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Mr. José María Ruda, Observer for the Commission**

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Report on the 1968 meeting of the Inter-American Juridical Committee,
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1. In accordance with the decision taken by the International Law Commission at its twentieth session,¹ I had the honour to attend, as Observer for the Commission, the meeting of the Inter-American Juridical Committee which was held at Rio de Janeiro from mid-June to early September 1968. I attended from 26 to 30 August. The following members participated in the meeting: Mr. Francisco Campos (Brazil), Mr. José Joaquín Caicedo Castilla (Colombia), Mr. Francisco González de la Vega (Mexico), Mr. Jorge Aja Espil (Argentina), Mr. Elbano Provenzali Heredia (Venezuela) and Mr. William S. Barnes (United States of America). Mr. Francisco Campos was elected Chairman of the Committee.

2. The items of substance considered by the Inter-American Juridical Committee at this meeting were:

- (a) Harmonization of the legislation of the Latin American countries on companies, including the problem of international companies (Rapporteur: Mr. J. J. Caicedo Castilla);
- (b) A uniform law for Latin America on commercial documents (Rapporteur: Mr. J. Aja Espil);
- (c) Draft statutes of the Inter-American Juridical Committee (Rapporteurs: Mr. J. Aja Espil and Mr. J. J. Caicedo Castilla);
- (d) Draft report to the first General Assembly of the

Organization of American States (Rapporteurs: Mr. E. Provenzali Heredia and Mr. J. J. Caicedo Castilla);

- (e) International Standstill Agreements (Mr. William S. Barnes).

3. A brief summary of the results of the discussion on each topic follows below.

- (a) *Harmonization of the legislation of the Latin American countries on companies, including the problem of international companies*

4. The Committee unanimously approved an opinion on this topic, in which it reviewed the American and European precedents, particularly since the creation of the European Economic Community, problems related to the nationality of companies and the laws applicable to them, recognition of the juridical personality of foreign companies and the position of "public international" or "multinational" companies.

5. In its conclusions, the Committee resolved again to request the Council of the Organization of American States to call a specialized conference to consider the revision of the Bustamante Code² or decide to adopt a code of private international law, at which the provisions concerning companies would be specially examined. It suggested the desirability of adopting new provisions in

¹ *Yearbook of the International Law Commission, 1968*, vol. II, document A/7209/Rev.1, p. 225, para. 114.

² League of Nations, *Treaty Series*, vol. 86, pp. 254 et seq.

chapter I of the Bustamante Code on Commercial Companies, to the effect that:

- (i) The commercial character of a company is determined by the law of the place where it has its domicile;
- (ii) Commercial companies duly constituted in a contracting State will enjoy the same juridical personality in the other contracting States, subject to the provisions of territorial law. Territorial laws are those referring to banks of issue, those relative to the exploitation of natural resources that are of importance to the country concerned, those that establish for foreign corporations the obligation to be registered and those that impose on them the obligation to maintain a permanent representative, with power of attorney, for judicial disputes and notifications.

6. The Committee further suggests the possibility of replacing articles 18 and 19 of the Code by a new article under which the nationality of civil, commercial or industrial companies, whether corporations or otherwise, shall be determined by their domicile, this to be defined as "the juridical centre of the administration".

7. The opinion elsewhere proposes a draft "Inter-American Convention on Reciprocal Recognition of Companies and Juridical Persons". The preamble refers to the need to facilitate the economic integration of the hemisphere.

8. Articles 1 and 2 recognize the extraterritorial juridical personality of companies under civil or commercial law, organized in one of the contracting States, which engage in activities or do business in the territory of another, and of moral persons under public or private law, other than those mentioned above, engaged in normal activity performed for consideration and in a continuous manner. These provisions shall not apply in the cases mentioned above in connexion with chapter I of the Bustamante Code—i.e., banks of issue, companies engaged in the exploitation of important natural resources, and so on.

9. Under article 4, a contracting State may declare that the Convention shall not apply to the companies or juridical persons mentioned in articles 1 and 2 when their true headquarters are outside the territory of the Parties, if such companies or juridical persons have no serious tie with the economy of any of the contracting States. "True headquarters" means "the legal centre of the administration". Under article 6, the Convention shall not apply if the company or juridical person violates, by its activities, rules of public order of the respective contracting State.

10. Under article 7, "public international" companies are governed by the agreement which has created them or, if such an agreement subsidiarily admits the application of a specified legislation, by the legislation existing at the time the agreement entered into force.

11. The Juridical Committee further resolved to include in the agenda for 1969 the topic "Preparation of a draft uniform law on commercial companies and studies on public international companies" and appointed a Rapporteur.

(b) *Uniform law for Latin America on commercial documents*

12. The opinion approved on this topic recommends that, in the absence of a doctrine regarding the advisability of systematizing under a single law all so-called commercial documents, it is advisable to begin with bills of exchange and cheques. It goes on to say that, as the most feasible solution, a draft convention, or draft conventions, to apply in the exclusively international sphere should be sponsored, and that each State should retain its domestic legislation. Uniformity at the sub-regional level may also be sponsored, following the principles of the relevant Geneva Convention³ and the Cervantes Ahumada draft. The Committee decided to include the topic "Draft conventions on bills of exchange and cheques of international circulation" in the agenda for 1969.

(c) *Draft statutes of the Inter-American Juridical Committee*

13. The Protocol of Amendment to the charter of the Organization of American States, also called the "Protocol of Buenos Aires", which was signed at the Third Special Inter-American Conference,⁴ substantially amended the part of the charter relating to the machinery for considering the legal affairs of the regional organization. The Inter-American Council of Jurists was abolished and the Inter-American Juridical Committee was included among the organs by means of which the Organization of American States accomplishes its purposes. Chapter XVII of the amended charter sets out the basic standards for its functions and procedures.

14. Although the amended charter has not yet entered into force, some members of the Committee felt that it was necessary to consider and prepare the statutes which will apply when the Committee begins to operate under the new system. The document is only a draft and will be presented to the first General Assembly of the Organization of American States in a spirit of co-operation and as a basis for discussion.

15. Following a reaffirmation in the opening articles of the draft of some basic principles of the charter, article 4 declares the Committee competent to deal with the following matters:

1. Rendering advice on juridical matters of international interest submitted to it by the Organization;
2. Undertaking the studies and preparatory work on the topics assigned to it by the Assembly, the Councils and the Meeting of Consultation;
3. Undertaking studies and work in pursuance of its specific purposes;
4. Suggesting the holding of specialized juridical conferences;
5. Establishing co-operative relations with universities, institutes and teaching centres, as well as with national and international committees and entities devoted to study, teaching or dissemination of information on juridical matters of international interest.

³ *Ibid.*, vol. CXLII, pp. 257 and 356.

⁴ Pan American Union, *OEA documentos oficiales (OEA/Ser.A/2 (SEFP) Add., p. 49)*.

16. Draft article 6 confers on the Committee "the broadest possible technical autonomy" and gives its members "complete independence of opinion".

17. The Committee represents the Organization as a whole; therefore, its members shall not represent the States which nominated them.

18. As regards the composition of the Committee, the draft states that it shall be composed, as provided in the charter, of eleven jurists "of high moral character and professional standing". They shall be elected by the Assembly, from panels of three candidates presented by member States, for a period of four years and may be re-elected. Membership shall be replaced partially.

19. According to draft article 15, the meetings of the Committee shall last three months, and may be extended for up to ten additional days when considered necessary. Special meetings may be held. The failure of a member to attend for two consecutive years shall result in the automatic vacation of his office.

20. The permanent seat of the Committee shall be Rio de Janeiro.

21. With regard to procedure, draft article 21 sets the quorum for conducting business at six members and for preparatory sessions at four. For the adoption of recommendations and opinions, the votes of six members are required.

22. The draft provides that the expenditures for the maintenance of the secretariat of the Committee shall be borne by the Organization of American States and that travel expenses and those occasioned by the stay of the members in Rio de Janeiro shall be borne by the Governments of which they are nationals; however, the Organization of American States shall pay members an attendance fee.

23. The general provisions of the draft provide that the Juridical Committee may utilize the services of specialists if it considers it necessary and may invite jurists to take part in its discussions on a given matter.

24. Draft article 34 provides that the Committee shall submit an annual report to the Assembly.

25. The draft statutes of the Inter-American Juridical Committee are reproduced as an annex to this report for the Commission's information.

(d) *Draft report to the first General Assembly*

26. The draft report was not approved, and it was agreed to include the topic in the agenda for the following year.

(e) *International Standstill Agreements*

27. The draft opinion was likewise not approved, and the topic will be discussed again in 1969.

28. I wish to point out that this was the first time that an Observer for the Commission attended a meeting of the Inter-American Juridical Committee and that this action was greatly appreciated by the members, who were most co-operative and understanding throughout. On behalf of the International Law Commission, I gave a detailed account of the Commission's current work and of its work plans for the immediate future.

29. The Inter-American Juridical Committee adopted as part of the Final Act a resolution in which it expressed its pleasure at receiving an observer from the Commission and reaffirmed its intention to maintain the best co-operative relations with the International Law Commission. The resolution was sent to the Secretary of the Commission by the Committee.

ANNEX

Preliminary draft of the Statutes of the Inter-American Juridical Committee

NATURE, PURPOSES, AND SEAT OF THE COMMITTEE

Article 1

The Inter-American Juridical Committee, established by the charter of the Organization of American States is the juridical organ of the Organization of American States. Its composition and its functions shall be fixed by the provisions of the charter.

Article 2

In accordance with the charter of the Organization, the purpose of the Inter-American Juridical Committee is to serve the Organization as an advisory body on juridical matters of an international nature, its specific purposes being to promote the progressive development and the codification of international law and to study juridical problems related to the integration of the developing countries of the hemisphere and, in so far as may appear desirable, the possibility of attaining uniformity in their legislation.

Article 3

The permanent seat of the Inter-American Juridical Committee shall be the city of Rio de Janeiro. This shall not prevent the Committee from meeting and performing its functions in any other place in special cases in which the Committee so decides, with the sole requirement of prior consultation with the member State concerned.

COMPETENCE OF THE COMMITTEE

Article 4

The competence of the Inter-American Juridical Committee shall cover the following matters:

1. Rendering advice on juridical matters of international interest submitted to it by the Organization;

2. Undertaking the studies and preparatory work on the topics assigned to it by the General Assembly, the Meeting of Consultation of Ministers of Foreign Affairs and/or the Councils of the Organization;

3. Undertaking the studies and work that it considers advisable and that refer to its specific purposes, expressed in article 2 of these statutes;

4. Suggesting the holding of specialized juridical conferences;

5. Rendering the Governments of member States legal advice on matters of public and private international law on which they consult it;

6. Establishing co-operative relations with universities, institutes, and other teaching centres, as well as with national and international committees and entities devoted to study, teaching or dissemination of information on juridical matters of international interest.

Article 5

The Inter-American Juridical Committee shall draft its own rules of procedure, in which it shall establish the standards for its operation.

Article 6

In the performance of its duties the Inter-American Juridical Committee shall have the broadest possible technical autonomy, and its members shall have complete independence of opinion. The latter shall enjoy the privileges and immunities established by article 140 of the charter.

COMPOSITION OF THE COMMITTEE

Article 7

The Inter-American Juridical Committee shall be composed of eleven jurists, nationals of member States, of high moral character and professional standing, and no two members may be nationals of the same State.

Article 8

The members of the Committee shall be elected by the General Assembly from panels of three candidates presented by member States; one candidate who is not a national of the State presenting it may appear on such a panel. The Assembly shall take into account, in addition to the personal qualifications of the candidates, the criterion that equitable geographic representation on the Committee should be assured, in so far as possible.

Article 9

The members of the Committee shall be elected for a period of four years and may be re-elected. The membership shall be replaced partially, and for this purpose it is established that the term of office of five of the members elected in the first election, chosen by lot, shall be limited to two years.

Article 10

The Inter-American Juridical Committee represents all of the member States of the Organization. Therefore, a member nominated by a State and elected by the Assembly shall not represent that State and shall therefore have the same mandate as he has in respect of the other member States.

Article 11

The members of the Inter-American Juridical Committee shall exercise their functions from January 1 of the year following the year in which they were elected until December 31 of the year in which the election of new members is held.

Article 12

In the event of a vacancy by reason of the death or resignation of a member, once a successor is elected by the General Assembly he shall take office immediately and complete the term of office of his predecessor.

Article 13

Prior to an election to replace a member at the end of his term of office, the General Secretariat shall request the respective Governments to present panels of three candidates, together with their biographical data, and shall submit them to the General Assembly. It shall also make them known to the other American Governments.

Article 14

In the case of filling a vacancy caused by the death or resignation of a member, the General Secretariat shall request the Government that originally proposed that member to present a new panel of three candidates in the manner indicated in the preceding article.

MEETINGS

Article 15

The Inter-American Juridical Committee shall hold one regular meeting each year, which shall last three months, and the meeting may be extended for up to ten additional days should the Committee consider this necessary. In special cases, in which the importance and urgency of some matter so requires, it may also hold special meetings.

Article 16

Before adjourning its regular meeting, the Inter-American Juridical Committee shall draw up the agenda and set the opening date for the next meeting.

Article 17

Special meetings of the Inter-American Juridical Committee may be convoked on the proposal of the General Assembly or of another competent organ of the Organization, or on the Committee's own initiative. Proposals of this nature should be addressed to the Chairman of the Committee and to the Secretary-General of the Organization. Once convocation has been decided upon by the written opinions of the members of the Committee, and the date of the meeting has been set, the Secretary-General shall notify the Governments of it.

Article 18

The jurists elected as members of the Inter-American Juridical Committee shall bear in mind that for the fulfilment of the purposes of the Committee it is essential that, during the meeting, they reside in Rio de Janeiro and devote full time to the work thereof.

Article 19

The failure of a member of the Committee to attend its regular meetings for two consecutive years shall result in the automatic vacation of his office.

Article 20

The Secretary-General of the Organization or his representative shall participate, but without the right to vote, in the discussions of the Committee and of such sub-committees or working groups as it may establish.

QUORUM AND MAJORITY

Article 21

Seven members shall constitute a quorum for conducting the business of the Committee, but it may hold preparatory sessions with only four of its members present. The preparatory sessions shall be merely deliberative.

Article 22

For the adoption of recommendations and opinions of the Committee, the affirmative votes of at least six of its members shall be required.

The same majority shall be required for any resolutions the Committee may adopt for carrying out its purposes and for the drafting of its rules of procedure.

Each member, whether or not he is in agreement with a recommendation, opinion, or resolution adopted by the majority, shall have the right to have the explanation of his vote or his dissent included following such recommendation, opinion or resolution.

All other questions shall be decided by the vote of a majority of the members present.

CHAIRMAN

Article 23

The Committee shall elect its Chairman and Vice-Chairman for a period of two years, and they may be re-elected. The majority vote of six members shall be required for these elections. The powers of the Chairman shall be set forth in the rules of procedure of the Committee.

In the event of the absence of the Chairman and the Vice-Chairman of the Committee, the Secretary thereof may take the necessary administrative measures concerning the work of the Secretariat and payment of its personnel.

SECRETARIAT

Article 24

The permanent Secretariat of the Inter-American Juridical Committee in Rio de Janeiro shall be composed of officials and employees who shall also be members of the staff of the General Secretariat of the Organization of American States and shall enjoy the same benefits as the other members of that staff. The former shall be appointed by the Secretary-General of the Organization with the prior approval of the Committee.

Article 25

The General Secretariat shall provide the Inter-American Juridical Committee with such technical and administrative services as it may require.

EXPENSES

Article 26

The expenses occasioned by the stay in Rio de Janeiro of the jurists who compose the Inter-American Juridical Committee, and the expenses of their transportation between their places of residence and Rio de Janeiro, shall be borne by the respective States of which those jurists are nationals.

Article 27

During the meetings of the Inter-American Juridical Committee the Organization of American States shall pay a fee to the members who attend.

Article 28

The expenditures for the maintenance of the Secretariat of the Inter-American Juridical Committee and for the fees to its members shall be included in the programme-budget of the Organization.

The Secretary-General, in consultation with the Chairman of the Juridical Committee, shall make an adequate estimate of the amounts necessary. For this purpose, the Secretary-General shall request the Chairman of the Committee, each year, to submit a draft budget.

The draft budget shall include a sufficient item for the enlargement of the headquarters and the library of the Inter-American Juridical Committee in Rio de Janeiro.

GENERAL PROVISIONS

Article 29

In the event that the Inter-American Juridical Committee considers it necessary to utilize the services of specialists who are to be compensated by the Organization, it shall make the corresponding request to the General Secretariat.

Article 30

The Inter-American Juridical Committee may invite American jurists whom it regards as specialists in the subject to take part in its discussions on a given matter. In the event that such an invitation involves expenditures, the procedure set forth in the preceding article shall be followed.

Article 31

The Inter-American Juridical Committee shall give the legal opinions that the General Secretariat of the Organization may request of it on juridical questions relating to the purposes of the Organization of American States.

Article 32

The General Secretariat shall give due publicity to the activities and work of the Inter-American Juridical Committee, including the works and studies approved by the Committee, even when they have not been adopted by vote as opinions or recommendations.

Article 33

The recommendations, opinions, studies, reports, views or drafts prepared by the Inter-American Juridical Committee shall be transmitted to the General Secretariat so that it may make them known to the Governments and, when appropriate, transmit them to the General Assembly.

The opinions, reports, studies, views or drafts requested directly by the Governments or by the Council shall be transmitted by the Committee to the party making the requests.

The works, studies, views or drafts prepared by the Inter-American Juridical Committee under the plan for the development and codification of public and private international law and the uniformity of legislation shall be circulated in accordance with the procedure determined by the said plan.

ANNUAL REPORT

Article 34

The Inter-American Juridical Committee shall submit to the General Assembly an annual report and such special reports as it deems pertinent.

AMENDMENTS

Article 35

The present statutes may be amended only in the same manner in which they were originally adopted, and in accordance with the charter of the Organization of American States.