imports are intended to be made.

COMMITTEE XII: HUMAN RIGHTS

Resolution 8

WHEREAS:

That, knowledge of human rights is the foundation for their fulfillment, and on which depends the survival with dignity of the human race now and forever;

That, the teaching about, and the knowledge of, human rights should be a part of the education of lawyers so that their activities can contribute to the development and defense of human rights; and

That, Bar Associations, in complying with their institutional obligations, should contribute to the defense and promotion of human rights;

RESOLVES:

To urge Bar Associations in the countries of the Americas to recommend to each Law School, in the country where the Bar Association is located, to include the subject of human rights as an essential part of the Law School's programs and curricula.

*Resolution 9***WHEREAS:**

That, the protection of human rights is one of the fundamental components of the international legal order;

That, the member countries of the Organization of American States ("OAS"), established, after a laborious process, an important institution for the protection of human rights within the western hemisphere;

That, by resolution, the General Assembly of the OAS approved the American Declaration of Human Rights and established the Inter-American Human Rights Commission and Tribunal which were duly ratified by many OAS Member States and incorporated into their national legislation;

That, respect for and compliance by OAS Member States with the recommendations and decisions of the Inter-American Human Rights Commission and of the Tribunal, respectively, are essential for the prevalence of the rule of law and political stability in the western hemisphere; and

That, in this context, non-respect for or non-compliance by a country with the aforementioned recommendations and decisions may threaten the future and effectiveness of the Inter-American Human Rights System.

RESOLVES:

1. To convey to the Presidents of the Inter-American Human Rights Commission and Tribunal, respectively, the full support of the Inter-American Bar Association for the work being performed by these entities in the hemisphere.

2. To communicate to the Secretary General of the OAS, the concern of the Inter-American Bar Association for the recent lack of compliance by some OAS Member States with the Inter-American Human Rights Commission and Tribunal.

3. To recommend to the Secretary General of the OAS that he transmit to the Governments of the OAS Member States the text of this resolution and that a OAS Working Group be appointed to recommend the measures required for the maximization of the collaboration of the OAS Member States with the Inter-American Human Rights Commission and Tribunal.

Resolution 10

WHEREAS:

That, the island of Vieques is a part of Puerto Rico;

That, the United States Navy occupies seventy-five percent of the island of Vieques, using it for war training exercises and as a target range with live ammunition at a short distance from the civilian population of approximately 9,000 people who reside on Vieques;

That, the training exercises hinder the economic development of Vieques and cause grave ecological damage as a result of the noise levels and the impact on plant and animal life in the land occupied by the Navy;

That, the above-mentioned situation represents a continuing threat to the health, safety, and life of the civilian population, which suffers an incidence of cancer considerably higher than in the rest of Puerto Rico, and which has suffered physical injuries and even death as a direct result of the use of live ammunition;

That, the Puerto Rican Bar Association has joined a consensus formed among diverse governmental, religious, community, civic, cultural and professional organizations, which on behalf of the people of Puerto Rico are currently demanding the immediate cessation of the firing and training exercises, the environmental rehabilitation of the contaminated areas, and the return of the land on Vieques to the government and people of Puerto Rico;

That, the above-mentioned situation raises serious issues concerning the human rights of the residents of Vieques to life, security, health, and an adequate standard of living, and to an appropriate physical environment; and

That, the President of the United States of America has instructed the United States Navy to investigate the situation in Vieques; and that the President will be designating a special commission, including civilians, to review the Navy's findings and recommendations and to report to him by no later than August of 1999.

RESOLVES:

To join the Puerto Rican Bar Association in support of the people of Puerto Rico in their demand for a cessation of the live ammunition firing in Vieques, for the environmental rehabilitation of the affected areas, and for the consideration of a return of the land used for the war training exercises and as a target range to the government and people of Puerto Rico.

COMMITTEE XIV: LABOR AND SOCIAL SECURITY LAW

Resolution 11

WHEREAS:

That, because labor law responds to the inertia of the economy which currently is in a globalization process, labor law must abide by international economic requirements, respecting and guaranteeing compliance with the minimum and inalienable benefits of each country's internal labor laws;

That, because the globalization process not only implies the exchange of goods and services but also the exchange of persons from one country to another, the possibility of establishing international minimum conditions or standards to govern the provision of employees' services to companies that participate in international markets must be seriously analyzed; and

That, the possibility of creating supranational organizations in charge of supervising the fulfillment of international minimal labor standards and rights, should be studied, while respecting the sovereignty of each of the participant countries that benefit from international markets.

RESOLVES:

1. To encourage the countries of the Americas to develop draft legal standards that can respond to international market

needs, guaranteeing the fulfillment of standardized labor and social security laws in all of the countries that benefit from international markets;

2. To recommend to the countries of the Americas that they begin to study and to draft regional and hemispheric labor and social security laws which would enable all employees to work with dignity.

COMMITTEE XV: PHILOSOPHY AND SOCIOLOGY OF THE LAW,
AND COMMITTEE IX: LEGAL EDUCATION AND LEGAL
PROFESSION

Resolution 12

WHEREAS:

That, the legal system functions as a method of resolution of conflicts, controversies, or disputes, in which opposing parties base their claims on the existence of rights and obligations;

That, on occasion, conflicts arise which cannot be adequately resolved through the legal process;

That, in the second half of the Twentieth Century, there has been a substantial amount of inter-disciplinary scientific activity and research dedicated to the analysis of conflict and the generation of techniques for its prevention, management, and resolution;

That, when individuals are involved in a dispute in which they have incompatible claims which cannot be resolved by a court, they often turn to their lawyers in search of professional assistance, assuming that the lawyers have been trained as experts in conflict resolution;

That, broadening the training of lawyers through their acquisition of knowledge of dispute resolution techniques would increase their capacity to resolve conflicts that can currently only be resolved through judicial procedures and which would considerably widen the range of their services.

RESOLVES:

To recommend that the members of the legal profession take the necessary action to ensure that lawyers receive the education

and training necessary to enable them to facilitate resolution of conflicts, whenever practicable, without resort to litigation.

COMMITTEE XVI: INTELLECTUAL AND INDUSTRIAL PROPERTY
LAW

Resolution 13

WHEREAS:

That, linked or connected rights concern the ownership rights of performers, producers of phonograms, and broadcasting organizations;

That, these rights are related to traditional copyrights in two practical aspects, one positive and one negative; the positive aspect is the ability of the copyright holder to exercise different intellectual property rights simultaneously through similar processes under various provisions of applicable laws and regulations; while the negative aspect is that each subject-specific body of law has its unique and independent legal character;

That, as a result, neither the performer, nor the producer of phonograms, nor the broadcaster of the phonograms, has an exclusive copyright, as their respective interests are different and may be in conflict, because each of them derives ownership rights through different relationships with the author.

RESOLVES:

1. To recommend to the countries of the Americas that they take the necessary steps to guarantee an effective method for the protection of their own cultural heritage within a pluralistic cultural environment.
2. To recommend to the countries of the Americas that they provide a high level of protection to performers' rights without prejudice to the rights of the author.
3. To recommend to the countries of the Americas that they establish appropriate means of preventing monopolistic control of the commercialization and distribution of cultural works and services by enacting rules, regulations, and/or laws which adequately protect the rights of authors and performers, so that

consumers have access to the creative manifestations and works which express their personal and national cultural identity.

Resolution 14

WHEREAS:

That, in diplomatic conferences organized by the World Intellectual Property Organization ("WIPO") in Geneva from December 2 to 20, 1996, two treaties were approved for the purpose of introducing adequate means of resolving issues raised by economic, social, cultural and technological innovations, as well as for the purpose of recognizing the impact created by the convergence of advances in information technology and advances in communications on the creation and use of works of art and literature, recognizing the need to maintain an equilibrium between the rights of performers, producers of phonograms, and the public interest;

That, these treaties are known as the WIPO Copyright Treaty and the WIPO Treaty on performers, producers and phonograms; and

That, both Treaties resulted from advances achieved through the TRIPS Agreement of the World Trade Organization, which has achieved a high level of acceptance.

RESOLVES:

To urge IABA member Associations to encourage their governments that have not yet done so to ratify these two Treaties as soon as possible.

COMMITTEE XVII: TELECOMMUNICATIONS, SCIENCE, AND
TECHNOLOGY LAW

Resolution 15

WHEREAS:

That, the services and businesses in the telecommunications sector form an important part of the economy of each country;

That, the existence of a reliable, available, and modern telecommunications system is essential for the economic development of countries;

That, achievement of a reliable, available, and modern telecommunications system will enable countries to provide their inhabitants with the opportunity to improve their quality of life; and

That, for these reasons, sixty-five countries signed the Telecommunications Convention in Geneva in 1996,

RESOLVES:

1. To encourage each country of the Americas to adhere to the Telecommunications Convention and to observe and implement the provisions of that Convention.

2. To recommend to each government that has ratified, or that subsequently ratifies, the Telecommunications Convention, to work directly and continually through appropriate governmental agencies to ensure implementation of proper regulatory rules for fair competition in the country's telecommunications sector.

COMMITTEE XIX: INTERNATIONAL ARBITRATION LAW

Resolution 16

WHEREAS:

That, uniformity among legal systems in the field of international commercial arbitration is a desirable objective;

That, through the efforts of the United Nations Commission on International Trade Law ("UNCITRAL"), there exists a Model Law on international commercial arbitration;

That, the world legal community has a taken favorable position regarding the model law, and;

That, some of the countries of the Americas have already modified their national arbitration laws to take into account the wording and the spirit of the model law;

RESOLVES:

To promote in the countries of the Americas, the adoption of the UNCITRAL Model Law of International Commercial Arbitration, and the adjustment of their laws on domestic arbitration to this Model Law, in order to promote security in commercial transactions in those countries.

COMMITTEE XX: WOMEN'S RIGHTS

Resolution 17

WHEREAS:

That, the issue of acknowledging paternity is important throughout the world;

That, in general, women are the ones who fight to have their children legally recognized by the father;

That, the verification of parenthood is as fundamental for the individual as it is for the State;

That, medical science and law are in agreement as to the importance of the genetic determination of biological linkage;

That, scientific studies provide unequivocal biological proof that DNA and RNA can establish parentage with almost absolute certainty;

That, legal proceedings are in general the only way for a country to bring an action; and

That, individuals have a right to know who they are.

RESOLVES:

1. To urge those countries that have not yet done so, to enact laws giving individuals the right to learn their biological origins and the right to sue to establish their parentage, including sanctions for refusal to submit to genetic tests in civil paternity actions;

2. To urge those countries that have not yet done so to create non-adversary mechanisms such as alternative dispute resolution mechanisms, which could be utilized prior to bringing a law suit, so as to establish a conciliatory environment in which

experts in family matters may facilitate resolution of the dispute or conflict.

ADMINISTRATION OF JUSTICE SECTION

Resolution 18

WHEREAS:

That, the Constitutions of the countries of the Americas establish the Judicial Branch as the guarantor of responsible and impartial justice;

That, the Judicial Branch in some countries of the Americas are the targets of accusations, especially because of the delay by judges in deciding court cases, thereby preventing resolution of social, political, and infrastructure problems;

That, Judicial Branches should contribute to the resolution of the delay problem, not only with a greater dedication and preparation on the part of judges and others involved in the Administration of Justice, but also by developing a strategy and a public policy that results in greater efficacy and efficiency in their judicial activities, for which they must be a guaranteed budget which is adequate to give the judiciary real capacity and independence;

That, within all of the justice systems of the countries of the Americas, alternative dispute resolution procedures should be established and/or strengthened, such as conciliation, mediation, and arbitration; and that small claims courts also should be established where the jurisdiction of that court would be determined by a claim's social importance and not by the amount of money in dispute, thereby helping to alleviate the huge backlog of cases in the courts;

That, in addition, there should be initiated within the countries of the Americas an introspective process to help them determine the causes in their justice systems that led to previous failures in their efforts to find judicial solutions for conflicts, and which should help them find valid solutions to conflicts, with assistance from their moral and religious beliefs and their social customs;

That, in the process of globalization which is now developing and which is leading us to a truly Global Community, the nations of the world should establish and provide a fair and just judicial system as the Community's foundation; where all members of society, including members of ethnic groups, have the right to seek and to obtain necessary education, health, and welfare in accordance with the principles of the Rule of Law; thereby obtaining Justice, Due Process, and the Common Good; and as a result achieving Unity, Peace, Liberty, Solidarity, and Equality among the members of society; and

That, the process of impeachment by National Legislatures of members of the Judicial Branch has resulted in confrontations in some countries between those two Powers, which threatens the good name and work of the officials involved, thereby making it advisable to study possible modification of the impeachment process in order to attempt to avoid damage to the country's democratic institutions,

RESOLVES:

1. To urge those governments that have not yet done so, to provide for the members of their judiciary, respect, independence, and resources to enable them to fully carry out their powers of interpreting and applying the law in our societies in an atmosphere of judicial security.

2. To urge those governments that have not yet done so, to select all those involved in their administration of justice system based upon each individual's dedication, and ability, and to provide them with continuing training so that they can perform their functions fully in order to achieve the efficacy and efficiency which their work demands.

3. To urge those governments that have not yet done so, to establish alternative dispute resolution mechanisms and special courts to consider small claims, in order to alleviate the excessive backlog of court cases.

4. To urge that the Global Community be structured based upon the principles of the Rule of Law and that the Community be established based upon the values of Justice, Due Process, and the Common Good, thereby achieving Unity, Peace, Liberty, Solidarity, and Equality among the members of society.

5. To encourage those governments that have not yet done so, to initiate the study of the possibility of modifying their legislative impeachment and trial of members of the judiciary, and of replacing the current system with Adjudicatory Juries composed of specialists who are appointed based upon their merit, integrity, and skill, and who cannot be removed from their posts during the discharge of their functions.

RESOLUTIONS SUBMITTED BY THE BLUE STAR PROGRAM OF
JUNE 9, 1999, ORGANIZED BY THE WORKING GROUP ON
COMBATING CORRUPTION IN THE AMERICAS

Resolution 19

WHEREAS:

That corruption adversely affects public administration, undermines the rule of law, and distorts the economy and public finance, all of which cause particular damage to the poor and disadvantaged people in our countries.

RESOLVES:

1. To encourage full and prompt implementation of the Inter-American Convention Against Corruption by those countries that have ratified the Convention to date.

2. To encourage those countries that have not yet ratified the Convention to do so as soon as possible.

3. To encourage the OAS Member States to adopt an appropriate mechanism for oversight and mutual evaluation by the States Parties of the implementation and enforcement efforts of States Parties to the Convention, for exchanges of information among Member States, and the preparation and submission of periodic progress reports, so that the Convention can realize its full potential and implementation can occur in the most efficient manner.

4. To encourage Bar Association members and individual members of the Inter-American Bar Association to identify opportunities to educate their membership and others about the new developments in the fight against corruption, recognizing that the Convention will result in new and amended laws in

many countries in the Hemisphere, and will have implications for the day-to-day work of lawyers in working with the commercial matters of their clients.

