

FIRST COMMITTEE

CLIMATE CHANGE AND ITS EFFECTS

The XXIX Congress of the Hispano-Luso-American Institute of International Law,

Considering that climate change constitutes, according to reports of specialized international institutions such as the International Panel on Climate Change and even the Global Risk Report of the World Economic Forum, one of the biggest global risks to the world, and that global warming is increasingly accentuated, as various studies of United Nations agencies have demonstrated.

Considering that according to the World Bank global warming is the factor that contributes the most to raise global poverty rates and the fall of GDP in developing countries.

Considering that the effects of climate change impact the enjoyment of human rights, in particular of vulnerable groups, affecting the right to life, to adequate food, water, sanitation, health, and housing.

Considering that climate change imposes the need to adapt particular legal systems, as is the case with the ones that govern polar spaces.

adopts the following

CONCLUSIONS:

1st All subjects of international law shall fully comply with international provisions, including the 2015 Paris Agreement, and assume more commitments to reduce greenhouse gases.

2nd States shall use rational and balanced energetic systems, promote renewable energies and implement innovative mechanisms to fight against climate change, such as storage of carbon dioxide in marine spaces, in accordance with International Law.

3rd States are encouraged to make contributions committed to the Green Climate Fund.

4th States are requested to incorporate in their study plans contents to develop awareness and a citizenship culture on the commitment to the fight against climate change.

5th The need to promote the progressive development of International Law in matters of international responsibility to tackle the effects of climate change, such as displacements for environmental reasons, is stressed.

SECOND COMMITTEE
THE APPLICABILITY OF THE *IURA NOVIT CURIA* PRINCIPLE IN
INTERNATIONAL ARBITRATION

The XXIXth Congress of the Hispanic-Portuguese-American Institute of International Law,

Bearing in mind the relevance of arbitration as a mechanism for the settlement of international disputes between private parties and between private parties and States or other public entities.

Considering the need to ensure the fair settlement of disputes by arbitral tribunals, as well as the enforceability of arbitral awards, which requires that arbitrators enjoy a certain discretion in determining the law applicable to the substance of the dispute, as well in interpreting and applying it.

Conscious also of the arbitral tribunal's duty to treat parties equally and to give them full opportunity to assert their rights, as well as to comply with the definition made by the parties of the issues to be decided,

Adopts the following

CONCLUSIONS:

1st. Since it does not administer justice on behalf or by delegation of a given State, the arbitral tribunal is in a different position from that of a State court in what concerns the determination of the law applicable to the substance of the dispute, the search for its contents, its construction and application.

2nd. Rules that bind State courts in respect of these issues do not necessarily apply to arbitral tribunals.

3rd. Rules applicable to international arbitration in this regard should take into account the specific nature and purposes of this dispute settlement method.

4th. The arbitral tribunal is not subject to a duty to determine on its own motion the law applicable to the substance of the dispute equivalent to that which binds State courts in various legal systems, nor do parties in arbitral proceedings freely dispose of the applicable law.

5th. The arbitral tribunal may inquire on its own motion into the contents of the

applicable law in international arbitration.

6th. Furthermore, the arbitral tribunal may apply to the substance of the dispute rules of national, international or community law distinct from those that were pleaded by the parties, in particular when this is justified by the safeguard of the enforceability of the award.

7th. The arbitral tribunal is therefore not bound by the parties' pleadings in respect of the applicable law, nor to the evidence produced by them regarding its contents, or to their submissions concerning the legal classification of the relevant facts.

8th. Parties should, nevertheless, cooperate with the arbitral tribunal in the determination of the applicable law, by providing it with the relevant information for the adjudication of their claims.

9th. The arbitral tribunal should not apply rules to the substance of the dispute on which parties have not had a reasonable opportunity to express their views prior to the rendering of the arbitral award, except to the extent that this is manifestly unnecessary.

10th. The arbitral tribunal may not exercise its power of autonomously determining the applicable law in such a way that the award will exceed the scope of the issues that it has been called upon to decide by the parties.

THIRD COMMITTEE
THE CREATION OF STATES IN CONTEMPORARY INTERNATIONAL LAW
IN CASES OF SECESSION: EFFECTIVENESS/LEGALITY

The XXIX Congress of the Hispanic Luso-American Institute of International Law/Instituto Hispano-Luso-Americano de Derecho Internacional,

Considering that a number of fundamental principles have been enshrined in contemporary International Law as well as a series of peremptory norms affecting the international community as a whole.

Considering that, according to International Law, the creation of a new State requires the confluence of constitutive elements contained in Article 1 of the *Montevideo Convention on the Rights and Duties of States* of 26 December 1933, which must be given in an effective manner.

Considering that the term secession has been established in the common language to make reference to the separation of a part of the territory of a State by its population in order to create an independent State or submit to another existing State, carried out without the consent of the predecessor State,

Adopts the following:

CONCLUSIONS

1. International Law only recognizes the right to independence to peoples subjected to colonial domination and to peoples subjected to subjugation, domination or foreign exploitation.

2. International Law does not recognize a right to secession. Peoples within a sovereign State have only the right to internal self-determination, that is, the right to decide their own political organization and without discrimination on the basis of race, creed or color. Likewise, the territorial integrity of the State in which they are located must be respected.

3. In contemporary International Law the creation of a new State must comply with the requirements of effectiveness and legality.

4. Effectiveness implies the general and exclusive control by the government of the state functions, on a continuous and prolonged basis, and independent of another

State or International Organization.

5. The requirement of legality implies that the creation of the State must be carried out in accordance with the fundamental Principles of International Law, especially the prohibition of the use of force and that of sovereignty and territorial integrity of States. Consequently, any unilateral declaration of independence in violation of any of these Principles lacks validity and legal effects in application of the maximum *ex injuria non oritur ius*.

6. States and International Organizations should not recognize unilateral declarations of independence contrary to International Law.

FOURTH COMMITTEE
DEMOCRACY AND INTERNATIONAL LAW

Towards a Digital Representative Democracy in the Inter-American System

The XXIX Congress of the Hispano-Luso-Americano Institute of International Law,

Considering that in Europe and the Americas, representative democracy—in its diverse degrees and modalities—is legitimized at the national and international juridical level. In addition, in the case of the Inter-American System, democratic principles and collective action in defense of democracy are included in the OAS Charter and the Inter-American Democratic Charter;

Bearing in mind that, classic representative democracy is affected by digital innovation represented by Information and Communication Technologies (ICT);

Considering that ICT are fundamental means for modernizing the State including digital government, public information access and citizens' participation;

Keeping in mind the positive impact, that ICT could represent for the exercise of democracy, as well as the potential for negative effects for society if they are used in an inappropriate context or without proper legal safeguards;

Recalling the indivisibility and interdependence among all human rights, in conformity with the Declaration and Action Program of Vienna of 1993 and the extension of those rights in the context of the evolution towards an information society;

Bearing in mind that technological progress shall also be appreciated from the legal perspective of International Law and that present legal framework must be put up-to-date to be in accordance with digital innovation of democratic institutions;

We adopt the following

CONCLUSIONS

1. The interaction between democracy and ICT requires a rethinking of the relationship between politics and the national and international legal framework, and to consider the emergence of new rights and responsibilities concerning innovation in democratic governance.

2. States shall evaluate the convenience of implementing a digital government (“electronic” or “open”) using the advantages of ICT to confront democratic deficit in our societies.

3. We exhort States to properly reinforce transparency measures in democratic electoral processes and the progressive incorporation of electronic voting and other digital mechanisms.

4. We recommend the creation of a proper juridical framework in each State such as the one presented in the “*Model Inter-American Law on Access to Information*” (2010), which was adopted by the Organization of American States (OAS), and to promote digital access to public information.

5. We recommend that States make progress toward establishing an appropriate legal framework to protect “online” personal data and privacy, considering an adequate balance with respect to public information e-access.

6. We highlight the convenience of creating, consolidating and promoting proper legislation to enable broader citizen’s participation through digital means to reach an inclusive and plural democracy that allows citizens to increase presence in the political life of their respective States.

7. We urge States, in order to guarantee the exercise of the aforementioned rights through ICT, to promote universal access to Internet to progressively diminish the existing digital divide in our societies. Universal access to ICT and digital education are emerging as central components of the new networked-society architecture.

8. In order to fully enforce human rights including emerging digital ones, the existing interrelation among all rights must be taken into account. In this process, it is fundamental that States strengthen their political institutions in accordance with technological advances.

9. We recommend States to promote progressive development of International Law to establish a legal framework of reference for an adequate inclusion of virtual rights and obligations to move towards a new democratic paradigm in the digital age.