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Dear Mr. President:

We write in order to clarify a misapprehension of our statements cited in your November 13 address to the Organization of American States, in the Lecture Series of the Americas, on the topic, "The OAS: Democracy and Human Rights."

You referred to a November 5 event organized by the Inter-American Dialogue on the topic, "Reforming the Human Rights System: Challenges and Possibilities." You stated:[1]

> "In this event, a group of experts of the University of Notre Dame, among whom were professors Paolo Carozza and Doug Cassel, discussed what they called the situation of crisis currently affecting the Inter-American human rights system; the need to carry out a thorough reform; and the aptness of the current moment to discuss in depth the possible changes."

You also criticized the August 28, 2014 Judgment of the Inter-American Court of Human Rights in the *Case of Expelled Dominican and Haitian Persons vs. The Dominican Republic*, characterizing it as "a clear violation of the sovereignty of our country" and asserting that "the Dominican State is impeded from accepting and obeying this decision …" You opined that there was "an abuse of authority on the part of the Court in its decision, which unfortunately delegitimizes the Court and leads to a crisis of confidence on the part of States …"

You added that the "imposition of requirements by the Commission and Court, which exceed the mandate given by the States, will only produce a lack of legitimacy, credibility and confidence in these institutions, non-compliance with their decisions, and eventually the withdrawal by governments from submission to their respective competencies." In conclusion

[1] All translations in this letter from your Spanish text are ours.

you indicated that the OAS "finds itself compelled, once again, to rethink its objectives [and] to redesign its institutions …"

We are compelled to clarify, by means of this letter, that we do not share your analysis, or your conclusions, and that our remarks in the Inter-American Dialogue event were contrary to your contentions.

The analysis we presented at the Inter-American Dialogue was for the purpose of strengthening the Inter-American System of Human Rights, and not to diminish it with threats of noncompliance with judgments and withdrawal of States from the System. The four topics we addressed during our remarks were: the relationship between the Inter-American Court and national courts, in particular the doctrine of "control of conventionality"; the need to build bridges within the Inter-American System between the English-speaking countries, and their legal cultures, and those of the Spanish, Portuguese and French-speaking countries; efficiency in processing cases before the Commission and Court; and the need for ever more transparent and inclusive processes for the election of well-qualified commissioners and judges of the Commission and Court.

None of the topics we addressed had the objective of weakening the Inter-American System of Human Rights. If the System is currently experiencing moments of crisis, that is largely due to the posture of some governments to attack it whenever they lose a case before the Commission or Court.

We do not suggest that the System functions perfectly for the protection of human rights in the hemisphere, but we recognize as you did in your lecture that, "As a result of this system, the countries of the region have achieved important advances in matters of human rights." In order to maintain and expand these advances, the solutions for the current challenges should be directed to strengthening, not weakening, the regional System.

You consider that the Inter-American Court ruled "erroneously" in the case of persons expelled from the Dominican Republic, notwithstanding the fact that the vote of the judges was unanimous in ruling against the State. In any case, you have the full right to express your own legal opinion; even so, it is very different to assert that a State has the right to disobey a judgment because it does not agree with it. If that were so, a judicial system could not function, because every party dissatisfied by a judgment could transform itself into its own court of appeal.

Such a proposition violates, not only the principle that no one can be the judge of his own case, but also the express commitments made by States when they exercised their sovereignty to ratify the American Convention on Human Rights and accept the contentious jurisdiction of the Inter-American Court. Article 67 of the Convention provides: "The judgment of the Court shall be final and not subject to appeal." Article 68.1 stipulates: "The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." There is no exception for decisions not to the liking of a party.

We must add that we also do not share your analysis of the supposed error in the Judgment of the Inter-American Court. While this brief letter is not the place to debate fully the evidence and legal reasoning of the case, we invite any interested reader to consult the complete Judgment, and to compare it with the version – incomplete, to say the least – presented in your lecture. Only by way of example, we mention the following:

- The constitutional and other provisions you cite were adopted after the birth of the petitioner victims in the case; nonetheless, the authorities applied them retroactively to the victims;
- Despite your assertion that the new regulations on citizenship do not permit anyone to become stateless, the authorities either destroyed the documents of the victims or did not permit the victims to retrieve and present their documents before being expelled; and
- Despite your assertion that there was no discrimination, the evidence in the case showed that the abusive practices were applied disproportionately to Dominicans of Haitian descent.

Many other points could be cited in order to evaluate the case fully and impartially, but we mention these simply to illustrate that the Judgment is, to say the least, more complex than the version offered in your lecture.

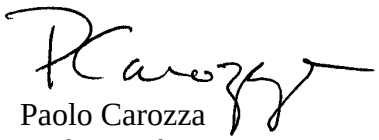
You contend that only 30 member States of the United Nations "apply the system of *jus solis* with no conditions, which means that 164, among which are the Dominican Republic, Haiti and Costa Rica, have chosen not to extend automatic recognition of citizenship to persons born on their respective territories." However, in a sample of the constitutions of 25 nations of the Americas, the great majority grant citizenship to every person born on their territory, with the only exceptions, and only in some countries, being children of foreign diplomats or children whose parents are citizens of enemy nations.[2] Among the 25 countries, the Constitution of the Dominican Republic is the only one that expressly denies citizenship to the children of foreigners who "reside illegally" in the national territory – and this provision, following legislation and judicial interpretations beginning in 2004, was adopted only in 2010.

In short, the fundamental point is this: the Inter-American System is an indispensable safeguard for human rights. Like any human institution, it deserves constructive criticism on occasion. However, exaggerated or destructive criticisms are never appropriate.

[2] Bolivia, Brazil, Chile, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay, United States and Venezuela. Other constitutions, for example, those of Barbados, Cuba and Suriname, delegate this topic to national legislation. (Source: Political Database of the Americas, Georgetown University.)

We remain at your disposition to engage in dialogue over these matters at any time you deem convenient, and to continue reflecting on ways to strengthen the Inter-American System.

Cordially,



Paolo Carozza
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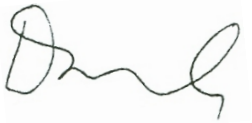

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