

INTERAMERICAN DEVELOPMENT BANK

**CONFERENCE:
TRANSPARENCY AND DEVELOPMENT IN
LATIN AMERICA AND THE CARIBBEAN**

**REMARKS ON THE PRESENTATION REGARDING THE
INTER AMERICAN CONVENTION AGAINST CORRUPTION
BY DR. EDMUNDO VARGAS CARREÑO**

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In the name of the Federacion Interamericana de Abogados/Inter American Bar Association (FIA/IABA) I want to thank the Inter American Development Bank, through its President Dr. Enrique Iglesias, its Legal Department and the organizers of this event, for the opportunity afforded to the organization that I represent to participate in this important conference regarding the implementation of the Inter American Convention Against Corruption.

BRIEF HISTORY/DESCRIPTION OF THE FIA/IABA:

For those of you who are not familiar with our organization, the FIA/IABA is in reality the “Bar Association of the Americas”. It is a federation, founded in the year 1940, which groups the vast majority of the national bar associations of this hemisphere, from Alaska to the Malvinas.

For example, the Canadian Bar Association, the American Bar Association, the Barra Mexicana, the Colegio de Abogados de Puerto Rico (where I come from), etc. are all active members of FIA/IABA. As a matter of fact, the national bar associations of the member states of the Organization of American States (OEA/OAS) are all members of the FIA/IABA. Our Federation also has other institutional members, such as bar associations with special interests like the Federal Bar Association in the United States or the National Bar Association of Women Lawyers in the Dominican Republic, or of local interest, as the Bar Association of San Isidro in Argentina or the Bar Association of Cochabamba in Bolivia. The Federation also has thousands of individual members.

The General Secretariat of the FIA/IABA is located here in the city of Washington, D.C., since the founding of the organization. The Inter American Bar Conferences constitute our principal periodic event, formerly held every 18 to 24 months, and more recently, regularly every year during the month of June in different cities of the continent. For example, this year our XXXVI Conference shall be held in the City of Panamá, June 17 to 23rd.

The FIA/IABA also holds mid-term meetings of its Council, in October or November of each year, as well as regional seminars on topics that are of interest to the legal profession, like the one held last November in the Dominican Republic on the role of the corporate attorney in a globalized world. All of you, specially those who are attorneys, are invited to participate in our next conference and in the work sessions of our 20 committees, 2 sections and 4 affiliated institutions. At these meetings legal professionals of the entire hemisphere, and even some from Europe and Asia are gathered. Our Secretary General, Dr. Louis G. Ferrand, whom some of you may know since he is one of the principal attorneys at the OAS, will gladly provide you with any additional information regarding our organization.

THE INTER AMERICAN CONVENTION AGAINST CORRUPTION

We have examined the excellent presentation of Dr. Edmundo Vargas Carreño about the origins, negotiation, development and adoption of the Inter American Convention Against Corruption (hereinafter “the Convention”) as well as the perfect radiography of its structure, provisions and implementation. We have to fully coincide with the observation by Dr. Marcio J. de Moraes when he describes said work as “primoroso”. Certainly this well articulated presentation will

assist legal professionals to better understand and thus to be able to more effectively support the highly commendable objectives of such important international treaty.

In compliance with its duties as the bar association of the continent, the FIA/IABA has always been most attentive to the bilateral and multilateral agreements entered into by the member states of the OAS, which, as we have stated, constitute also the countries represented in our Federation by their respective bar associations. Here we need not dwell on the protagonist role of the attorneys in the processes of drafting, negotiating and adopting these bilateral and multilateral agreements, as well as in the process of developing in our respective nations, the internal legislation necessary or convenient for their implementation.

In the particular case of the Convention, as pointed out by Dr. Vargas Carreño, the same was executed in Caracas, Venezuela on March 29, 1996 and became effective on March 6 of the following year, when, pursuant to its own provisions, thirty days had elapsed since a second country deposited its instrument of ratification with the OAS. At the FIA/IABA conference immediately thereafter, number XXXIII held in Río de Janeiro, in May 1997, the Convention was the object of analysis and discussion in the joint session of our committees III (Administrative Law) and VI (Criminal Law and Procedure). As a result, Resolution number 4 (XXXIII) was approved, recommending to the governments of the countries of the Americas the prompt ratification of the Convention and the implementation of the necessary measures to adapt their respective legislations with the purpose of promoting the participation of non governmental organizations in the efforts to eradicate corruption from the public functions in our countries. At the time, only 3 countries had ratified the Convention and 3 others did so during the month of May 1997. This statement by the lawyers of the Americas in their XXXIII Conference, is in harmony with what Dr. Vargas Carreño in his brilliant presentation points out as the first of the two “fundamental purposes” of the Convention, that is, the internal actions that each state may adopt to promote and strengthen the development of mechanisms needed to prevent, detect, punish and eradicate corruption. Also, said pronouncement underscores the importance of the provision contained in Article III.11 of the Convention itself, which calls for the States Parties to create, maintain and strengthen “mechanisms to encourage participation by the civil society and nongovernmental organizations to prevent corruption”.

The second “fundamental purpose” of the Convention identified by Dr. Vargas refers to “those actions aimed at promoting, facilitating and regulating cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate acts of corruption in the performance of public functions...” This purpose has also been supported by the lawyers of the Americas. Let us see.

The FIA/IABA revisited the Convention in its XXXV Conference held in the City of Mexico in June of 1999. By then, 15 member states of the OAS had ratified the same. In a special program developed to review the progress of ratification and implementation of the Convention, the Working Group to Combat Corruption in the Americas, following and ample discussion, drafted and submitted to the General Assembly of the IABA Conference a proposed resolution, which was approved as Resolution 19 (XXXV) urging the complete and full implementation of the Convention by those member states who had already ratified the same, and urging those states who had not yet done so, to ratify (the Convention). Also, the Resolution urges the member states of the OAS to “adopt the appropriate mechanisms to follow up on the implementation of

the Convention as well as norms for the exchange of information and mutual evaluation among the states parties so that the Convention may more effectively achieve its objectives”.

With respect to this point, we have to coincide with Dr. Vargas Carreño in that if it is true that the Convention constitutes a useful instrument from the strictly legal point of view, its effectiveness will depend very much on the internal provisions adopted in each of the States Parties to implement the same, and in the way in which these States oblige themselves to mutual cooperation in the implementation of the agreed provisions.

Going back to Resolution 19 (XXXV) of the FIA/IABA, the same also invited the Association's members to identify opportunities to divulge, within and without the FIA/IABA, new projects which may emerge in the fight against corruption, taking into consideration that the Convention shall originate new laws, or the reform of existing laws to provide an adequate legal framework, which will in turn affect the daily work of lawyers in connection with the business affairs of their clients. In this sense, the lawyers of the Americas manifest their awareness of the lawyers' share of the obligation as an active component of civil society to, on the one hand, assist in the development of internal legislation of their respective countries, and on the other, advise and duly educate their clients to promote an entrepreneurial behavior in harmony with these objectives. Because, as Dr. Vargas points out, the Convention “...is not only an instrument designed to regulate the relations and collaboration against its State Parties. As important as that is its purpose to promote and facilitate internal mechanisms to combat acts of corruption inside each country, as are the preventive measures provided in Article III...”

Towards the end of its presentation, Dr. Vargas points out that the Convention has served as the basis for a series of activities geared to strengthen existing proceedings and institutions in the member states to promote international cooperation and facilitate the adoption of measures to combat corruption. In this regard, he reminds us of the Inter American Program of Cooperation to Fight Corruption, a Symposium on Enhancement of Probity in the Hemisphere held in 1998, the agreement between the IDB/BID and the General Secretariat of the OEA/OAS of March 26, 1999 and other activities and pronouncements by diverse organizations to promote the full implementation of the principals that served as basis to the Convention. To this list we wish to add the Experts' Round Table recently hosted by the Washington College of Law of the American University, co-sponsored by Transparency International and the FIA/IABA, here in Washington in November of 1999. This event convened a panel of experts consisting of several ambassadors and representatives of government of American States, representatives of the Academia, the legal profession and several international organizations. Dr. Lucinda A. Low, of the United States, who is a distinguished member of our Council, represented the FIA/IABA together with our Secretary General, Dr. Louis A. Ferrand, Jr.

As a result of their exhaustive analysis, the Experts Round Table produced a document containing 13 determinations, 9 considerations and 9 recommendations. Of the latter, we should underscore numbers 2, urging the OEA/OAS member states to create a multilateral mechanism to follow up on the implementation of the convention; 5 urging the creation of a permanent secretariat with proper support staff and funding; 7 recommending that procedures to consult the private sector and civil society be implemented; and 8, proposing that an annual report be submitted to the General Secretariat of the OEA/OAS and to the public.

The FIA/IABA fully supports the above recommendations and is committed with the international community to continue doing its share, within our limited resources, to help our nations eradicate the cancer of corruption. Thank you.

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