

Protocol of Cochabamba Amending the Treaty Creating the Court of Justice

The Governments of Bolivia, Colombia, Ecuador, Peru and Venezuela, bearing in mind the changes introduced by the Protocol Amending the Andean Subregional Integration Agreement (Cartagena Agreement), approved in Trujillo, Peru on March 10, 1996,

AGREE to sign the following Protocol Amending the Treaty Creating the Court of Justice of the Cartagena Agreement:

FIRST.- The Treaty Creating the Court of Justice of the Cartagena Agreement is hereby amended in accordance with the following text:

"TREATY CREATING THE COURT OF JUSTICE OF THE ANDEAN COMMUNITY

CHAPTER I ON THE LEGAL SYSTEM OF THE CARTAGENA AGREEMENT

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

- a. The Cartagena Agreement, its Protocols and additional instruments;
- b. This Treaty and its Amending Protocols;
- c. The Decisions of the Andean Council of Foreign Ministers and of the Commission of the Andean Community;
- d. The Resolutions of the General Secretariat of the Andean Community; and
- e. The Industrial Complementarity Agreements and any such other agreements as the Member Countries may adopt among themselves within the context of the Andean subregional integration process.

Article 2.- Decisions become binding for Member Countries as of the date they are approved by the Andean Council of Foreign Ministers or the Commission of the Andean Community.

Article 3.- Decisions of the Andean Council of Foreign Ministers or of the Commission and Resolutions of the General Secretariat shall be directly applicable in Member Countries as of the date they are published in the Official Gazette of the Agreement, unless they indicate a later date.

When their text so stipulates, Decisions must be incorporated into national law through an express act stipulating the date they will enter into effect in each Member Country.

Article 4.- Member Countries are under the obligation to take such measures as may be necessary to ensure compliance with the provisions comprising the legal system of the Andean Community.

They further agree to refrain from adopting or employing any such measure as may be contrary to those provisions or that may in any way restrict their application.

CHAPTER II ON THE CREATION AND ORGANIZATION OF THE COURT

Article 5.- The Court of Justice of the Andean Community is hereby created as its jurisdictional body, with the organization and jurisdiction established in this Treaty and its Amending Protocols.

The Court shall have its headquarters in the city of Quito, Ecuador.

Article 6.- The Court shall consist of five judges who must be nationals of the Member Countries, enjoy a good moral reputation, and fulfill the necessary conditions for exercising the highest judicial functions in their respective countries or be highly competent jurists.

The judges shall enjoy full independence in the exercise of their duties. They may not perform other professional activities, either paid or free of charge, except for teaching; they shall also refrain from any act that is incompatible with the nature of their position.

The Andean Council of Foreign Ministers, in consultation with the Court, may alter the number of judges and create the position of Advocate General, to such number and with such powers as may be established for that purpose in the Organization Law referred to in Article 13.

Article 7.- The judges shall be appointed by unanimous decision of the Plenipotentiary Representatives accredited for that purpose, from slates of three candidates each submitted by each Member Country. The government of the host country shall summon the Plenipotentiary Representatives.

Article 8.- Judges shall be appointed for a six-year term; they shall be renewed in part every three years and may be re-elected only once.

Article 9.- Judges shall each have a first and second alternate to replace them, in that order, in the event of their definitive or temporary absence or their impediment or recusal, as provided for in the Court's Organization Law.

Alternates must fulfill the same qualifications as the principals. They shall be appointed on the same date, in the same manner and for the same period as the principal.

Article 10.- Judges may be removed from office at the request of the Government of a Member Country, in accordance with the procedure established in the Court's Organization Law, only if in the exercise of their duties they commit a serious violation provided for in that Organization Law. To this end, the Governments of Member Countries shall appoint Plenipotentiary representatives who, upon being summoned by the host country, shall decide the case by unanimous vote, at a special meeting.

Article 11.- At the conclusion of their term of office, judges shall continue to perform their duties until such time as the person replacing them takes office.

Article 12.- Member Countries shall give the Court all of the necessary facilities for the proper fulfillment of its functions.

Within the territory of the Member Countries, the Court and its judges shall enjoy all of the immunities acknowledged by international Agreements, particularly the Vienna Convention on Diplomatic Relations, with respect to the immunity of their records and their official correspondence and in all matters concerning civil and criminal jurisdiction, with the exceptions established in Article 31 of the cited Vienna Convention.

The Court's premises are inviolable and its property and assets are immune from all judicial procedures, unless it expressly waives that immunity. That waiver, however, shall not be applicable to any executory measure.

The judges, the Court Secretary and the officials appointed by the latter as international civil servants, shall enjoy the immunities and privileges corresponding to their status in the territory of the host country. Accordingly, judges shall enjoy a category equivalent to that of chief of mission, while the categories of other officials shall be established by mutual agreement between the Court and the government of the host country.

Article 13.- The Andean Council of Foreign Ministers shall adopt any amendments to the Organization Law of the Court of Justice of the Cartagena Agreement, approved through Decision 184, at the proposal of the Commission and in consultation with the Court.

The Court shall be responsible for issuing its Internal Rules.

Article 14.- The Court shall appoint its Secretary and the necessary personnel to perform its duties.

Article 15.- The Court shall submit annual reports to the Andean Presidential Council, the Andean Council of Foreign Ministers, and the Commission.

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

CHAPTER III ON THE COURT'S SPHERES OF JURISDICTION

Section One On the Nullity Action

Article 17.- It is the responsibility of the Court to declare the nullity of Decisions of the Andean Council of Foreign Ministers and the Andean Community Commission, Resolutions of the General Secretariat, and the Agreements referred to in Article 1, paragraph e), if enacted or agreed upon in violation of the provisions comprising the legal system of the Andean Community, and even for the deviation of power, when requested by a Member Country, the Andean Council of Foreign Ministers, the Commission of the Andean Community, the General Secretariat, or natural or artificial persons whose rights or interests are affected as provided for in Article 19 of this Treaty.

Article 18.- Member Countries may bring a nullity action only in cases of Decisions or Agreements that were approved without their affirmative vote.

Article 19.- Natural or artificial persons may bring a nullity action against the Decisions taken by the Andean Council of Foreign Ministers or the Andean Community Commission, General Secretariat Resolutions, or Agreements that affect their subjective rights or their legitimate interests.

Article 20.- Any nullity action must be brought before the Court within a period of two years following the date of the Decision of the Andean Council of Foreign Ministers or of the Andean Community Commission, the General Secretariat's Resolution, or the Agreement in question becomes effective.

Even if the period provided for in the previous paragraph has expired, either of the parties to a litigation brought before national judges or courts could petition those judges or courts to declare that the Decision or Resolution is inapplicable to the specific case, provided that the said case is related to the application of that provision and that its validity is open to question, in accordance with the stipulation of article 17.

Upon the filing of the petition to declare inapplicability, the national judge shall submit an inquiry to the Court of Justice of the Andean Community regarding the legality of the Decision, Resolution, or Agreement; it shall then suspend the process until receipt of the Court's decision, which the national judge must apply in his/her sentence.

Article 21.- The filing of a nullity action shall not affect the effectiveness or validity of the provision or the Agreement being challenged.

The Court may, however, at the request of the petitioning party and after guaranteeing that obligation should it deem this necessary, through its final verdict, order the

temporary suspension of the execution of the Decision, Resolution or Agreement being challenged or other cautionary measures, if such were to cause or could cause the petitioner damage that is irreparable or difficult to repair.

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

The body of the Andean Community whose act was annulled shall adopt the required provisions in order to ensure that the judgement is effectively fulfilled within the period set by the Court.

Section Two On the Action to declare Noncompliance

Article 23.- If the General Secretariat considers that a Member Country has failed to comply with its obligations under the provisions or Conventions comprising the legal system of the Andean Community, it shall submit its observations to that Member Country in writing. The Member Country must respond to those observations within a period set by the General Secretariat in keeping with the urgency of the case, which shall not exceed sixty days. Once the reply has been received or the term has expired, the General Secretariat shall issue an administrative ruling, which must include its reasoning, regarding the state of compliance with those obligations.

If the General Secretariat decides that the Member Country has failed to comply with its obligations and it continues with the behavior that was the subject of the observations, the former shall request a decision from the Court as soon as possible. The Member Country affected by that noncompliance can join the General Secretariat in the action.

Article 24.- If a Member Country considers that another Member Country has failed to comply with its obligations under the provisions comprising the legal system of the Andean Community, it may take its claim to the General Secretariat, together with the respective background of the case. The latter may then take the necessary action to rectify the noncompliance within the period stipulated in the first paragraph of the previous article. If the response is received or the period elapses without any positive results, the General Secretariat shall, in keeping with its internal rules and within the following fifteen days, issue a ruling on the state of compliance with those obligations, which must include its reasoning.

If the General Secretariat decides that the Member Country has failed to comply with its obligations and the country continues with the behavior that gave rise to the claim, the General Secretariat shall request a decision from the Court. Should the General Secretariat fail to bring that action within sixty days after the date of its administrative ruling, the claimant country may appeal directly to the Court.

If the General Secretariat fails to issue an administrative ruling within sixty-five days after the date the claim was filed, or if its decision is that no noncompliance exists, then the claimant country may appeal directly to the Court.

Article 25.- Natural or artificial persons whose rights have been affected by the failure of a Member Country to fulfill its obligations may appeal to the General Secretariat and to the Court, following the procedure provided for in Article 24.

An action brought as stipulated in the foregoing paragraph excludes the possibility of simultaneous recourse for the same purpose to the procedure provided for in Article 31.

Article 26.- If a Resolution has been issued to verify the existence of a duty or a restriction or in the event of flagrant noncompliance, the General Secretariat shall, in keeping with its internal rules, issue an administrative ruling including its reasoning as

rapidly as possible, after which the General Secretariat or the Member Country affected may appeal directly to the Court.

Article 27.- Were the Court to decide that the Member Country has not complied with its obligations, the country at fault would be compelled to take the necessary steps to execute the judgment within a period of no more than ninety days after notification.

If that Member Country fails to fulfil the obligation stated in the previous paragraph, the Court, summarily and after hearing the opinion of the General Secretariat, shall establish the limits within which the claimant country or any other Member Country may restrict or suspend, in whole or in part, the benefits obtained by the Member Country at fault under the Cartagena Agreement.

In any case, the Court may order the adoption of other measures, should the restriction or suspension of the benefits of the Cartagena Agreement worsen the situation to be resolved or fail to be effective in that regard. The Court's Organization Law shall stipulate the conditions and limitations on the exercise of this function.

The Court shall communicate its decision to the Member Countries via the General Secretariat.

Article 28.- Before handing down its final judgment, the Court may, at the petition of the claimant party and after bonding should it deem this necessary, order the temporary suspension of the allegedly violating measure if this were to or could cause the claimant country or the subregion irreparable damage or damage difficult to repair.

Article 29.- Judgements handed down in actions to declare noncompliance may 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 that the party requesting the review was not aware of that fact on the date of sentencing.

The petition for a review must be submitted within ninety days after the date of discovery of the fact and, in any case, within a year after the judgement date.

Article 30.- A verdict of noncompliance issued by the Court, in the cases envisaged in Article 25, shall constitute legal and sufficient grounds for the party to ask the national judge for compensation for any damages or loss that may be due.

Article 31.- Natural or artificial persons shall have the right to appeal to the competent national courts, as provided for by domestic law, should Member Countries fail to comply with Article 4 of this Treaty in the event that the rights of those persons are affected by that noncompliance.

Section Three On Prejudgment Interpretation

Article 32.- It shall be the Court's responsibility to make a prejudgment interpretation of the provisions comprising the legal system of the Andean Community, in order to ensure their uniform application in the territory of the Member Countries.

Article 33.- National judges hearing a case in which one of the provisions comprising the legal system of the Andean Community should be applied or is litigated, may directly request the Court's interpretation of such provisions, providing that the verdict is susceptible to appeal under national law. If the time comes to pass judgement without having received the Court's interpretation, the judge must decide the case.

In all proceedings in which the verdict is not susceptible to appeal under national law, the judge, either at his/her own initiative or at the request of one of the parties, shall suspend the proceeding and directly request the Court's interpretation.

Article 34.- The Court's interpretation must be limited to specifying the contents and scope of the provisions comprising the legal system of the Andean Community, which refer to the specific case. The Court may neither interpret the contents and scope of national law, nor judge the facts in dispute. Even so, it may refer to those facts when essential for the requested interpretation.

Article 35.- The judge trying the case must adopt the Court's interpretation in his/her sentencing.

Article 36.- The Andean Community Member Countries shall ensure the fulfillment of the provisions of this Treaty and particularly the observance by national judges of the stipulations in this section.

Section Four On an Action due to Omission or Inactivity

Article 37.- Should the Andean Council of Foreign Ministers, the Andean Community Commission or the General Secretariat abstain from carrying out an activity for which it is expressly responsible under the legal system of the Andean Community, those bodies, Member Countries or natural or artificial persons whose rights and interests are affected as stipulated in Article 19 of this Treaty, may demand the fulfillment of those obligations.

If that request fails to be acted upon within the thirty following days, the petitioner may appeal to the Court of Justice of the Andean Community to hand down a ruling on the case.

Within thirty days after the appeal has been admitted, the Court shall issue the corresponding ruling based on the existing technical documentation, background of the case, and explanations by the body whose behavior is the subject matter of the action. That ruling, which shall be published in the Official Gazette of the Cartagena Agreement, should stipulate the form, way and period in which the body in question shall fulfill its obligation.

Section Five On the Arbitration Function

Article 38.- The Court is competent to settle such disputes as may arise as a result of the application or interpretation of contracts, conventions or agreements signed between bodies and institutions of the Andean Integration System or between the latter and third parties, via arbitration, should the parties so agree.

Private parties may agree to submit to the Court's arbitration any disputes that may arise as a result of the application or interpretation of aspects contained in private contracts that are governed by the Andean Community's legal system.

The Court shall issue its arbitration award, either in law or in equity, as the parties choose, and this decision shall be binding and unappealable and shall constitute legal and sufficient grounds for demanding its execution in accordance with the national legislation of each Member Country.

Article 39.- The General Secretariat is competent to settle via arbitration such disputes as private parties may submit to it with respect to the application or interpretation of aspects contained in private contracts that are governed by the Andean Community's legal system.

The General Secretariat shall issue its arbitration award in equity according to criteria of fairness and technical elements that conform to the Andean Community's legal system. Its decision shall be binding and unappealable, unless the parties decide otherwise, and

shall constitute legal and sufficient grounds for demanding its execution in keeping with the national legislation of each Member Country.

Section Six
On Labor Jurisdiction

Article 40.- The Court is competent to hear such labor disputes as may arise within the bodies and institutions of the Andean Integration System.

CHAPTER IV
GENERAL PROVISIONS

Article 41.- In order to be carried out, the Court's rulings and arbitration awards and the arbitration awards of the General Secretariat shall not require official approval or exequatur in any Member Country.

Article 42.- Member Countries shall not submit any dispute that may arise from the application of provisions comprising the legal system of the Andean Community to any court, arbitration system or proceeding whatsoever except for those stipulated in this Treaty.

The Member Countries or bodies and institutions of the Andean Integration System may submit to the stipulations of this Treaty in regard to their relations with third countries or groups of countries.

Article 43.- The General Secretariat shall publish the Official Gazette of the Cartagena Agreement, in which the Decisions of the Andean Council of Foreign Ministers and of the Andean Community Commission, the Agreements, the Resolutions and administrative rulings of the General Secretariat, and the Court's judgments shall be printed.

The Secretary General may, as an exception, order the publication of other legal acts, provided that they are of a general nature and that their contents are of interest to the Andean Community.

Article 44.- Should the Court consider it necessary for fulfilling its functions, it may communicate directly with the authorities of Member Countries.

Article 45.- The President of the Court shall coordinate meetings and actions with the highest-level judicial authorities of the Member Countries, in order to promote the dissemination and the perfecting of Community law, as well as its uniform application."

EFFECTIVENESS

SECOND.- This Amending Protocol shall become effective when all of the Member Countries signing it have deposited the respective instrument of ratification with the General Secretariat of the Andean Community and when the Amending Protocol to the Andean Subregional Integration Agreement (Cartagena Agreement), approved in Trujillo, Peru on March 10, 1996, has taken effect.

TRANSITORY PROVISIONS

THIRD.- The Andean Community Commission shall adopt the Decision containing the new codification of the Treaty Creating the Court of Justice of the Andean Community, whose draft shall be submitted to it by the Court.

FOURTH.- Such proceedings as may be underway before the Court and the General Secretariat on the date this Amending Protocol becomes effective shall be adjusted to its provisions..

IN WITNESS WHEREOF, this Amending Protocol to the Treaty Creating the Court of Justice of the Andean Community is signed in the city of Cochabamba, Bolivia on May 28, 1996.

SIGNED BY:

ANTONIO ARANIBAR QUIROGA
Minister of Foreign Affairs and Worship of Bolivia

RODRIGO PARDO GARCÍA-PEÑA
Minister of Foreign Affairs of Colombia

GALO LEORO FRANCO
Minister of Foreign Affairs of Ecuador

FRANCISCO TUDELA
Minister of Foreign Affairs of Peru

MIGUEL ANGEL BURELLI RIVAS
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