



Study Guide

Topic Area B

Possible Ways of Combating Corruption and alleviating its impact on human rights

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Study Guide Topic Area B: *Possible Ways of Combating Corruption and alleviating its impact on human rights* to be discussed at the Summit of OAS for its simulation during the 7th Rhodes Model Regional Co-operation to be held in Rhodes, October 12-16, 2016.

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Welcoming Letter

Dear delegates,

We would like to welcome you to the Organization of the American States and to congratulate you for participating in RhodesMRC 2016. We are convinced that you will have the opportunity to participate in fruitful debates, to exchange innovative ideas and to live an unforgettable experience! Our Committee will try to explore two interesting topics: firstly, the rapprochement of the relationship between OAS and the Republic of Cuba and the second one is about possible ways of combating corruption and alleviating its impact on human rights. For this reason, we are waiting for your

opinions, your dynamic presence, your negotiation skills, and your personality. And of course, we are more than eager to help you, to discuss with you, to learn from you.

We hope that this study guide will contribute a lot in your study and that it will be a strong motivation for further research. However, it is crucial to examine your country's policy in order to develop more solid arguments and to achieve a higher level of diplomatic dialogue and attitude. Mobilize your academic knowledge and your temperament and be ready for an exceptional journey!

We would like to thank you for your interest and we are looking forward to meeting you in October! RhodesMRC 2016 is going to be a unique experience! Take a stand!

Kind Regards,

Board of the Organization of the American States

Paschalis Paschalidis, Chairperson

Theodora-Iliana Papacharalampous, Secretary General

Introduction to the Committee¹

The Organization of American States is an organization of regional cooperation between the states of the American region. Its roots were held back to 1890 after the negotiations that took place during the First International Conference of American States, held in Washington, D.C. of the United States. This Conference decided the establishment of the "International Union of American Republics", the first regional cooperation institution of the world. The aim was to create a legal framework and the proper institutions in order to unite the American region and ensure the proper communication between the states.

The Union was transformed to the Organization of American States in 1948, when the member states met in Bogota of Colombia and signed the Chapter of OAS, which was entered into force in

¹ About the History of OAS you can search the following links: http://www.oas.org/en/about/who_we_are.asp and <http://www.usoas.usmission.gov/history.html>

1951. Four important amendments followed by the Protocol of Buenos Aires (1967), the protocol of Cartagena de Indias (1985), the Protocol of Managua (1993) and the protocol of Washington (1992). According to the article 2 of the Chapter of OAS²:

"The Organization of American States, in order to put into practice, the principles on which it is founded and to fulfill its regional obligations under the Charter of the United Nations, proclaims the following essential purposes:

- a) To strengthen the peace and security of the continent;
- b) To promote and consolidate representative democracy, with due respect for the principle of nonintervention;
- c) To prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the Member States;
- d) To provide for common action on the part of those States in the event of aggression;
- e) To seek the solution of political, juridical, and economic problems that may arise among them;
- f) To promote, by cooperative action, their economic, social, and cultural development;
- g) To eradicate extreme poverty, which constitutes an obstacle to the full democratic development of the peoples of the hemisphere; and
- h) To achieve an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the Member States."

Today, the organization consists by 35 members and has also approved the status of observers to 70 states. Its actions are based on four main pylons: democracy, human rights, security, and development.

² You can find the Chapter of OAS in the following link: http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm

Introduction to the topic

The fight against corruption is central to the struggle for human rights. Corruption has always greased the wheels of the exploitation and injustice which characterize our world. From violent ethnic cleansing to institutionalized racism, state actors have abused their entrusted powers to focus on gains for the few at great cost for the many. For instance, the TI Global Corruption Barometer (2007), which measures citizens' opinions and experiences of corruption, found that one in four citizens who came into contact with the police had paid a bribe. Corruption at this level can begin a chain of human rights violations that obstruct every step in the law enforcement and justice process. Similar clear linkages can be established between corruption and economic, social and cultural rights, as well the inter-dependence of violations among them.

Furthermore, it is of utmost importance the governments to adopt more efficient anti-corruption policies in order to create a respectful and protective space for the human rights. Without this prerequisite, the lives of activists are endangered and it is not feasible to ensure the resulting measures address the symptoms and causes of corruption with the goal to protect the rights of all individuals. Although there are many public campaigns and legal reforms to improve public administration, corruption is still in the spotlight. Therefore, the key to combat corruption is a collective initiative coordinated by different social groups.

Last but not least, as all forms of corrupt practice may in the long-run have an impact on human rights, it cannot be concluded mechanically that a given act of corruption violates a human right. This means that, to apply the human right framework usefully, it is necessary to distinguish corrupt practices that directly violate a human right from corrupt practices that lead to violation of a human right and from corrupt practices where a causal link with a specific violation of rights cannot be practically established.

Basic Definitions

- **corruption³**: a form of dishonest or unethical conduct against the nature of law by a person entrusted with a position of authority, often to acquire personal benefit.
- **political corruption⁴**: the use of powers by government officials for illegitimate private gain. The concepts of political corruption are the following: bribery, cronyism, plutocracy, economics of corruption, electoral fraud, legal plunder, nepotism, slush fund, plutocracy and political scandal.
- **police corruption⁵**: a specific form of police misconduct designed to obtain financial benefits, other personal gain, and/or career advancement for a police officer or officers in exchange for not pursuing, or selectively pursuing, an investigation or arrest.
- **judicial corruption⁶**: corruption related misconduct of judges, through receiving or giving bribes, improper sentencing of convicted criminals, bias in the hearing and judgment of arguments and other such misconduct.
- **bribery⁷**: the improper use of gifts and favors in exchange for personal gain.
- **human rights⁸**: moral principles or norms which describe certain standards of human behavior, and are regularly protected as legal rights in municipal and international law. They are commonly understood as inalienable fundamental rights "to which a person is inherently entitled simply because she or he is a human being," and which are "inherent in all human beings" regardless of their nation, location, language, religion, ethnic origin or any other status.
- **violation of human rights⁹**: the action of denying, and also actions of not upholding human rights standards, or non-willingness to protect such rights etc. It is, in a sense, to treat them as if they are less than human and undeserving of respect and dignity.

³ <http://www.corruptie.org/en/corruption/what-is-corruption/>

⁴ https://www.sciencedaily.com/terms/political_corruption.htm

⁵ https://en.wikipedia.org/wiki/Police_corruption

⁶ <https://en.wikipedia.org/wiki/Corruption>

⁷ <http://legal-dictionary.thefreedictionary.com/bribery>

⁸ <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

⁹ https://en.wikipedia.org/wiki/Human_rights

The phenomenon of corruption

It is clear that corruption has come to the forefront in the international agenda, due to the extent of the phenomenon and the transnational character that the problem has gradually acquired. Therefore, it has acquired a very complex and costly form¹⁰.

Regarding the reports on corruption in America¹¹, the situation has remained unchanged for several years and mainly in the public service. Moreover, it is important to say that in 2009 82, 35% of the countries in Latin America was below the average value of corruption. In particular, the 2009 Transparency International Global Corruption Barometer (GCB) provides the following picture of corruption¹²:

- Political parties are perceived as the most corrupt institutions, followed by the judiciary branches, legislative branches and the public sector;
- 10% of persons stated they had paid a bribe;
- There are significant differences within each sub-region. For instance, in Bolivia and Venezuela between 23 and 49% of persons stated they had paid a bribe whereas less than 6% of persons in Argentina and Panama had paid bribes;
- Bribes occur mainly when interacting with police forces;
- 5 to 6 of every 10 persons surveyed believe that private sectors in their countries resort to subornation to influence government policy, the law and regulations (state capture);
- 61% of persons believe the measures adopted by governments to address corruption are not effective whereas 26% believes they are.

The 2008 Bribe Payers Index (BPI)¹³ on international sources of bribery includes Mexico and Brazil, with indices of 7.4 and 6.6 respectively (where 10 represents an environment free of bribery). The areas in which bribes are most likely to be paid are public work contracts and construction, real estate, the mining industry and the oil and gas industries.

¹⁰ Zephyr Teachout, *Corruption in America: From Benjamin Franklin's Snuff Box to Citizens United*, 2014, Harvard University Press

¹¹ V.N. Viswanathan, *Corruption and Human Rights*, Allied Publishers Private Limited, 2012, India

¹² http://www.transparency.org/research/gcb/gcb_2009

¹³ http://www.transparency.org/research/bpi/bpi_2008

Furthermore, in 2004 the Casals & Associates consulting firm prepared a report on corruption in Latin America¹⁴ which listed the following weaknesses that lead it easier for corruption to be maintained:

- A civil service in transition towards professionalization and meritocracy.
- Confused and bureaucratic procedures and regulations.
- Oversight and control weaknesses.
- Inefficient control on the part of the legislative branches.
- Nonfunctional judicial systems.
- Social control weaknesses.
- Limited awareness of the issue, in conjunction with attitudes and opinions that do not reflect the extent of the problem.
- Insufficient political will.

To conclude with, the social structure of the Latin America favors the establishment of the corruption by weakening the rule of law. Moreover, the lack of transparency in the judicial system and the political corruption lead to the malfunction of the whole social system.

The violation of human rights

During the Cold War in Latin America, thousands of people were murdered or suffered torture due to the actions taken by the military governments of many countries in the area¹⁵. As a consequence, a plethora of activist groups protesting for the protection of human rights developed a significant action during the 1980s. It is of utmost importance to mention Human Rights Watch (HRW) that through its Annual Reports reflects the severe violation of human rights in many countries around the world. In particular, the 2014 Annual Report proves the great percentages of corruption, police abuse and torture in Latin America¹⁶.

¹⁴ Richard S. Hillman/John A. Peeler/Elsa Cardozo Da Silva, *Democracy and Human Rights in Latin America*, Praeger Publishers, 2002, USA

¹⁵ Edward Cleary, *Mobilizing for human rights in Latin America*, Kumarian Press, 2007, USA

¹⁶ <https://www.hrw.org/world-report/2014>

Furthermore, according to the aforementioned report, national security is used as an excuse to violate human rights. A characteristic example is the still-open Guantanamo Bay detention center by the US as a way to reassure its national security. However, the human rights are violated due to the practices developed inside Guantanamo Bay.

Another important case is that of Venezuela where the lack of expression consists a daily phenomenon, as well as the lack of transparency. On the other hand, Honduras suffers from the high police abuse and the majority of Latin America's countries from the corruption in the judicial mechanism.

To conclude with, the illicit drug trade favors the violation of human rights in the continent by corrupting institutions and weakening the rule of law. Therefore, HRW calls upon all governments of the Americas to decriminalize personal use and possession of drugs.

The role of OAS against corruption¹⁷

According to the OAS, public opinion surveys show a correlation between corruption and the lack of confidence many citizens have in their governments. Besides undermining trust on governmental institutions and politicians, corruption also affects citizens economically. Fighting corruption is a key aspect of the democratic exercise of power demanded under the Inter-American Democratic Charter, and thus, is a priority issue for all OAS member states¹⁸.

The Inter-American Convention against Corruption, adopted in March, 1996, in Caracas, Venezuela, is the first legal instrument in this field which recognizes the international reach of corruption and the need to promote and facilitate cooperation between states in order to fight against it¹⁹.

The purposes of the Convention are the following:

- To promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption;

¹⁷ <http://www.oas.org/en/>

¹⁸ http://www.oas.org/charter/docs/resolution1_en_p4.htm

¹⁹ *Supra* note 17

- To promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of the measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance.

Moreover, in 1996, the OAS Member States adopted the first international anticorruption legal instrument, and in 2002, they instituted the mechanism which evaluates its fulfillment²⁰. Since that time, the Inter-American Convention against Corruption and the Follow-Up Mechanism for its Implementation (MESICIC), have represented the principal cooperation instruments for preventing, detecting, punishing and eradicating corruption in the Americas.

The Anti-Corruption Portal of the Americas, developed by the Department of Legal Cooperation of the Secretariat for Legal Affairs, provides information regarding transparency in public administration and anticorruption cooperation, including developments within the MESICIC framework and technical cooperation efforts (left-hand menu), as well as links to the web pages of the member states' agencies with responsibilities in this area (right-hand menu)²¹.

i. The role of OAS on the protection of human rights²²

According to OAS, the term 'human rights' includes various rights, as the right to free speech, political participation and transparent justice. The Inter-American Commission on Human Rights (IACHR) contributed in the defense of freedom and justice by cooperating with States on the strengthening of their laws, as well as with institutions responsible for the human rights protection. The member countries of the OAS have affirmed their faith to the protection of democracy and human rights. The Commission's role is to prove that this faith –which derives from the countries' initiatives-, leads to an efficient protection practically.

Moreover, the Department of International Law of OAS promotes and develops international law by conducting a variety of activities related to the protection of human rights. Among others, it provides

²⁰https://www.google.gr/#q=%22legal+instrument,+and+in+2002,+they+instituted+the+mechanism%22&gws_rd=cr

²¹ <http://www.oas.org/juridico/english/fighcur.html>

²² *Supra* note 14

technical secretariat services on matters related to indigenous peoples, the organs, agencies, and entities of the OAS, as well as its committees and working groups and exercises general coordination within the General Secretariat.

Last but not least, OAS develops projects in Haiti on the protection of human rights. The main projects concern democratic governance, socio-economic development, human rights and justice, environmental protection, security and political institutions.

ii. The Inter-American Court of Human Rights²³

In November 1969, the Member States of the OAS adopted in Costa Rica the American Convention of Human Rights which entered into force on July in July 1978. Nowadays, twenty-five American States have ratified or adhered to the Convention.

In 1959, the Inter-American Commission on Human Rights was created and a year after the Inter-American Court of Human Rights in order to protect the human rights in the Americas. However, the first lawyers of the Court were elected in 1978, as the essential prerequisite was the American Convention to be entered into force, whereas the first hearing was held in 1979 at the OAS' headquarters in Washington D.C.

The Court is located in Costa Rica since 1978, after the approval of the relevant Costa Rican Government's offer by the OAS. Moreover, the new Rules of Procedure entered into force on November 2009 and are applicable to all cases brought before the Court.

Last but not least, the privileges and the immunities of the Court orientated to the protection of the judges, the staff and the persons that appear before it is secured in the Headquarters Agreement since 1981. The main goal of the aforementioned Agreement is to facilitate the normal flow of the activities that take place in the Court.

²³ <http://www.corteidh.or.cr/>

Case study

Concerning the human rights in America, it is crucial to describe the situation in the following States of this continent: USA, Brazil, Canada and Mexico. In these countries, the violation of human rights affects different social groups and the phenomenon presents different escalations²⁴. In particular:

USA

According to recent polls²⁵, in 2009, two out of three Americans acknowledge corruption is widespread throughout the U.S. government.

More specifically, political corruption is endemic to the U.S. system of government, operating at the federal, state and local levels. Pay-to-play politics is a bi-partisan game that operates at all levels of government.

A recent study by the University of Illinois at Chicago (UIC) found that between 1976 and 2013, the three top states in terms of public corruption convictions were New York, California and Illinois²⁶.

Furthermore, Gretchen Morgenson a New York Times business columnist, reflected on the 2008 mortgage crisis: “The giant accounting frauds that took down companies in the early 2000s, the corrupt brokerage firm research [i.e., Standard & Poor’s and Moody’s] that harmed so many investors, the Libor [London Interbank Offered Rate] rate-fixing scandal that cast doubt on the basis for trillions of dollars of fixed income instruments”²⁷. The big banks paid tax-deductible fines or got a slap-on-the-wrist; no major financier faced criminal prosecution.

According to a recent AP-NORC survey²⁸, “Confidence in Institutions,” people are deeply suspicious of financial institutions and major companies. “Americans’ confidence in banks and financial institutions has declined by half over the past 40 years,” it reports. No industrial sector is immune for charges of corruption, whether the Hollywood movie industry and the all-white Oscars; the

²⁴ Inter-American Yearbook on Human Rights, Martinus Nijhoff Publishers, 2015, The Hague-Netherlands

²⁵ <http://www.gallup.com/poll/185759/widespread-government-corruption.aspx>

²⁶ <http://www.counterpunch.org/2016/03/11/corruption-usa/>

²⁷ *Ibid*

²⁸ <http://www.apnorc.org/projects/Pages/HTML%20Reports/confidence-in-institutions-trends-in-americans-attitudes-toward-government-media-and-business0310-2333.aspx#labor>

pharmaceutical industry relating to fraudulent clinic trials or pay-offs to doctors; and the for-profit private prison racket at the federal and state levels.

Brazil

According to a Datafolha poll (in Portuguese) released on 11 April, 63% of respondents across the country said her government was "bad or terrible", with only 13% saying it was "good or excellent"²⁹. Experts analyzing this poll say this reflects voters' disillusionment with a deep recession and a corruption scandal involving the state-controlled oil company Petrobras. The investigation into the corruption scandal, dubbed Operation Car Wash, has implicated important figures from Ms Rousseff's Workers' Party, but also some of her opponents.

Since the Workers' Party was elected to the governance in 2003, a series of corruption scandals involving politicians from the governing party and also opposition parties take place in Brazil. The two biggest scandals are the 'Mensalao' and the 'Operation Car Wash'.

Mensalao³⁰: Name given to a corruption scheme in which public funds were illegally used to pay members of Congress in exchange for backing the government in crucial votes. The scandal first broke in 2005. By the time Supreme Court concluded its trial in 2012, 25 politicians, bankers and businessmen had been convicted, some of whom were top members of the Workers' Party.

Operation Car Wash³¹: Name given to an investigation launched in March 2014 due to allegations that Brazil's biggest construction firms overcharged state-oil company Petrobras for building contracts. Part of their windfall would then be handed to Petrobras executives and politicians who were in on the deal. Prosecutors allege that the Workers' Party partly financed its campaigns and expenses through these kickbacks.

²⁹ <http://datafolha.folha.uol.com.br/opiniaopublica/2016/04/1759676-reprovacao-a-gestao-dilma-recua-e-volta-a-nivel-pre-manifestacao.shtml>

³⁰ <http://www.bbc.com/news/world-latin-america-35810578>

Canada

In 2014, 1,181 cases of murders and disappearances of indigenous people were identified in Canada. This incident comes along with the fact that Canada is the base for the majority of the international exploration companies, whose actions regarding the protection of human rights are not monitored by the Canadian government when they go abroad. Therefore, in many cases there is a severe violation of human rights, especially of those of the vulnerable communities.

It is important to say also that there is a linguistic propaganda by the Canadian State in order to minimize the use of English and boost the use of French. As a consequence, the United Nations Human Rights Committee concluded that this practice is not in accordance with an international covenant on civil and human rights. “A State may choose one or more official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's choice”. Bill 101 itself was considered as adhering to international standards for human rights and the complaint was ultimately rejected as "non-admissible" while recommending an amendment to the law concerning outdoors advertising. The current law specifies that commercial outdoor signs can be multilingual so long as French is markedly predominant.

Mexico

Mexico's security forces have participated in widespread enforced disappearances since former President Calderón (2006-2012) launched a “war on drugs”. Members of all security forces continue to carry out disappearances during the President Enrique Peña Nieto administration (since December 2012), in some cases, collaborating directly with criminal groups.

The most characteristic incident related to this collaboration took place in 2014 in the rural town of Iguala Guerrero, where municipal police officers opened fire against three buses carrying 90 students. As a result, a few people died and injured while others disappeared and found dead after some months.

The government has pursued potentially promising initiatives to find people who have gone missing, but they have produced limited results. In 2013, it created a unit in the Federal Prosecutor's Office to investigate disappearances, and locate people who had gone missing. As of August 2014, the unit had found 87 people.

Moreover, since 2006, there are 9,000 complaints of abuse by the army, and issued reports in over 100 cases in which it found that army personnel had committed serious human rights violations. Another important issue is the crowded and unhygienic prisons, where corruption and violation of human rights are present.

Conclusion

The awareness that these forms of exercising and influencing power and administration were illegitimate and to be combated, could only emerge with the development of the modern State – a State in which an impartial bureaucracy is called upon to apply the law equally and in which all public officials are required to act in the public interest, not in the interest of their family or ethnic group. In a patrimonial State in which the political and administrative positions are primarily intended to generate income, the idea of corruption has no place. In that sense – as already indicated at the outset – the modern State governed by the rule of law and the concept of corruption are inextricably linked. This also explains why anti-corruption is difficult in regions of the world where this understanding of the State and the associated institutional safeguards are weak.

Only if this insight proves to be universally applicable can a global anti-corruption strategy be successful. And the “individualized” conception of corruption – namely the insight that corruption interferes with the rights of each individual citizen – can make a greater contribution to this universalization than the invocation of an anonymous general interest and an abstract conception of public office.

Points to be addressed

- How can the private sector be motivated to combat corruption?
- Bearing in mind the differences between the States in the Americas, what should be the approach of the OAS to the corruption related to political and social structures?

- What is the role that the Inter-American Court of Human Rights can play in the fight against corruption and more effective respect towards human rights?
- Are sanctions required for making sure that the corruption and the violation of human rights will be eradicated?
- What more should be done to ensure the protection of human rights in the Americas taking under consideration the recent reports of the international non-governmental organizations?
- What was the impact of the corruption scandals to the protection of human rights?
- Is the decriminalization of personal use and possession of drugs necessary for the efficient protection of human rights in the Americas? Or to the contrary should be any restrictions?

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