

TREATY CREATING THE COURT OF JUSTICE OF THE CARTAGENA AGREEMENT

The Governments of Bolivia, Colombia, Ecuador, Peru and Venezuela,

PERSUADED by the fact that the Latin American economic integration, particularly that established in the Cartagena Agreement, is a common economic and social development goal; and bearing in mind the Declaration of Presidents of Andean Countries defined in Bogota on August 8, 1978;

AWARE of the fact that the strict abidance of commitments arising directly or indirectly from the Cartagena Agreement must be guaranteed so that the outcome of the integration meets the expectations of the peoples of the Member Countries;

CONVINCED of the fact that some of the difficulties encountered in the implementation of the Cartagena Agreement and the acts which implement it are due to the complex nature of its legal system;

CERTAIN of the fact that the stability of the Cartagena Agreement and of the rights and obligations arising from it must be safeguarded by a high-ranking judicial authority independent of the Governments of Member Countries and of the other bodies of the Cartagena Agreement, capable of ruling on community law, settling disputes arising from it and consistently interpreting it;

HEREBY AGREE to enter into the following Treaty to that effect, through their duly authorized Plenipotentiary Representatives, to create the

CHAPTER I

LEGAL SYSTEM OF THE CARTAGENA AGREEMENT

Article 1.- The legal system of the Cartagena Agreement comprises:

- a) The Cartagena Agreement, its Protocols and additional instruments;
- b) The Treaty set forth herein
- c) The Commission's Decisions; and
- d) The Board's Resolutions.

Article 2.- Decisions become binding for Member Countries as soon as they are approved by the Commission.

Article 3.- The Commission's Decisions shall apply directly in Member Countries from the date they are published in the Official Gazette of the Cartagena Agreement, unless a later date is mentioned therein.

When so stipulated in their text, Decisions must be incorporated into municipal laws by means of a specific deed stipulating the date of enforcement in each Member Country.

Article 4.- The Board's Resolutions shall become effective on the date and in the manner established in its Bylaws.

Article 5.- Member Countries are under the obligation to take the necessary steps to enforce the rules comprising the legal system of the Cartagena Agreement.

They are also hereby committed to refrain from adopting or employing any measure that opposes these rules or that in any way restricts their application.

CHAPTER II

THE CREATION AND ORGANIZATION OF THE COURT

Article 6.- The Court of Justice of the Cartagena Agreement is hereby created as a main body of the Agreement, with the organization and competence established herein.

The Court shall be based in the city of Quito, Ecuador.

Article 7.- The Court shall consist of five magistrates who must be natives of Member Countries, enjoy a good moral reputation and meet the necessary conditions for exercising the highest judicial role in their respective countries, or be highly competent jurists.

Magistrates shall enjoy full independence to exercise their duties. They must not undertake any other professional activity, paid or otherwise, except teaching; they shall also abstain from any actions that are incompatible with the nature of their role.

At the request of the Court, and by a unanimous vote, the Commission of the Cartagena Agreement is hereby authorized to change the number of magistrates and to create the position of Attorney General, in accordance with the number and authority to that effect established in the Bylaws referred to in Article 14.

Article 8.- The magistrates shall be appointed from three-members lists submitted by each Member Country and by the unanimous decision of the Plenipotentiary Representatives entitled to do so. The Government of the host country shall assemble the Plenipotentiary Representatives.

Article 9.- Magistrates shall be appointed for a period of six years, which shall be partially renewed every three years; they may only be re-elected once.

Article 10.- Magistrates shall each have a first and second deputy to replace them, in order, in the event of a definitive or temporary absence or due to an impediment or objection, in accordance with the provisions set forth in the Court's Bylaws.

Deputies must have the same qualities as the principal Magistrates. They shall be appointed on the same date, in the same manner and for the same period as the principal magistrates.

Article 11.- At the request of the Government of a Member Country and in accordance with the procedure set forth in the Court's Bylaws, magistrates may be removed only if they have committed a serious fault envisaged therein while exercising their role. To this end, the Governments of Member Countries shall appoint Plenipotentiary representatives who, once summoned by the host country, shall solve the case at a special meeting in which they must reach a unanimous decision.

Article 12.- At the end of their period, magistrates shall remain in office until such time as the person replacing them takes over.

Article 13.- Member Countries are under the obligation to grant the Court all the necessary facilities for the adequate fulfillment of its role.

Within the territories of Member Countries, the Court and its magistrates shall enjoy all the immunities acknowledged by international conventions, particularly the Vienna Convention on diplomatic relations, with respect to the immunity of records and official correspondence and all matters concerning civil and penal jurisdictions, with the exceptions established in Article 31 of the Vienna Convention mentioned above.

Magistrates, the Court Secretary and the officials appointed by the latter as international representatives in the host country, shall enjoy the immunities and privileges corresponding to their category. To this effect, the category of magistrates shall be equivalent to that of Chiefs of Mission; the categories of other officials shall be established by mutual agreement between the Court and the Government of the host country.

Article 14.- At the suggestion of the Board and within three months after the enforcement of this Treaty, the Commission shall approve the Bylaws that shall govern the Court's operations as well as the judicial proceedings to which the actions envisaged herein shall be subjected.

Amendments to the Bylaws shall be made by the Commission at the request of the Court.

The Commission's Decisions in this respect shall be approved with the affirmative vote of two thirds of its members, providing there is no negative vote.

It shall be up to the Court to issue its Internal Rules.

Article 15.- The Court shall appoint its Secretary and the essential staff required to fulfil its duties.

Article 16.- Each year, the Commission shall approve the Court's Annual Budget. To this end, the Court President shall promptly submit the corresponding draft Annual Budget.

CHAPTER III

THE COURT'S SPHERES OF COMPETENCE

Section One

ACTION OF NULLIFICATION

Article 17.- It is up to the Court to nullify the Decisions taken by the Commission and the Resolutions issued by the Board that violate the rules comprising the legal system of the Cartagena Agreement, even though deviation of power, at the request of either a Member Country, the Commission, the Board, individuals or companies under the conditions envisaged in Article 19 herein below.

Article 18.- Member Countries may only file an Action of Nullification for Decisions that were not approved with their affirmative vote.

Article 19.- Individuals or companies may file an Action of Invalidity against Decisions taken by the Commission or Resolutions issued by the Board that apply to them and cause them injury.

Article 20.- The Action of Nullification must be filed before the Court within a year following the date of enforcement of the Commission's Decision or the Board's Resolution.

Article 21.- The opening of an Action of Invalidation shall not encumber the effectiveness or enforcement of the impugned rule.

Article 22.- When the Court declares the total or partial annulment of the impugned Decision or Resolution, it shall indicate the effects of the judgement over time.

The body of the Cartagena Agreement whose act was declared invalid must adopt the provisions required to ensure the effective fulfillment of the judgement.

Section Two

Action of Noncompliance

Article 23.- When the Board considers that a Member Country has failed to fulfil the obligations emanating from the rules comprising the legal system of the Cartagena Agreement, it shall make its observations in writing. The Member Country must reply within a period compatible with the urgency of the case, which shall not exceed two months. Once the reply has been received or the term expired, the Board shall issue a reasoned opinion.

If in the Board's opinion the Member Country failed to fulfill the obligations mentioned above and continues to do so, the Board may request a verdict from the Court.

Article 24.- When a Member Country considers that another Member Country has failed to fulfill the obligations emanating from the rules comprising the legal system of the Cartagena Agreement, it may raise its claim to the Board stating all the background of the case, so that the Board can issue a reasoned opinion, following the procedure mentioned in the first paragraph of article 23 herein above.

If in the Board's opinion the Member Country failed to fulfill its obligations and continues to do so, the Board may request a verdict from the Court. Should the Board not file the action within the two months after the date of its judgement, the claiming country may appeal directly to the Court.

Should the Board fail to pronounce judgement within three months from the date the claim was submitted, or rule against the noncompliance, then the claiming country may appeal directly to the Court.

Article 25.- If the court rules finds noncompliance, the Member Country at fault shall take the necessary steps to execute the judgement within three months after notification.

Should this Member Country fail to fulfil the obligation mentioned in the previous paragraph, the Court, summarily and once the Board has issued an opinion, shall establish the limits within which the claiming country or any other Member Country may, totally or partially, restrict or suspend the advantages of the Cartagena Agreement benefiting the Member Country at fault. Through the Board, the Court shall inform Member Countries of its decision.

Article 26.- Judgements passed in actions of noncompliance can be reviewed by the same Court at the request of one of the parties, based on a fact that may have decisively influenced the result of the proceeding, providing the person requesting the review was not aware of that fact on the date the judgement was passed.

The claim for a review must be submitted within two months after the date the fact was discovered and, in any case, within a year from the date of the judgement.

Article 27.- In the event the rights of individuals or companies are affected by the failure of Member Countries to fulfill the provisions set forth in Article 5 herein above, they would be entitled to gain access to competent national Courts.

Section Three

Pre-judicial Interpretation

Article 28.- It is up to the Court to issue a pre-judicial interpretation of the rules comprising the legal system of the Cartagena Agreement, in order to ensure its uniform application in the territories of Member Countries.

Article 29.- National judges who are conducting a proceeding in which one of the rules comprising the legal system of the Cartagena Agreement should be applied, may request the Court's interpretation of such rules, providing the verdict is susceptible of appeals under municipal laws. Should the opportunity arise to pass judgement without having received the Court's interpretation, the judge must decide the case.

In the event the verdict is not susceptible to appeals under municipal laws, the judge, either at his own initiative or at the request of one of the parties, shall suspend the proceeding and request the Court's interpretation, providing the case is considered well-founded.

Article 30.- The Court's interpretation must be limited to specifying the contents and scope of the rules of the legal system governing the Cartagena Agreement. The Court may neither interpret the contents and scope of municipal laws nor determine the merits of matters concerning the proceeding.

Article 31.- The judge who is conducting the proceeding must adopt the Court's interpretation.

CHAPTER IV

GENERAL PROVISIONS

Article 32.- In order to comply with the Court's verdicts, no official approval or exequatur will be required in any Member Countries.

Article 33.- Member Countries shall not submit any controversy arising from the application of rules comprising the legal system of the Cartagena Agreement to any court, arbitration system or proceeding other than those contemplated herein.

Member Countries hereby agree to make use of the procedure established in Article 23 of the Cartagena Agreement only for controversies arising between any one of them and another Contracting Party of the Montevideo Treaty that is not a member of the Agreement.

Article 34.- The Board shall publish the Commission's Decisions, the Board's Resolutions and the Court's verdicts in the Official Gazette of the Cartagena Agreement.

Article 35.- When the Court considers it necessary in order to fulfil its role, it may directly address the authorities of Member Countries.

CHAPTER V

ACCESSION, EFFECTIVENESS AND NOTICE OF TERMINATION

Article 36.- This Treaty shall not be signed with reservation. States joining the Cartagena Agreement must also accede to this Treaty.

Article 37.- This Treaty shall become effective when the Member Countries signing it have deposited the respective ratification instrument in the Secretariat of the Cartagena Agreement Commission.

Article 38.- This Treaty shall remain effective as long as the Cartagena Agreement remains in force and cannot be terminated separately from the latter. The notice of termination of the Cartagena Agreement shall include that of this Treaty.

Both this Treaty and the Cartagena Agreement shall remain in force independently from the effective period of the Montevideo Treaty.

CHAPTER VI

TRANSITORY PROVISIONS

One.- The Action of Nullification referred to in Section One, Chapter III of this Treaty may be filed against Commission Decisions and Board Resolutions approved before the date of enforcement of this instrument, within a year from the above-mentioned date.

Two.- The Government of the Court's host country must assemble the Plenipotentiary representatives mentioned in Article 8 for the initial appointment of magistrates, within three months after the date of entry in force of this Treaty.

Three.- On the first occasion, two of the magistrates shall be appointed for three years and three for six years, according to lots costed immediately following the appointment.

IN WITNESS WHEREOF the duly appointed Plenipotentiary representatives, whose full powers had been found to be in good order and duly deposited, signed this treaty on behalf of their respective Governments in the city of Cartagena on the twenty-eighth day of May, nineteen hundred and seventy-nine.

For the Government of Bolivia: GARY PRADO SALMON

For the Government of Colombia: DIEGO URIBE VARGAS

For the Government of Ecuador: JOSE AYALA LASSO

For the Government of Peru: CARLOS GARCIA BEDOYA

For the Government of Venezuela: JOSE ALBERTO ZAMBRANO VELASCO