Inter-American Bar Association: Resolutions of the XXX Conference

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

On May 15, 1940, a group of distinguished lawyers and jurists representing forty-four professional organizations and seventeen nations in the Western Hemisphere founded the Inter-American Bar Association (IABA). The IABA was created to develop a closer relationship among the lawyers of the Americas. The organization furthers its goal by holding Inter-American Bar Conferences every eighteen months. The purposes of these conferences are to advance the science of jurisprudence, promote the uniformity of laws, encourage the establishment and maintenance of independent judicial systems, preserve and defend human rights and liberties, guarantee the free exercise of civil and political rights under democratic principles, and uphold the honor of the legal profession.

At every Inter-American Bar Conference, each of the eighteen Inter-American Bar Association Committees creates resolutions dealing with urgent matters of legal interest within the Americas. At the thirtieth Inter-American Bar Conference, held in 1993, the IABA enacted the twenty-three resolutions which are reproduced below.

COMMITTEE I on PUBLIC AND PRIVATE INTERNATIONAL LAW

COMMITTEE IV on CIVIL LAW, PROCEDURE AND LITIGATION

COMMITTEE VI on CRIMINAL LAW AND PROCEDURE

RESOLUTION 1

TRAFFIC OF MINORS

WHEREAS:

The Inter-American Bar Association has had the opportunity to act as an observer of the preparatory effort of a special committee of the Hague Conference for the drafting of a Convention regarding the International Adoption of Minors;

During these sessions, the need to discourage the traffic of minors and the general problems from which they suffer were repeatedly mentioned, but the criminal aspects of potential solutions for these problems were not addressed;
The 7th World Conference of Family Law, which took place in El Salvador in October, 1992, recommended that a study be made of international criminal laws concerning crimes against minors;

A draft of international criminal provisions relating to crimes against minors has been presented to Committee I (Public and Private International Law) and VI (Criminal Law and Procedure),

RESOLVES:

1. To recommend that the proper authorities call upon criminal law and international law experts to consider the drafting of concrete legal provisions to discourage the traffic of minors and to provide them protection.

2. To recommend that Committees I and VI prepare a draft document to be the contribution of the IABA Association to the drafting of an international convention on these subjects, which document will be offered to the Hague Conference and other competent international organization (UN, OAS, etc.).
DUMPING AND SUBSIDING

WHEREAS:

The Countries of the Americas have acknowledged the need to modify their economic structures and legal systems in order to ensure greater and real economic integration in the area;

The danger exists that legislation which regulates practices such as dumping and subsidies, may contain subjective elements that, when applied to specific cases, disrupt or limit free trade among the countries of the Continent instead of guarantying open markets,

RESOLVES:

1. To recommend to the Congresses and legislative bodies of the American continent that, when adopting legislation concerning dumping and subsidies, they establish clear and precise procedures and detailed definitions of the necessary concepts so as to guarantee the objective application of such laws.

2. To call upon countries to establish a common framework within which the countries of the Continent can analyze and unify the various concepts and procedures required to impose sanctions on the international commercial practice of dumping and subsidies consistent with [The General Agreement on Tariffs and Trade] GATT.
Whereas:

There is broad consensus throughout the Western Hemisphere that freedom of religion, conscience, belief and non-belief (referred to herein as "religious liberty") deserves protection as fundamental, inherent and inalienable human rights, as evidenced by wide support for the Charter of the Organization of American States, the American Convention on Human Rights, and the recognition of religious liberty in the constitutions of nations in the Western Hemisphere;

This consensus within the hemisphere is part of a more widespread agreement in the international community that religious liberty deserves protection, as evidenced by the United Nations Charter, the Universal Declaration of the Rights of Man, the International Covenant on Civil and Political Rights, the United Nations Declaration of the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, and various regional agreements such as the European Convention for the Protection of Human Rights and Freedoms, the Helsinki Final Act, and by recognition of religious liberty in the constitutions of most nations of the world;

The violation of religious liberty, whether systematic, occasional, or even inadvertent, tends to undermine the very foundation of the constitutional systems of countries in the hemisphere;

The vigilant and ongoing concern regarding actual or potential violations of basic rights such as religious liberty are vital to their maintenance and to their protection, as well as to the continuation of the rule of law; and

Numerous resolutions have been passed by the Inter-American Bar Association over the years regarding freedom of speech, free-
dom of the press, judicial independence, due process and other human rights issues, but significantly less attention has been paid to religious liberty,

RESOLVES:

1. That the protection of the religious liberty of all persons, religious associations and entities should constitute a basic concern of all juridical and constitutional systems.

2. That governments of states in the Western Hemisphere should be vigilant in taking measures, on an ongoing basis, to ensure that religious liberty is effectively protected against both intentional and inadvertent infractions through legislative, judicial, administrative or other means deemed appropriate under the legal system of each State.

3. That the relationship of religious liberties with other protected rights (such as freedom of speech, freedom of press, freedom of movement, freedom of association, right to ownership of property, right to due process, right to equal protection and familial rights) merits further study and examination by members of the bar and other interested parties in the Western Hemisphere.

4. In examining protections afforded religious liberty, states and other interested parties would be well advised to consider emerging international standards of religious liberty such as those articulated in the various international instruments referred to above and in related documents such as the Concluding Document of the Vienna Meeting of the Representatives of the Conference on Security and Co-operation in Europe adopted in 1989.
WHEREAS:

Intelligence is an activity developed by all modern states, which basically attempts to obtain and manage information;

Despite its occasionally justified negative reputation, the necessity of intelligence activity today is undisputed. However, it should be developed within a legal framework and with strict respect to basic guarantees of citizens. The capabilities of state intelligence agencies should be oriented to provide enough information to governments regarding better administration of state matters;

Intelligence activities should not be limited only to activities related to obtaining and managing information. These agencies should also be involved with state action oriented to achieving national security objectives, while at the same time these activities can produce serious risks regarding basic guarantees;

Legal norms that allow intelligence activities which imply restrictions to basic rights should be drafted in the most accurate way possible, setting out clear guidelines, means and mechanisms within which intelligence agencies should operate,

RESOLVES:

To recommend to the states of the Americas the need to balance intelligence activities with basic guarantees for citizens and the rule of law.
WHEREAS:

In various countries of the Americas laws are being passed to regulate the holding and the commercial use of rural land;

These measures have affected the environment. The purpose of land use has changed through the sale of rural land and its conversion to urban property. Further, changes occur through migrations from rural forested areas which are then dedicated to agricultural uses permitting the development of industrial activities in areas rich in natural resources,

RESOLVES:

To make the recommendation to governments of the countries of the Americas that, in their legislation concerning land use and land holdings, they consider the implications that might arise from such legislation in the area of forestry and environment.
COMMITTEE VI on CRIMINAL LAW AND PROCEDURE

Resolution 6

ARBITRARY DEPRIVATION OF LIBERTY

WHEREAS:

The arbitrary deprivation of liberty of the Mexican citizen Álvarez Machain, attributed to members of the drug enforcement administration, and his coerced conveyance for trial in the United States, constitutes an illegal practice that violated constitutional rights and international guarantees;

These violations of the extradition treaty signed by both countries, constitutes a grave precedent for other nations;

The arguments of the majority of the Supreme Court of the United States that sustain the decision worry the community of lawyers that met at the XXX IABA Conference. They consider the procedure used to be unacceptable and improper,

RESOLVES:

1. To declare and demand a complete respect for the principles of sovereignty contained in the international law of each country and the fulfillment of international obligations.

2. To recommend that this Assembly ratify the actions taken by the [American Bar Association] ABA in this particular case.

3. To communicate to the Executive, Legislative, and Judicial authorities of The United States the previous conclusion.

Resolution 7

CRIMINAL PROTECTION FOR THE ENVIRONMENT

WHEREAS:

Environmental issues are of global concern;

The permanent increase of the risks that affect the life and
health of mankind are unpredictable;

The rights of every person to enjoy a quality of life compatible with his or her fundamental human nature should be respected in all cases,

RESOLVES:

1. To recommend that the environmental policy to be adopted be oriented to the defense of the worldwide community.

2. To recommend the promotion of the adoption of criminal sanctions in those cases that cause or threaten contamination or harm to the environment.
RESOLUTION 8

PROSPECT FOR INTEGRATION BETWEEN ARGENTINA AND CHILE

WHEREAS:

Economic Complementation Agreement No. 16, signed by Argentina and Chile on August 2, 1991, constitutes an excellent instrument to promote integration between the two countries;

This Agreement has been appropriately completed by the Treaty for the Protection and Promotion of Investments, signed in the same year;

Despite the brief time period that has elapsed, important advances have resulted in this process of cooperation, particularly in the fields of petroleum, mining, roads, electricity and services;

The purpose of the Agreement is to stimulate integration in a gradual form and through private sector action;

Chile and Argentina enjoy healthy and vigorous economies;

The macroeconomic policies of both countries coincide,

RESOLVES:

1. To recommend that the governments of Chile and Argentina evaluate the appropriateness of prioritizing the process of co-

** The Academy was founded in 1941 at the First Inter-American Bar Association Conference in Havana as an adjunct to the IABA to advance the science of jurisprudence emphasizing the study of comparative law. The President of the Academy is an ex officio member of the IABA Council.
operation and economic integration between the two countries against other alternatives that offer fewer real prospects in the immediate future.

2. That the business sectors in Chile and Argentina utilize to a greater extent: (a) direct investments, (b) the formation of binational enterprises, (c) the undertaking of joint enterprises and (d) the intensification of the bilateral trade set out in Agreement No. 16 for Economic Cooperation and its protocols.
WHEREAS:

That the new intellectual property laws recently enacted in Chile and Mexico, as well as the amendments introduced early this year in the patent law of Canada, represent a significant advancement, as they overcome serious flaws in the previous legislation and modernize provisions that have great influence on productive activities;

That full and effective intellectual property protection, in all its forms and without any sort of discrimination, is in today’s world an unavoidable prerequisite for economic development and for the entry into free trade agreements with industrialized countries,

RESOLVES:

To recommend that the governments of the Latin American countries follow the trend represented by the new industrial property laws of Canada, Chile, and Mexico.
RESOLUTION 10

DELEGATION OF POWERS IN MATTERS OF TAXATION

WHEREAS:

Several American States allow for the delegation of some regulatory powers to the executive branch, especially in relation to the establishment of rates for the several tax brackets;

By virtue of the principle of legality in tax matters, such delegation must be restrictively construed to secure the effectiveness of the guarantee;

As a result, limits ought to be set for the exercise of the delegated power, in the form of maximum and minimum rates established by the legislative branch;

Additionally, it is also necessary to establish an expedient method to review the legality and reasonableness of the tax burden imposed by the executive power;

In order for such control to be effective, it should refer not only to the tax rates but also to the tax base,

RESolves:

To recommend to the American States that all legislative delegation of tax powers should be limited by minimum and maximum rates established by the legislative branch and that there must be recourse to the judicial branch for the rapid review of the burden imposed, both to the rate and to the tax base used.

RESOLUTION 11

HARMONIZATION OF TAXATION

WHEREAS:

According to Inter-American Bar Association principles, the processes of integration which are evolving in the Americas make it especially necessary to harmonize the legislation of the several countries;
In tax matters, the study of executive regulatory powers is of great interest under the principle of legality of taxation;

On the other hand, such regulatory powers are exercised differently in the several American States, as a result of which they should be harmonized to facilitate the processes of integration,

RESOLVES:

To recommend to the American States, in view of the processes of integration which are occurring in the Americas, that it is necessary to harmonize the exercise of executive regulatory powers in tax matters.
COMMITTEE XII on HUMAN RIGHTS

RESOLUTION 12

PROPER RESOURCES FOR THE INTER-AMERICAN COMMISSION AND THE INTER-AMERICAN COURT OF HUMAN RIGHTS

WHEREAS:

The Inter-American Commission and the Inter-American Court of Human Rights are essential for the promotion and protection of human rights in the Hemisphere;

The actions of the Commission and the Court are particularly important when almost all the countries in the Hemisphere are undergoing processes of transition and consolidation of democracy;

The material resources available to those bodies are insufficient for the proper discharge of their important functions,

RESOLVES:

1. To recommend to the states of the Hemisphere to consider the assignment of resources needed for the Commission and Court to discharge their functions properly in accordance with the norms of the Inter-American System of Human Rights.

2. To communicate this resolution to the next General Assembly of the Organization of American States.

RESOLUTION 13

STUDY OF THE ESSENTIAL CONDITIONS THAT GUARANTEE THE INDEPENDENCE AND EFFICIENCY OF THE JUDICIARY

WHEREAS:

The overwhelming majority of the countries in the Hemisphere have re-established the basic norms of representative democracy;
That one of the most essential conditions for the consolidation of democracy is the respect for the norm of due process;

The existence of an independent, modern and efficient judiciary is an essential component of due process;

The ratification of the American Convention on Human Rights, and the legal value of the American Declaration of the Rights and Duties of Man, creates an obligation for the States of the Hemisphere to ensure respect for due process, including the existence of judiciaries that are independent, modern, and efficient,

RESOLVES:

1. To recommend that the Hemispheric States undertake to critically review the norms that could effectively ensure the independence and efficiency of the judiciary.

2. To recommend that those studies should include *inter alia*:
   a. The systems to appoint and promote judges
   b. Preparation of judges
   c. Efficient judicial procedures
   d. Access to justice under conditions of equality

3. To keep the subject under consideration by the Inter-American Bar Association.

RESOLUTION 14

THE NEED FOR ADEQUATE LEGISLATION ON DOMESTIC VIOLENCE

WHEREAS:

Domestic violence constitutes a serious problem to countries in the Hemisphere;

There are too few organizations specializing in, as well as too few legal provisions that ensure the prevention of, domestic violence, assistance to the victims of such violence, and the punishment of its perpetrators;

The need to give serious consideration to this matter and undertake proper measures;

The lack of norms, organizations, and procedures to assure that these kinds of violations do not take place, represents a viola-
tion of both the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man,

RESOLVES:

1. To recommend that the States adopt effective norms and procedures to avoid domestic violence, punish those responsible for such conduct, and assist the victims.

2. To recommend that the Inter-American Commission on Human Rights appoint a Special "Rapporteur" on domestic violence to report on the Hemispheric situation, and that the commission propose international norms concerning domestic violence.

3. To keep the subject under consideration by the Inter-American Bar Association for the next conference.

RESOLUTION 15

THE PROTECTION OF THE ENVIRONMENT AND HUMAN RIGHTS

WHEREAS:

The different constitutions of States do make sufficient reference concerning environmental protection;

There is a serious lack of adequate legislation regulating the environment, as is evident in comparative legal analysis;

That there are not sufficient criminal provisions designed to protect the environment and ensure a consistent quality of life,

RESOLVES:

1. To recommend that States enact proper legislation on environmental issues.

2. To recommend to States the incorporation into domestic law the concept of environmental crime, as indispensable to the guarantee of the right to a healthy environment.

3. To recommend the creation of both national and international organizations or agencies with the authority to supervise compliance with provisions protecting the environment.
WHEREAS:

The problem of refugees and internally displaced persons is one of the most serious tragedies of our time;

Despite the expectations generated by changes that have recently occurred, there is a progressive deterioration in the world leading to a refugee population of up to twenty million persons;

The democratic processes in Latin America have produced a significant reduction in the number of refugees. However, the increase in the phenomenon of internally displaced persons, due to its complexity and magnitude, requires particular attention to achieve specific solutions;

The humanitarian work of the United Nations Commission for Refugees is highly praiseworthy;

The lack of international solidarity, the socioeconomic difficulties of the region, and the massive displacement of refugees and displaced persons render necessary the strengthening of the system for humanitarian assistance of the United Nations,

RESOLVES:

1. To recommend to the countries of the Americas the incorporation of international laws on the expanded definition of refugees, as set out in the 1984 Cartagena Declaration.

2. To recommend to the countries of the Americas that, in matters of asylum they continue to respect and apply the "Principle of Non-Return" set forth in all the international instruments which relate to the question of refugees, in particular the United Nations’ Convention Relating to the Status of Refugees (1951), the New York Protocol (1967), and the American Convention on Human Rights (San Jose Pact of 1969).

3. To recommend to the countries of the Americas, to the Organization of American States, and to the Specialized Agencies of the United Nations, that they devote special attention to the grave problem of internally displaced persons.
RESOLUTION 17

MEDIATION AS ALTERNATIVE TO RESOLVE FAMILY CONFLICT

WHEREAS:

The Inter-American Bar Association (IABA) has continued to express an interest in alternative dispute resolution methods (ADR) in the development of new areas of practice, and it recommends training in ADR;

The Inter-American Bar Association has recognized that ADR has been successful in certain regions and can serve as a model to be applied in other regions;

That it is sometimes possible to misunderstand idiomatic terms due to the fact that such words may have different meanings, such as the term "mediation," which is linked to arbitration and to negotiation, but which is recognized in North America as a method for the resolution of family law disputes;

The experience in certain Latin American countries, such as Argentina and Colombia, where mediation of family law disputes uses a similar methodology, known by that same term, fills a void in such important matters as a fundamental and irreplaceable pillar of any such institution in all countries;

The application of interdisciplinary methods to the resolution of family law disputes makes it possible for issues in such disputes to reach the courts in a purer form, ensuring an orderly resolution and permitting a more expedient judicial solution,

RESOLVES:

1. To recommend to the various Bar Associations the advancement and promotion of mediation as an alternative method to be used to resolve family law disputes.

2. To propose to such Bar Associations that they organize
courses of instruction, seminars, and conferences to achieve the above recommendation.

**Resolution 18**

**Incentives for Younger Lawyers**

*Whereas:* The transportation and registrations for the Conferences organized by the Inter-American Bar Association are extremely expensive for students and young lawyers; The future of the Inter-American Bar Association depends, in part, on encouraging new generations to actively participate in the Inter-American Bar Association; There has been a positive response from students and young lawyers expressed in the proposed resolution presented in conjunction with Committee XIII to the Permanent Council at the XXX Conference held in Santiago, Chile,

**Resolves:**

To call upon the Council to:

1. Reduce the registration fee fifty percent.

2. Modify the format of the registration form for the conferences in order to identify students and young lawyers who participate.

3. Create the obligation for the Committees that organize future conferences to look for inexpensive lodging alternatives for students and young lawyers.

4. Incorporate into the Inter-American Bar Association Newsletter, a column devoted to the Section for Young Lawyers.
COMMITTEE XV on PHILOSOPHY AND SOCIOLOGY OF LAW

RESOLUTION 19

ON THE DEFINITION OF LAW

WHEREAS:

The analysis of the work presented by Professor Cicherello

RESOLVES:

Propose to the schools of law of the Americas special study concerning the exact and scientific definition of the law; that its understanding has a special and practical importance and a vital contemporary value; that the law is a competent instrument to promote justice as a desirable value.
WHEREAS:
The VIII Scientific Congress held in Washington, D.C. (1940), approved the proposal that recommended the intellectual property rights association as the most qualified element for sustaining intellectual property rights and the most efficient collaborators for the improvement and spread of intellectual property rights;

That in 1941, the Inter-American Academy of Comparative and International Law approved another proposal concerning intellectual property within the world organization that influenced the initiative to create the intellectual property rights division of UNESCO;

The IV Inter-American Bar Association Conference held in Santiago, Chile (1945), and the XVIII Inter-American Bar Association Conference held in Rio de Janeiro (1973), unanimously approved resolutions concerning the consolidation of intellectual property rights in the national and international spheres,

RESOLVES:
To recommend the creation of courses on intellectual property rights and intellectual property rights associations where they do not exist because these are the most qualified elements for the promotion, progress, and defense of intellectual property rights.
RESOLUTION 21

PRIVATIZATION OF TELECOMMUNICATIONS

WHEREAS:

The majority of the governments of the region have decided that private investment is desirable for developing communications centers;

They have also decided that the competition in some or all these services is useful for the public interest and to strengthen the national economy;

The legal and regulatory systems should support policies favoring this competition and not create obstacles,

RESOLVES:

1. To recommend that the governmental regulatory power should not be exercised to obstruct the free entrance of new competitors to the communication sector in those services open to competition; such power should be exercised to regulate the conduct of existing service providers.

2. To recommend the regulation of tariffs based on costs.

3. To recommend that legislation should promote private investment for the development of telecommunication centers.
COMMITTEE XX on WOMEN’S RIGHTS
LAW

RESOLUTION 22

WOMEN AND THE UNITED NATIONS CONFERENCE ON HUMAN RIGHTS

WHEREAS:

The world conference on Human Rights of the United Nations, to be held in Vienna, is an event of great importance, being the first since the Teheran meeting twenty-five years ago, the nations of the world will have the chance to meet about a common human rights agenda;

The XXX Inter-American Bar Association Conference included as a subject of great importance women’s issues and Human Rights;

For some decades, the situation of women has been a worldwide issue. Theoretically, the concepts of gender and development and gender and law, while important, have not been part of a global social, economic, and political approach;

The objectives of this next world conference were defined in the Resolution 45/155 of the General Assembly, including an evaluation about the effectiveness of United Nations Mechanisms and instruments in the Human Rights Field and the proposal of concrete recommendations to protect and promote human rights;

The World Conference of Human Rights of 1993 includes among its objectives the revision of Human Rights programs and mechanisms to improve them and to define the organization's role in achieving world peace. This objective cannot be reached without reviewing and rethinking the approaches of the universal system;

Until the necessary legal and political measures are taken that resolve the structural violence against women (equal rights in family jobs and job opportunities), it is not possible to go forward in building a sustainable peace process,

RESOLVES:

That the Inter-American Bar Association Executive Council
nominate as its representatives for the 1993 World Conference of Human Rights two women lawyers acting directly on women's issues, one from the north and the other from the south of the Americas, with the purpose that the Inter-American Bar Association begin taking the appropriate measures to become an effective legal, political, and social developmental advocate for women in the Americas.

Resolution 23

Section on Administration of Justice

Whereas:

The judiciary power is one of the essential elements for the establishment of a state of law inside a democratic system;

Maintaining judicial power is essential to promoting its independence and autonomy from the other powers of the state and from the political power,

Resolves:

1. To recommend the transfer of the organization and functions of judiciary power to the judiciary in order to ensure an autonomous administration of justice.

2. To promote budget autonomy of the judiciary through a fixed appropriation in the annual national budget for the Administration of Justice similar to the process found in some countries of the Americas.

3. To impel the judicial school for the formation of lawyers who desire to become judges, selecting the best of them and improving their capacities in accordance with the dynamic nature of law.

4. To establish the framework for a judicial career that is both effective and fair, in order to strengthen the Administration of Justice. This process will guarantee functional judicial independence in conjunction with an evaluation process based on merits and a previously established disciplinary procedure. Such procedure will never be based on judicial activities because judicial mistakes have their own corrective mechanism within the law. The process will also guarantee career promotion, and a retirement system will also be given adequate social protection.
5. To recommend the use of computers as an adequate means for a more expedient administration of justice.

6. To strengthen the institution of public defense.

7. To create the framework for periodic meetings between judges of the Americas regarding a more efficient administration of justice, based on the exchange of professional experience under the auspices and support of the Inter-American Bar Association.