

## **Administration of Justice in the Americas: judicial ethics and access to justice**

### **Reports and Resolutions:**

CJI/RES.40 (LX-O/02) *Improving the administration of justice in the Americas: access to justice*

CJI/doc.136/03 rev.1 The Caribbean Court of Justice (presented by Dr. Brynmor T. Pollard)

CJI/doc.221/06 *Preliminary notes on principles of judicial ethics*  
(presented by Dr. José Manuel Delgado Ocampo)

CJI/RES.126 (LXX-O/07) Administration of justice in the Americas: judicial ethics and access to justice

CJI/doc.238/07 Principles of judicial ethics  
(presented by Dr. Ana Elizabeth Villalta Vizcarra)

During the fifty-eighth regular session of the Inter-American Juridical Committee, held in Ottawa in March 2001, Dr. Jonathan T. Fried, the rapporteur on the topic, gave a brief presentation of what he had done. He highlighted the importance of an independent judiciary, and said that there had not been any reaction on the part of the political organs of the Organization. He also reported that the Center for Justice Studies of the Americas had not responded to the offer of cooperation extended by the Juridical Committee.

The Secretary for Legal Affairs suggested that, at the next regular session of the Inter-American Juridical Committee, it request the General Secretariat once again to advise the Permanent Council of its wish to have an item on access to justice and the independence of the Judiciary included on the agenda of the next Meeting of Justice Ministers of Justice, in addition to any report that the Juridical Committee may deem appropriate to present. He pointed out that even though the agenda for the meeting of Ministers of Justice may already have been determined, that does not mean that the Inter-American Juridical Committee could not make such a proposal.

The Inter-American Juridical Committee decided to keep the item on its agenda and to discuss it at its next regular session, with all the rapporteurs present. In addition, it decided to invite the President of the Center for Justice Studies of the Americas to attend that session, at the expense of the Center. At the same time, it agreed to add the phrase "access to justice" to the title of the item.

On April 30, 2001, the President of the Inter-American Juridical Committee, Dr. João Grandino Rodas, sent a letter to Dr. Mónica Nagel Berger, Chairmadam of the Center for Justice Studies of the Americas containing the invitation in question.

At the thirty-first regular session of the General Assembly in San José, Costa Rica, in June 2001, the Assembly asked the Inter-American Juridical Committee to pursue its research into various aspects related to improvement of the administration of justice in the Americas. For the time being, it is to focus its efforts on the issue of access to justice by individuals, and, in so doing, to maintain the necessary coordination and maximum cooperation possible with other organs, agencies, and entities of the Organization that are

working in this area, and especially with the Center for Justice Studies of the Americas, which is headquartered in Santiago, Chile [AG/RES.1772 (XXXI-O/01)].

At its fifty-ninth regular session in Rio de Janeiro in August 2001, the Inter-American Juridical Committee received a visit from Dr. Juan Enrique Vargas, Executive Director of the Justice Studies Center of the Americas. Among other things, the Chairman of the Juridical Committee offered to send a letter to the Center inviting it to send a representative to teach at the next International Law Course, as part of a more extensive cooperation arrangement that, in his view, would be appropriate to establish between the Committee and the Center.

At the Inter-American Juridical Committee's LX regular session (Rio de Janeiro, February-March 2002), Dr. Brynmor Pollard, rapporteur for the topic, delivered a brief oral report. Dr. Pollard pointed out that the issue of access to justice had taken on increasing importance in recent years, and underscored the need to take measures in this regard. The rapporteur noted that this topic had been on the agenda of the Meetings of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJAs), alongside such other topics as cyber crime and terrorism. Dr. Brynmor Pollard referenced the document prepared by the General Secretariat, GE/REMJA/doc.77/01, *Alternative conflict settlement mechanisms in the justice systems of the American countries*. Dr. Pollard again emphasized the importance of the relationship between the Inter-American Juridical Committee and the Justice Studies Center for the Americas. He reported that some measures had already been taken to build up cooperation between the two. Finally, he made reference to REMJA IV, which was held in Trinidad and Tobago, March 10 through 13, 2002. Several members of the Inter-American Juridical Committee spoke to the importance of alternative conflict settlement mechanisms and also noted how important it was to see the Inter-American Juridical Committee's recommendations incorporated into the REMJA resolutions. Dr. João Grandino Rodas noted that alternative conflict settlement mechanisms and access to justice were two different topics. He noted that while they might have certain areas in common, the Committee would be well advised to deal with them separately. He suggested that a new topic could be added to the Committee's agenda; at the very least, they had to be distinguished in some way. Dr. Kenneth Rattray explained that access to justice was in part a question of whether individuals had the means to access the courts, it could also become a problem of procedures, as all too often the goal of swift and effective justice was trapped in a procedural quagmire. Dr. Eduardo Vío Grossi observed that this topic was so important that two bodies had already been created to address it immediately, namely REMJA and the Justice Studies Center for the Americas. He was, therefore, of the view that to be effective, the Committee had to find its own angle on this question. He suggested the idea of working on an eventual inter-American charter on the administration of justice, spelling out basic, generally accepted principles of inter-American law that would enable States to make progress on this front.

Finally, the Inter-American Juridical Committee approved resolution CJI/RES.40 (LX-O/02), *Improving the administration of justice in the Americas: access to justice*, whereby it decided to keep this topic on its agenda, taking particular note of any relevant decision forthcoming from the IV Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas, held in Trinidad and Tobago, March 10 through 13, 2002. It also asked the rapporteurs that they take those decisions and any consultation to be made with the Executive Director of the Justice Studies Center for the Americas into account when preparing their proposals pertaining to the Inter-American Juridical

Committee's future work on this topic, so that those proposals could be submitted to the Committee for consideration at its LXI regular session, scheduled for August 2002.

In resolution AG/RES.1844 (XXXII-O/02) adopted at its thirty-second regular session (Bridgetown, Barbados, June 2002), the General Assembly asked the Inter-American Juridical Committee to continue cooperating with the work requested of it in the future.

At its LXI regular session (Rio de Janeiro, August 2002), the Inter-American Juridical Committee decided to make Dr. Ana Elizabeth Villalta co-rapporteur for this topic. Dr. João Grandino Rodas observed that perhaps the examination of the more general topic should also include the vehicles of specialized justice that facilitate access to justice. Dr. Kenneth Rattray wondered what was the "justice" to which access was sought and what were the means either available or aspired to in order to administer that justice. These, he thought, were important issues to examine within the larger scheme of the topic. He observed that the means available to guarantee justice and administer it had to be central to any analysis. Dr. Felipe Paolillo observed that one important consideration was the access that disadvantaged persons had to justice. Dr. Paolillo was of the view that a necessary starting point for any exploration of this issue was to examine the reasons why access to justice was problematic, noting that this kind of information could surely be gotten from studies already done on this subject in various countries. Dr. Carlos Manuel Vázquez said that in his opinion, access to justice was mainly a problem of finances. Dr. Orlando Rebagliati suggested that when discussing this issue, the Inter-American Juridical Committee should be careful not to duplicate work being done in other political bodies and at the Justice Studies Center for the Americas. Finally, the Inter-American Juridical Committee decided to continue discussion of this subject, with particular emphasis on access to justice.

The Inter-American Juridical Committee did not take the subject up at its 62<sup>nd</sup> regular session (Rio de Janeiro, March 2003). However, it had agreed to change the title of the item from *Improving the administration of justice in the Americas: access to justice* to *Improving the systems of administration of justice in the Americas*, in light of the decisions taken at REMJA IV.

At its thirty-third regular session (Santiago, Chile, June 2003), the General Assembly requested the Inter-American Juridical Committee, in resolution AG/RES.1916 (XXXIII-O/03), to add to its work agenda, in accordance with its mandates, the pertinent recommendations of the Meetings of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA) in order to closely monitor the progress of their implementation.

At its 63<sup>rd</sup> regular session (Rio de Janeiro, August 2003), the Inter-American Juridical Committee had before it document CJI/doc.136/03 rev.1, entitled *The Caribbean Court of Justice*, submitted by Dr. Brynmor Pollard.

The members of the Juridical Committee made a number of observations on the document. Dr. Felipe Paolillo asked several questions about the nationality of the judges, to which Dr. Pollard replied that there was no reference to nationality for members of the Court. Dr. Paolillo also expressed concern about the number of judges of which the Court would be comprised, which had been given as a number not higher than nine but remained ill-defined. Dr. Pollard said that there were no references to the minimum number to constitute a quorum, but he assumed that it was five. Lastly, Dr. Paolillo said that he understood that the contracting parties were each of the countries of the Caribbean Community, but had doubts in that regard.

Dr. Luis Herrera recalled that the Juridical Committee had elaborated and published a document on dispute-settlement systems in the various regional blocks several years ago, which had been published by a university in Argentina. The presentation by Dr. Pollard provided a good opportunity to take up the subject again in the Committee. The item was part of the broader subject of the enforcement in national systems of sentences handed down by international courts, which could eventually be included in the agenda of the Juridical Committee and had effectively been included as an item in the current regular session.

Dr. Carlos Manuel Vázquez found it interesting that the Court should have final jurisdiction over matters falling within national legislation, even though it did not violate the norms of the Community, in other words, supranational laws. That was a notable difference from other international courts that had been established at the global level. Dr. Ana Elizabeth agreed with that observation and cited as an example the Central American Court, whose decisions and advisory opinions were of a supranational character for the countries that had accepted its jurisdiction.

With those comments, it was decided to retain the item in the agenda as a follow-up item.

At its 64<sup>th</sup> regular session (Rio de Janeiro, March 2004), the Inter-American Juridical Committee did not discuss this topic.

The General Assembly at its XXXIV regular session (Quito, June 2004), by resolution AG/RES.2042 (XXXIV-O/04), requested the Inter-American Juridical Committee, within the framework of its duties, to take into consideration the relevant recommendations of the Meetings of Ministers of Justice or Minister or Attorneys General for the Americas (REMJA).

At its 65<sup>th</sup> regular session (Rio de Janeiro, August 2004), the Inter-American Juridical Committee examined the General Assembly resolution AG/RES.2042 (XXXIV-O/04).

Dr. Brynmor Pollard, rapporteur of the topic, maintained that the topic was kept on the agenda in the hope of a mandate that could be received by the political agencies of the Organization. He also mentioned that the aspect of access to justice was given more importance in the framework of the REMJAS. However, he also warned about the importance of not neglecting quality of justice in the topic .

Dr. Ana Elizabeth Villalta, in turn, gave a brief report on the progress of some of the topics that were analyzed at the last REMJA (Washington, D.C, April 2004). Among these topics, she emphasized the hemispheric cooperation against terrorism, the struggle against transnational crime, mutual legal aid in criminal and extradition matters, cyberspace crime, human slave trade (women, teenagers and children), and violence against women. She suggested that the Juridical Committee adapt its work to the recommendations from the above REMJA.

Dr. Luis Marchand said that it would be interesting for the Committee to restrict its work to the access to justice on the part of the marginal sectors. He also suggested that at the next opportunity, the Committee could consider the study of the reports prepared by IDB on the subject.

Dr. Luis Herrera interpreted the General Assembly mandate in the sense that the Juridical Committee, at these moments, does not require to take any action on the topic and that, when doing so in the future, takes into account the recommendations of the

REMJAS and their priorities.

On the other hand, Dr. Eduardo Vio said that the topic itself has its own dynamics within the REMJAS and the Justice Studies Center for the Americas, and that therefore, care should be taken not to duplicate the work. He also recalled that in the past four years the General Assembly has been quite vague about the mandates to the Juridical Committee in this area. He believed that the Committee's work is to give legal technical assistance from the viewpoint of international law regarding the documents that either REMJAS or the Justice Studies Center for the Americas decides to submit for the Committee's appreciation. He, therefore, suggested contacting the Center in order to analyze together the contribution of the Juridical Committee and perhaps adopt some memorandum of understanding.

During the Inter-American Juridical Committee's recess period, Dr. Eduardo Vio contacted the Executive Director of the Justice Studies Center of the Americas (JSCA), Juan Enrique Vargas Viancos, with a view to exploring possible areas for collaboration between the Committee and the JSCA with respect to administration of justice in the Americas, and especially the possibility of writing a draft Judicial Ethics Code or General Principles of Judicial Ethics, for possible adoption by the inter-American system. In this connection and based on that contact, the Chair of the Juridical Committee, Dr. Mauricio Herdocia, engaged in a series of communications with the Chair of the Board of Directors of the JSCA, Dr. Federico Callizo Nicora, in which an understanding was reached to the effect that the Juridical Committee and the JSCA will work closely together on this project, which will be addressed by the Committee in its regular session scheduled for March 2005.

At the 66<sup>th</sup> session of the Inter-American Juridical Committee (Managua, February 28– March 11, 2005), its Chairman submitted for the approval of the other members the topic "Writing a Draft Judicial Ethics Codes or General Principles of Judicial Ethics" for inclusion as a topic of its agenda.

Dr. Galo Leoro expressed doubts regarding the title of this topic and remarked that, in practice, a code of similar nature adopted by Ecuador was not truly applied. He was inclined towards the title General Principles of Judicial Ethics, since ethics does not seem to fit the nature of a code, which refers to law.

The Inter-American Juridical Committee approved the inclusion of the topic under said name and decided to postpone the choice of a rapporteur on the topic until the session in August.

Next, the Chairman summarized the background and history of the topic, as of the contacts made with the Justice Studies Center of the Americas (CEJA).

Dr. Jean-Paul Hubert requested a clarification regarding the the purpose of this assignment, *i.e.*, whether it is the Committee who will write the first draft, or whether the Committee will assist the CEJA in their work. The Chairman of the Juridical Committee said that the idea was for the Juridical Committee to write the draft and for the CEJA to lend its assistance at the request of the Committee. The task of the rapporteur would be the drafting of a report on the subject matter, compiling, in an initial stage, the existing norms on the topic, which have already been forwarded to the CEJA.

Dr. Luis Marchand Stens expressed that to prepare a code of this nature and scope was a task for specialists in the subject matter and that it would be advisable for CEJA to prepare a basic document or a first draft for the Committee to work on.

Dr. Ana Elizabeth Villalta Vizcarra suggested that the Chairman speak again with the CEJA and explain that in the current session the Committee again reviewed the topic. In her opinion, the CEJA is precisely the specialized entity to begin this work, which the Committee could support. This proposal was accepted by consensus. The Chairman offered to keep the members informed on the steps he would take for this assignment.

At its 35<sup>th</sup> regular session (Fort Lauderdale, June 2005), the General Assembly, by resolution AG/RES.2069 (XXXV-O/05) resolved to encourage initiatives that the Inter-American Juridical Committee may adopt to conduct studies with other organs of the inter-American system, in particular with the CEJA, on various matters geared toward strengthening the administration of justice and judicial ethics.

During its 67<sup>th</sup> regular session (Rio de Janeiro, August 2005), the Inter-American Juridical Committee received the visit of Drs. Juan Enrique Vargas Viancos (Secretary of the Justice Studies Center of the Americas – CEJA), and Rodolfo Vigo (Minister of the Supreme Court of the Province of Santa Fé, Argentina), representatives of CEJA, with whom there was an exchange of ideas related to the topic.

Dr. Juan Vargas expressed the reasons why it was important to proceed with the drafting of a code of judicial ethics, above all as a tool to recover the image of justice, and stressed the utility of making a joint effort in this sense with the Inter-American Juridical Committee. He underscored the persuasive nature of such principles. He emphasized the importance of civil society also being able to participate in the discussion of these principles and that the theme should also be included in the agenda of the political organs of the OAS. He pointed out further that the ethical theme was only a part of the greater problem involved in reforming the judicial power.

Dr. Rodolfo Vigo also pointed out the reasons why it is important to develop this theme. He indicated that there was a crisis of legitimacy of the judicial powers and that judicial ethics was one of the means to remedy this situation. These are demands beyond the law (additional duties) and greater than those demanded of the common citizen. Ethics appeals to the spirit of the judge, he claimed, and so should be the result of consensus between judges rather than the product of law. He referred to the *Ibero-American Statute of the Judge* of 2001, the *Charter of the Rights of Persons before Justice* of 2002 and the *Declaration of Copan* of 2004, as antecedents of the theme. He informed that as a result of the latter declaration a meeting was held in Antigua in 2005 for the purpose of pushing forward a model code of judicial ethics in Ibero-America with 14 principles. He also referred to the negligence by Constitutions in respect to the requisites for becoming a judge and continuing to work in that career. He expressed that a code of ethics leaves certain rules clear where there is more than one option and the judge feels uncomfortable to choose one of them by himself. In counterpart, this also makes it easier for citizens to register complaints.

Following these presentations, Dr. Galo Leoro Franco referred to the theme of improving the administration of justice in the Americas for many years an item in the agenda of the Inter-American Juridical Committee. He expressed certain doubts as to the validity of the codes of ethics given the experience of a similar code in the Congress of his country. He wondered about the applicability and feasibility of a similar code in the judicial system of the countries of the Americas. He also asked about the nature of the norms contained in an eventual code, that is, whether they should be of a substantive or moral nature.

Dr. Eduardo Vio Grossi indicated that it was important to determine the obligatory nature of the instrument being discussed (binding or moral level). With regard to future work, he pointed out that there are many countries that already have a code of ethics, so the possibility of preparing a model code would not be of much use. He suggested that the alternative would be to establish general principles of law on the matter of judicial ethics obligatory for the States, a field in which the Juridical Committee could act. Another alternative would be to work on an inter-American code of judicial ethics to be adopted by the States with the commitment that they should have a certain application on the internal level of their judicial powers.

Dr. Luis Herrera Marcano recalled that in one of his reports, Dr. Jonathan T. Fried, former member of the Inter-American Juridical Committee, included an inventory of the codes of ethics that already existed on the level of the member States of the OAS, and that it would be important for the representatives of the CEJA to have that report available.

Dr. Stephen C. Vasciannie asked the members of the CEJA why they should suppose that the member States that already had a code of ethics should want to adopt a new body of principles on the matter, and in the case of those that did not have a code, why should it be supposed that with the judges having the opportunity to approve their own code of ethics, they would accept principles imposed from the outside. He also stressed that the premise that supposed a corrupt judicial power in need of a body of ethical rules was not shared in several countries of the Caribbean.

Dr. Antonio Fidel Pérez referred to several internal situations that generally occurred and were a product of the circumstances but did not necessarily amount to cases of corruption. So, the methods of approaching such situations, though they might well require a code of ethics, this would not be exclusive.

Dr. João Grandino Rodas emphasized the importance of ethical principles but expressed his interest that such principles, applied in practice, should not contribute to a greater amount of bureaucracy at the bases of judicial power. Dr. Luis Marchand Stens also wondered to what extent these principles could perhaps restrict the capacity of action of judges in matters in which a correct decision is alien to considerations of an ethical nature.

The Chairman of the Inter-American Juridical Committee ended by dealing with the areas of cooperation between the CEJA and the Juridical Committee. On the proposal of Dr. Juan Vargas, it was decided that the Inter-American Juridical Committee should remain wait until the CEJA has a more concrete document on ethical principles on which the Committee can form an opinion.

At its 68<sup>th</sup> regular session (Washington, D.C., March 2006), the Inter-American Juridical Committee appointed Dr. José Manuel Delgado Ocando rapporteur on the topic. During the recess, the rapporteur presented document CJI/doc.221/06, "Preliminary Notes on Principles of Judicial Ethics," which was distributed in good time to the other members of the Committee. This document appears at the end of the present sub-chapter.

During the 69<sup>th</sup> regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2006), the Chairman announced that because of the rapporteur's resignation from the Committee, a new rapporteur had to be appointed. Dr. Ana Elizabeth Villalta Vizcarra was selected for the position.

The Chairman then gave a verbal summary of the report prepared by the previous

rapporteur. As a starting point, the Chairman gave an overview of the Juridical Committee's past dealings with the topic and emphasized the efforts expended in gathering together international instruments on judicial ethics. He also spoke of various issues that affect the independence of the judiciary, particularly the situation in which court magistrates in some countries of the Americas are subject to influences from the political system. He explained the rapporteur's position about the concepts of ethics and morality, and about the principles and rules that govern them. He also explained the way in which internationally accepted judicial ethical principles are addressed, and he described the results of the VI Ibero-American Summit of Supreme Court Chief Justices of 2001. The Chairman then explained the analysis of the principles of judicial ethics and of the applicable codes that exist in various countries of the Americas.

At the end of his address, he read out the conclusions reached by Dr. Delgado Ocando in his report, with particular emphasis on analyzing the impact that enacting a code of judicial ethics might or might not have on the independence of the judiciary. He also said that, in some cases, doubts could arise about the relative effectiveness of such codes in the absence of social, political, and economic conditions requiring the ethical responsibility of members of the judicial branch.

The Chairman also explained that a debate existed regarding relations between the agencies responsible for enforcing and overseeing compliance with codes of judicial ethics and discipline, and he spoke about the efficiency of those codes.

The members of the Inter-American Juridical Committee thanked him for presenting the report and offered a number of comments. Specifically, they noted the importance of judicial independence but said that a balance had to be struck between the independence of the judiciary and the handling of cases by the courts: in other words, that independence must not be used to impede access to justice.

In addition, the Chairman said that one very important task would be to gather together all the Juridical Committee's work on this topic and compile it in a Code of Judicial Ethics for the hemisphere. Another comment said that if the drafting of such a code was decided on, consideration would have to be given to that fact that it would have to apply not only to judges, but to all participants with direct ties to the judiciary and to the administration of justice. The meeting was also told about the existence of a report and proposal drafted by Dr. Jonathan Fried (a former member of the Inter-American Juridical Committee) that could be used as a starting point for this exploration of judicial ethics.

At the 70<sup>th</sup> regular session of the Inter-American Juridical Committee (San Salvador, February-March 2007), the Director of the Department of International Legal Affairs pointed out that a past initiative of the Juridical Committee had disappeared from its agenda: the administration of justice. He mentioned that the Inter-American Commission on Human Rights was looking at this area, but exclusively from the perspective of safeguarding human rights and limited to criminal law. He then opined that there are a number of aspects that the IAJC could work on, such as consumer protection, labor law, small lawsuits, demarcation of small landholdings, etc., all of which are subjects taking on greater importance in the Organization. He pointed out that OAS is in contact with national Supreme Courts and is working on ways to best cooperate.



At the same regular session, Dr. Ana Elizabeth Villalta Vizcarra presented report CJI/doc.238/07, "Principles of judicial ethics", covering the advances made by various Ibero-American Summits of Supreme Courts of Justice. She also expressed the opinion that the IAJC could put the topic of access to justice back on its agenda. She recalled that the agenda item under discussion was derived from the subject area of Administration of Justice in the Americas and had also been the object of a mandate of the General Assembly, which recommended that the Committee cooperate with other organs in the development of the subject area. In her report Dr. Villalta referred to the principles adopted in the Bangalore Code on judicial conduct of 2001, the Code of Ethics of the USA, the Statute of Ibero-American Judges of May 2001, the Charter of the Rights of Persons in the Justice System in the Ibero-American Judicial Area of 2002, and the Ibero-American Code of Judicial Ethics of 2006. She pointed out that the objectives of said instruments include safeguarding the principle of judicial independence as a part of democratic governance and the rule of law, as well as that of the financial independence of the judiciary. The report recommends that, if the IAJC wants to draft a code expressly for the Inter-American system, it should base it on the Ibero-American Code of Judicial Ethics, to which many OAS Member States are parties. Another possibility that Dr. Villalta mentioned was the possibility of preparing a draft code the scope of which would go beyond judges to encompass all persons working in the administration of justice.

Dr. Jean-Paul Hubert thanked Dr. Villalta for her report and said that the matter should be pursued taking into account any progress made by other organs. He expressed the opinion that innumerable instruments, both national and international in scope, had already been created, and that it was not that important to have one more. He added, however, that if the Committee should decide to keep the item on the agenda, it should accept the challenge of elaborating a Draft Inter-American Code that would take into account member States having a common law system, as these countries have not participated in the Ibero-American summits.

Dr. Galo Leoro Franco underscored the significance that a code would have for the Inter-American system. Despite many countries already having their own codes, an Inter-American one would add value and strengthen enforcement. He recommended that the rapporteuse continue her work and submit a draft code of judicial ethics so that the political organs could decide how to proceed. In his opinion, that would be the only way to respond to the General Assembly mandate.

Dr. Mauricio Herdocia Sacasa stressed that the question of judicial ethics is a core one that the IAJC could pursue as it is an element of the rule of law. For him the idea is to strengthen the system of separation of powers, and it would be natural to think that the Juridical Committee would have something to say about the matter as it is essential to the consolidation of democracy and related to access to justice. He recalled that the Inter-American Democratic Charter and the Charter of the OAS itself recognize the separation of powers as a core principle. He said that the Committee should continue its work, and requested that the rapporteuse proceed with a draft Inter-American code of ethics, if feasible in collaboration with the JSCA, also including the experience-rich common law countries. Such a document could take advantage of common law modalities to put forward either a model law or a model code with the purpose of helping countries that have no norms in this area or that want to bolster what they already have.

Dr. Freddy Castillo Castellanos stated that the Committee should not ignore this matter as the countries of the Americas face problems of judicial independence and

effective implementation of decisions. A code of ethics or a model law would represent great progress.

Dr. Hyacinth Evadne Lindsay stated that she saw much merit in common law judges having in hand a document such as the Ibero-American Code of Ethics, and offered to send to the rapporteuse relevant material from CARICOM countries.

Dr. Ricardo Seitenfus added that one of the objectives of a code is to render the acts of the judiciary more effective. To him, the financial independence of the judiciary is also extremely important, but must go hand in hand with financial accountability, or in other words, transparency of expenditure.

The Inter-American Juridical Committee passed resolution CJI/RES.126 (LXX-O/07), "Administration of Justice in the Americas: judicial ethics and access to justice". Said resolution appointed Drs. Ricardo Seitenfus and Freddy Castillo Castellanos as co-rapporteurs to work alongside Dr. Ana Elizabeth Villalta Vizcarra. It also underscored the critical link of judicial ethics and access to justice on the one hand, and the administration of justice and the strengthening of the rule of law in the Americas on the other. It declared that the topic is to be maintained on the Committee's agenda under the heading: "Administration of justice in the Americas: judicial ethics and access to justice". The co-rapporteurs were asked to continue to update the report with the purpose of drafting a text that would encompass the principles of judicial ethics of the inter-American system.

At its 37<sup>th</sup> regular session, the OAS General Assembly (Panama, June 2007) made no request of the Inter-American Juridical Committee in this area.

During the 71<sup>st</sup> session of the Inter-American Juridical Committee (Rio de Janeiro, August 2007), the Chairman remarked on the history of this topic within the Committee and on the reports that the rapporteurs had filed on the subject, proposing to the membership a method or procedure to following when addressing this topic in the future.

Dr. Ana Elizabeth Villalta Vizcarra summarized the report she authored and which she had presented at the Committee's previous regular session, document CJI/doc. 238/07 "Principles of Judicial Ethics". That report took into account the documents already adopted on the subject, both at the global and regional levels. Those documents spelled out principles of ethics, but always for judges. Taking a more inclusive perspective, however, Dr. Villalta Vizcarra observed that access to justice encompassed all those instrumental in the realm of justice, including prosecutors, police and defense attorneys. She concluded that the same principles could be adapted to suit each level of the administration of justice, although she observed that some principles applied to only one level, such as the principle of judicial independence, which applied to judges. In conclusion she suggested that if the Committee wanted to explore this topic at greater length, it could develop principles for operators at every level of the justice system.

Dr. Mauricio Herdocia Sacasa also suggested that the topic not be confined to judges, but instead opened up to include all actors involved in the administration of justice. He observed that regional differences should be taken into account, as should the types of situations typically found in Latin America, such as small communities that must find other avenues to access justice. Dr. Herdocia Sacasa recalled the project that the Nicaraguan Supreme Court conducted in rural areas where there were no judges: facilitators were proposed by the community itself, so that those facilitators might collaborate on finding solutions to problems. He indicated that in its future activities the Committee would have to more closely scrutinize the way people live. He suggested that alternative mechanisms for accessing justice could be explored within the framework of international law, taking

account of the problem of communities that have their own justice systems; in other words, a practical approach could be taken to specific phenomena that tie in with international law.

Dr. Freddy Castillo Castellanos, for his part, supported the idea of broadening the concept of judicial ethics, since almost all the more traditional codes narrow the issue of judicial ethics to judges. More modern codes, like Venezuela's, prescribe ethics for the judicial system as a whole –not just judges-, and span the entire gamut of professionals involved in the administration of justice: judges, attorneys, representatives of civil society, and the simplest agents of the justice system. Dr. Castillo suggested that some thought might be given to a model code, i.e., a compilation of core principles that should be part of any code of ethics for the judicial system. He also suggested that the problem of slow-moving and onerous systems as impediments to access to justice might also be addressed. He also opined that the focus of the Juridical Committee's attention should be on suggesting alternatives more than preparing diagnostic studies. Dr. Castillo observed that a mechanism was already in place for settling legal problems related to the exercise of citizenship and democracy. The work of the Committee, therefore, should be geared at reinforcing alternatives, improving the immediate application of rules, ensuring that the justice system reflects society by taking cultural differences into account provided those differences are not at odds with the core principles. In Venezuela, he observed, efforts were being made to include indigenous peoples and take their customs into account when setting the community's problems. In this way, he pointed out, areas that the formal justice system does not reach have access to a justice system run by rules that the members of the community understand and accept.

Dr. Hyacinth Evadne Lindsay seconded the views summarized above and remarked that the issue of judicial ethics and access to justice was of the utmost importance in the countries of the English-speaking Caribbean, which was why she was so interested in serving as co-rapporteuse for this topic. She added that the greater the access to justice the greater the confidence in the judicial system. As examples of the new restorative trends in access to justice, Dr. Lindsay cited night courts, the trend favoring rehabilitation over punishment, small-claims courts that dispense with the presence of a judge, all of which opens up access to justice.

Dr. Ricardo Seitenfus added the *pro bono* legal service offered by the law schools in Brazil to help settle disputes involving family law, social rights, and others. He observed that in some regions of Brazil, it was established a mobile legal service rendered by the so-called "citizenship bus", as the means to afford low-income persons in the more remote cities access to justice.

Dr. Jean-Paul Hubert, for his part, mentioned the creation of small-claims courts. In some cases heard by such courts, neither plaintiff nor respondent had to be represented by an attorney.

Dr. Eduardo Vio Grossi wondered about what type of contribution the Inter-American Juridical Committee could make in that regard, as there were other agencies and institutions within the system that had addressed judicial ethics and access to justice, and that had produced considerable material on the subject. As the mandate of the Inter-American Juridical Committee was in international law, Dr. Vio Grossi's view was that it should focus on those rules of international law that impaired access to justice or were at odds with principles of judicial ethics. He observed that there were many codes of judicial ethics and instruments in various national legal systems and thought that the Committee's contribution might be to analyze whether they had been influenced in any way by principles of international law.

Dr. Jaime Aparicio mentioned the studies done by the World Bank and USAID. Although not studies in law, he observed, some connection to international law could be inferred from them.

Dr. Antonio Fidel Pérez concurred with Dr. Vio Grossi's observations regarding domestic legal practices that might bear the hallmarks of principles of international law. That, he said, would fall within the Juridical Committee's mandate regarding the progressive development of law, as had happened in the case of human rights, protection of foreign investments, and so on. He also stressed how important it was that the Committee should continue to study the topic.

Finally, the Inter-American Juridical Committee decided to instruct the rapporteurs to present a report at the next session concerning the scope of the topic of judicial ethics and access to justice in the context of international law, including alternative forms.