ANALYSEN UND BERICHTE

The Community of the Portuguese Speaking Countries (1)[1]

Subsidies for the Definition of the Identity of a Novel International Organization

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Introduction

It is well known that the concept of *community* was established in the nineteenth century by F. Toennies in his *Gemeinschaft und Gesellschaft*[2] in such terms that even today it has resisted the passage of time. In opposition to *society*, an artificial grouping, fruit of a deliberate creation, determined rationally by the calculation of means more adequate to the pursuit of certain ends (*Kurwille*), the great German sociologist underlined that *community* is a spontaneous aggregation, an expression of a natural organic will (*Wesenwille*), the elements of which are integrated in the group via the emotional ties they share.

Another important contribution from the romantic century is that of Durkheim who, in 1893, in regard to the concept of *solidarity*, distinguished *mechanical solidarity*, which is based on affinities or complicities and that unites people in the sharing of ideas, beliefs and inclinations, from *organic solidarity*, founded on the cold division of labour and that mirrors the differences between the members of a group united by the necessity or the fatality of interdependence. The concept of *mechanical solidarity*, one could say, is the rationale behind the concept of *community*[3].

Both formulae point toward a *hard nucleus* of characteristics that constitute a *community*: a form of diverse social intercourse, founded on a feeling of a particular solidarity or complicity which is not based on cold rational calculations or interests but on durable *ideals* or *values* and *common ends*, in a sign of *identity* which is also a *program of action*.

1 The second part of the article will be published in the coming issue of VERFASSUNG UND RECHT IN ÜBERSEE.

2 See *F. Toennies,* Gemeinschaft und Gesellschaft, Leipzig, 1887.

3 See *Durkheim,* De la division du travail social, Paris, 1978, pp. 35, ff.

May the legal-institutional reality of the Community of Portuguese Speaking Countries[4], created two years ago, on the 17th of July, 1996, be worthy of the term of community, even in light of the hesitations that determined the repeated delay of its foundation?[5] And what type of community would this be? Is it namely following any model?

This is what we will seek to ascertain, first by addressing the constituent texts, which are the Constituent Declaration of the Community of Portuguese Speaking Countries and the Statutes of the Community of Portuguese Speaking Countries, and where we will try to identify the properties of the entity, to define and characterize it. Secondly, we will try to contrast it with existing possible models, namely that of the Commonwealth[6], since this is also, essentially, a *community of language* and not a geographically determined Organization and has also been the inspiration for other, less fortuned adventures, such as the Union and Francophone Community[7] and the Dutch-Indonesian Union[8]. Is the CPLP different from or similar to the Commonwealth? Even if we conclude in favour of the former hypothesis, this '*démarche*' will always be useful, since the contrast or the "negative" can also serve to define the image of the entity. And finally, we will try to verify if, at another level, it is not possible to obtain inspiration or orientation for the collective project that the CPLP represents, and namely for its alleged shortcomings, whether at the organizational dimension or at the one of its internal material program, and also in its dimension of relation. What seems certain from the very start, however, is that the answers that we may obtain will never be more than the beginning of an answer, since this new international entity is

4 Hereinafter we will use the abbreviation by which the Organization is known in the Portuguese speaking world: CPLP (standing for "Comunidade dos Países de Língua Portuguesa").

5 In truth, the foundation of the CPLP was delayed twice, the first time on the 2 nd of June of 1994 and then again on the 20 th of July of 1995. The first false start and subsequent postponement was due to an unfortunate incident: the death of a family member of the Brazilian President that impeded his presence at the constituent ceremony and which determined a chain reaction by the Presidents of Angola, Guinea-Bissau, Mozambique and S.Tomé and Príncipe who also cancelled their attendance; the second denoted a persistent uneasiness in the relations between some of the Portuguese speaking States. With respect to this process, which began in 1984, when the then Minister of Foreign Affairs of Portugal, Jaime Gama, presented the idea in Praia, Cape Verde, see the information collected by *J. Salazar Campos,* "A Comunidade Lusófona e a sua possível institucionalização", in ISCSP, Conjuntura Internacional, 1996, especially pp. 315-330.

6 Fundamental sources of information on the subject continue to be *R. Y. Jennings,* "The Commonwealth and International Law", BYBIL, 1953, vol. 30, pp. 320-351; *Jennings,* Problems of the New Commonwealth, 1958; *Fawcett,* The British Commonwealth in International Law, 1963; *Verzijl,* International Law in Historical Perspective, 1969, vol. 2, pp. 207-269; *Morvay,* Souveranitätsübergang und Rechtskontinuität im Britischen Commonwealth, 1974; *D. Judd and P. Slinn.* The Evolution of the Modern Commonwealth, *1982; W. Dale,* The Modern Commonwealth, 1983; *A.J. Groom and P. Taylor (eds.),* The Commonwealth in the 1980s: Challenges and Opportunities, 1984; *Jennings and Watts (ed.),* Oppenheim's International Law, vol. I, 9th ed., 1993, pp. 256-266.

7 See *A. Bleckmann,* "Decolonization: French Territories", *EPIL,* vol. 10, pp. 987-989.

8 See in this sense, *L. C. Green,* "British Commonwealth", *EPIL,* vol.10, p. 35.

just now taking its first steps. Furthermore, such answers will surely be conditioned by the perspective that we use (predominantly legal) although we will try not to ignore the warnings given by the theory of International Organizations which underline that these entities can only be understood through an appeal to a much more plural method[9].

I. The properties of the CPLP – or what the founding texts tell us about it

§ 1. The Structure: an International Organization

The first element that one must highlight is that the CPLP must definitely be considered as an *International Organization*, that is, a reality which complies with the intensive criteria that constitute the definition given by Bettati[10], amongst many others[11]: an association of States, created by a treaty, with its own permanent organs, that pursues common ends, affirming a diverse legal personality from that of the member States.

It participates therefore in a movement of the "*Organization of the World*", as Inis Claude[12] has called it, or what we could call the institutional pulsation of the International Community and of International Law that began in the middle of the nineteenth century, first with the fluvial commissions of the Rhine and the Danube, that then continued with the Administrative Unions at the end of the century, which intensified after World War II in face of the necessity to remove the shadow of the war[13] and that, in the sequence of the Cold War and the ensuing decompression of the previously suffocating bipolarity, has sprung up again as what some call a "*new regionalism*"[14].

9 *Vide Virally,* L'Organisation Mondiale, 1972, pp.23-29.

10 See *M. Bettati,* Le droit des organisations internationales, Paris, 1987

11 One may also see, *Köck / Fischer,* Grundzüge des Rechts Internationaler Organisationen, 1981; *I. Seidl-Hohenveldern,* Das Recht der Internationalen Organisationen, einschließlich der Supranationalen Gemeinschaften, 1984, 4th ed.; *A. Marques Guedes,* Direito Internacional Público, 1985, Mimeo; *A. Azevedo Soares,* Lições de Direito Internacional Público, 1988, 4th ed., p. 373; *H. Schermers and N. Blokker,* International Institutional Law, 1990, p. 23; *A..Muller,* International Organizations and their Host States, 1995, p. 4; *A. Gonçalves Pereira and Fausto de Quadros,* Manual de Direito Internacional Público, 1993, 3rd. ed., pp. 411, ff.; *Jorge Miranda,* Direito Internacional Público I, 1995, 2nd ed., pp. 266 ff.

12 *Inis L. Claude,* Swords into Plowshares, London, 1964, p.3.

13 See, in a more summarized way, *Volker Rittberger,* "Internationale Organisationen, Theorie der", in *R. Wolfrum (Hrsg.),* Handbuch der Vereinten Nationen, München, 1991, p. 363 or *Epping,* "Internationale Organisationen", in *K. Ipsen,* Völkerrecht, 1990, 3rd ed., pp. 348-349.

14 See *Louise Fawcett and Andrew Hurrell,* Regionalism in World Politics, Oxford, 1995.

1. An association of States

And indeed the CPLP starts by being an *association of States* which presently congregates the Seven founders: Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal and São Tomé and Príncipe. What is immediately notable in this association and especially in the present times, is that the elements of aggregation are not regional, or only are in the sense that we can speak of a "*regionalism of identity*", since the State Members are located in three different continents. Furthermore, one may note that this club of States[15] is not necessarily definitive but rather open to a new composition. This composition is conditioned[16] by a formal criterion foreseen in § 2 of article 6 (a "*unanimous decision of the Conference of Heads of State and of Government*") and by three material criteria: the quality of a State (with which the CPLP excludes[17] the Timorese, Goese and Macaense people as well as other Portuguese speaking communities), whose official language is Portuguese and the adhesion without reservations of the State to the Statutes (§ 1 article 6).

In truth, and if we concern ourselves now, exclusively, with the Timorese, Goese and Macaense, there is a fundamental difference between the Timorese and their territory, on the one side, and the Goese and Macaense as well as their territories, on the other: It resides in the fact that a (global) international legal status is not recognized to the latter ones.

1.1. The Timorese People

Timor's specificity derives from the persistent inclusion in the *list of non-self-governing territories*, a fact which has been recently recalled by the recent ruling of the International Court of Justice when it stated that the General Assembly "reserves to itself the right to determine the territories which have to be regarded as non-self-governing for the purposes

15 This is a typical closed International Organization, not an universal one. On the distinction, see *R.-J. Dupuy,* "Etat et organisation internationale", in *R.-J. Dupuy (ed.),* Manuel sur les organisations internationales, Dordrecht / Boston / Lancaster, 1988, p.14.

16 On general criteria of membership or participation in international organizations, see *F. Morgenstern,* Legal Problems of International Organizations, 1986, p. 46 or *C. Archer,* International Organizations, 1992, 2nd ed., p. 45.

17 But nothing impedes, one can note, that a status of observer (or even another formula such as the one of associate) be thought of in order to permit the inclusion of these (and even other) Portuguese speaking communities (the communities of Portuguese-Speaking emigrants scattered all over the world) from whom it can be expected commitment to furthering the aims and purposes of the Organization and the effectiveness of its mission (for these and other alternatives to full participation in the Organization and the respective advantages and shortcomings, see *H.G. Schermers,* "The International Organizations", in *M. Bedjaoui (ed.),* International Law: Achievements and Prospects, 1991, pp. 81-83).
It is even possible, and may be actually imperative, to conceive the status with *variable contents*, thus corresponding to realities which are also diverse.

of the application of Chapter XI of the Charter" and that it "has treated East Timor as such" or "the competent subsidiary organs of the GA have continued treating East Timor as such to this day". This quality of non-self-governing territory was even supported by the Court when it, most originally, and, no doubt, on purpose, decided to write "Territory of East Timor" with a capital 'T'.

It is also a consequence of Portugal being its '*de iure*' Administering Power, in spite of the fact that Timor has been occupied by Indonesia ever since 1975. Indonesia is thus, its mere '*de facto*' administrator. In spite of claiming to have integrated Timor in the Republic in 1976 by annexation or by a referendum, the international community never recognised this alleged development and insists that a valid act of self-determination take place.[18]

1.2. The Goese People

The Goese are related to a territory (more rigorously, the territories corresponding to the former "Portuguese State of India", *i.e.* Goa, Damão and Diu, as well as the enclaves of Dadrá and Nagar-Aveli) that, apparently, and in spite of having been taken by India by force and an act of self-determination not having occurred (as the territory had been previously authoritatively qualified as non-self-governing by Resolution 1542 (XV) of the General Assembly and thus its people was entitled to the bringing about of such act), as well as, to say the least, an ambiguous ICJ's decision following Portugal's contention of India's denial of the right of passage over Indian territory and the occupation of the enclaves of Dadrá and Nagar-Aveli by Indian nationalist groups,[19] Goa seems to be internationally recognized as part of the Indian territory.

[18] For Indonesia's highly significative variance in the argumentation trying to legitimize Timor's integration, *vide R. Clark,* "The Decolonization of East Timor and the United Nations Norms on Self-Determination and Aggression", YJWPO, 1980, pp. 2 ff. For the Case and the question of East Timor in general, both today as well as in its historical dimension, see *Miguel Galvão Teles and Paulo Canelas de Castro,* "Portugal and the Right of Peoples to Self-Determination, AVR 1996, vol. 36/1, pp. 37-46 and the bibliography there cited.

[19] For the historical and legal recollection of this process, see, apart from our study, in AVR 1996, particularly, pp. 19 and 21-22; UN Monthly Chronicle, 1972, vol. 9, nº7, p. 36; *Fausto de Quadros,* "Decolonization: Portuguese Territories", EPIL, vol.10, p. 94; *F. Gonçalves Pereira,* Portugal, a China e a "Questão de Macau", 1985; *Vasconcelos de Saldanha,* "Alguns aspectos da "Questão de Macau" e o seu reflexo nas relações luso-chinesas no âmbito da Organização das Nações Unidas", RJM/MLJ, 1995, vol. II/3, pp. 7-72. See also the ICJ's ruling in *Right of Passage over Indian Territory (preliminary objections),* ICJ Reports, 1957 and (merits), ICJ Reports, 1960.

Indeed, Goa's annexation was very rapidly recognized in the UN's political organs by a majority of States and Portugal's objections were dismissed.[20] In the same vein, the vast majority of the non-Portuguese doctrine of international law which analysed the case also seemed to be able to find arguments in support of this result, even if founded on disparate reasoning.[21]

1.3. The Macaense people

As for the Macaense, it must be first noted that these descendants from the Chinese and the Portuguese are a minority in a fluctuating population which is, in the vast majority, composed of Chinese nationals who come and go constantly and live, so to say, a life of their own, thus not really suffering the impact of the contact with another political or civic culture. Second, one must also recall that the territory of Macau was originally also part of the Resolution 1542(XV) by which the institutionalised international community, according to the law itself helped to develop, apparently recognized a right to self-determination. After further consideration though (which was closely connected with the attribution of China's seat in 1972 to the People´s Republic of China), and in an implicit recognition of the Republic of China's constant thesis that, in spite of being administered by Portugal, the territory was really part of China, the territory was, so to say, disqualified, *i.e.* the mention to the territory was excluded from the list of Portugal's non-self-governing territories where an act of self-determination had to take place.

Portugal, on its side, ceased to integrate Macau in the definition of its territory with the Constitution of 1976 – article 5 '*a contrario*' – and even qualifies it as a territory "*under Portuguese administration*" – art. 292 § 1.[22]

20 See *H. Wilson,* International Law and the Use of force by National Liberation Movements, 1990, p. 70.

21 One may, for instance, compare *R. Higgins,* The Development of International Law through the Political Organs of the United Nations, 1963, pp. 187-188 and 221; *Wright,* "The Goa Incident", AJIL, 1962, vol. 56, pp. 617-621; *Brownlie,* International Law and the Use of Force, 1964, pp. 349, 379-383 and *Crawford,* The Creation of States, 1979, pp. 112-113, 319, 370). Portugal itself came to recognize India's sovereignty over Goa in the Treaty of the 31st of December 1974 (see *UNTS*, 982, p. 153). But some voices remain critical: *v.g. Fausto de Quadros,* "Decolonization: Portuguese Territories", EPIL, vol. 10, p. 96.

22 See also the present Organic Status of Macau, whose art. 2 is symptomatically different from the three previous statuses, and, in the doctrine, *J. Miranda,* Manual de Direito Constitucional, 1991, 3rd ed., p. 303 and vol.II, p. 46; *Gomes Canotilho and Vital Moreira,* "A Fiscalização da Constitucionalidade das Normas de Macau", RMP, 12/48, pp. 9 ff.; *Vitalino Canas,* "Relações entre o ordenamento constitucional português e o ordenamento jurídico do Território de Macau", BMJ, 1987, nº 365, pp. 69 ff.; and *Gomes Canotilho and Vital Moreira,* Constituição da República Portuguesa. Anotada, Coimbra, 1995.

Moreover, Portugal and China came to agree explicitly on this understanding in article 1 of the Treaty "Joint Declaration of the Government of the Portuguese Republic and of the Government of the Popular Republic of China on the Question of Macau" which they signed on the 13th of April of 1987. The situation was "clarified" later, when, after the resolution of Hong Kong's case (and most obviously bearing it in mind), Portugal and China came to agree that Portuguese administration would cease on the 20th of December of 1999 at which time Chinese full sovereignty and administration would resume, but also that the territory would constitute the Special Administrative Region of Macau, benefiting from the principle "*one country, two systems*" (see article 31 of the Constitution of China) and enjoying a *particular constitutional stance* and *degree of autonomy*. This remarkable envisaged autonomy goes so far as to integrate independent legislative, judiciary and executive powers, apart from economic and financial autonomy and a specific regime of protection of human rights. From its ambit are only excluded the powers of definition of the external relations and of the security of the Region, which remain a prerogative of the Central Popular Government of the Republic of China – see Joint Declaration, articles 2 (2) and 2 (7), as well as Annex I, and articles 2, 5, 12, 13 and 135, and following of the Basic Law of the Region, which was already approved but which will enter in force only on the 20th of December of 1999.[23] Furthermore it will enjoy as well from a *special international status*: article 136 of the Fundamental Law, for instance, in terms similar to what had already been said in the Joint Declaration, foresees that the Region, with the special designation "*Macau, China" will be able to maintain or develop on its own relations, celebrate and apply conventions with other countries, regions and International Organizations*" in the matters for which it is internally autonomous.[24] This special status is legally assured for a period of time of fifty years after the reintegration in China.

In spite of the important differences between Timorese and Timor, Goese and Goa, Macaense and Macau, there is also an equally important common element between these three cases: They are, to say the least, *special situations* of what some described as the *rocky end of an old empire* and also of the *application* by the international community of its *doctrine of self-determination*. The fact remains that, in all these three cases, which *originally* deserved a *common consideration* and *solution* by the international community, as well as an *obstinate position* of Portugal prior to 1974 not to decolonise in an era of self-

[23] On the subject, see *M. Trigo,* "Por um lugar para Macau", Communication to the 1st Colloquium of the *Ius Gentium Conimbrigae*, 1997, *Mimeo*, pp. 6-8; *E.Cabrita, "*Tradução jurídica – instrumento nuclear da autonomia jurídico-política de Macau e condição necessária para o cumprimento da Declaração Conjunta", *Revista Administração*, 1992, nº16, vol.V/2, pp.343-389.

[24] On this specific point, see *G. Cabral,* "O acesso de Macau ao direito internacional convencional na perspectiva do Estatuto Orgânico", RJM/MLJ, 1996, vol. III/2, pp. 91-118 and *E. Cabrita,* "Limites de natureza internacional e constitucional à autonomia da RAEM", Mimeo).

determination,[25] there was *not* a (genuine and internationally recognized) *act of self-determination.*

And even if, probably, it is admissible to sustain that the question does not have to be raised for the other cases, the same cannot be said in the case of Timor, where Portugal, after 1974, started to implement a process of decolonisation interrupted by Indonesia's invasion and alleged annexation[26] and especially in relation to which the international community took clear positions in order to enable its fulfilment. [27]

In any case, the fact that, in all these three territories, there subsist – in spite of the variable local circumstances – important populations with a *special identity* (language, culture, beliefs, history), and certainly an identity different from the ruler, the recognition of such a difference and even the accordance of *special forms of treatment* seem to be imperative. These would come naturally, first of all, on the part of the CPLP and its member States. It is, however, to be hoped, that this recognition will not remain restricted to the CPLP.

25 On Portugal's stance prior to 1974, see the bibliography quoted in *M. Galvão Teles and P. Canelas de Castro,* "Portugal and the right of peoples to self-determination", AVR 1996, to which should now be added the work of *A. Duarte-Silva,* "O litígio entre Portugal e a ONU (1960-1974)", Análise Social, 1995, vol. XXX, n°130, pp. 5-50.

26 See *A. Moreira,* "The invasion of East Timor by Indonesia", in *CIIR/IPJET,* International Law and the Question of East Timor, 1995, pp. 290-298.

27 This clear stance can indeed be demonstrated by both the General Assembly's and the Security Council's Resolutions on the subject – respectively Resolutions 3485 (XXX) of 12 December 1975,, 1975, p. 865; 31/53, of 1 December 1976, UN Yearbook, 1976, p. 754; 32/34, of 28 November 1977, UN Yearbook, 1977, p. 890; 33/39, of 13 December 1978, UN Yearbook, 1978, p. 869; 34/40, of 21 November 1979, UN Yearbook, 1979, p. 1056; 35/27, of 11 November 1980, UN Yearbook, 1980, p. 1094; 36/50, of 24 November 1981, p. 1185; 37/30, of 23 November 1982, UN Yearbook, 1982, p. 1349 and Resolutions 384 (1975), 22 December 1975 – hence only two weeks after Indonesian's invasion! -, UN Yearbook, 1975, p. 866; 389 (1976), 22 April 1976, UN Yearbook, 1976 – and even the ICJ Judgement in the Case *East Timor (Portugal v. Australia)* of 30 June 1995.
Indeed, in spite of the World Court's frustrating contemplation vis-à-vis other interests (in full contrast to the densely reasoned Dissenting Opinions of Judge Weeramantry and Judge '*ad hoc*' Skubiszewski) and, of an, at least apparent, lack of sufficient consideration of some of the fundamental principles (everyone may no doubt agree that in a case like this it is strange that the reasoning founding the decision does not use more than 6 short pages! For other criticisms see, for instance, *E. Jouannet,* "Le principe de l'*Or Monétaire* à propos de l'arrêt de la Cour du 30 juin 1995 dans l'affaire du Timor Oriental (Portugal c. Australie)", RGDIP, 1996-3, pp. 673-714 and *C. Chinkin,* "The East Timor Case (*Portugal* v. *Australia*), ICLQ, 1996, pp. 712-725).

2. The constituent treaty

It is also *created by a Treaty,* a constituent Treaty, the "*Constitution*"[28] of the Organization and of *its* Members *in it. 'In casu'* the CPLP is founded by the Constituent Declaration of the Community of the Portuguese Speaking Countries and, especially, by the Statutes of the Community of the Portuguese Speaking Countries, which come along the Declaration and which were also signed by the representatives of the Seven founding Members on the 17th of July of 1996. Together they are to be considered the constitutional documents of the Organization[29]. In fact, as is the case with any International Organization, a two-headed entity, the founding treaty has a double utility: it is the "Constitution" which *habilitates* and *limits* the Members, on one hand, and on the other, rationally *orders* them but can also *subordinate* such Members before the institutional, procedural and decisionary mechanisms that are foreseen[30].

3. International legal personality

The characteristic of the existence of an *autonomous legal personality* is furthermore expressly affirmed in article 2 of the Statutes.

4. The institutions

The Organization has its own *organs*, which are diverse from those of the member States and which globally give it permanence. In accordance with number 1 of article 7, they are

28 We were inspired here by *Moura Ramos,* "As Comunidades Europeias", Lisbon, w.d., [1987].

29 These founding documents pose an interesting dogmatic problem, at least under the point of view of constitutional law. Creating an international organisation and according to the constitutional rules of some of the countries involved – most certainly so with Portugal – see art. 164 line j) of the Constitution-, the founding treaty has to be previously approved by the Parliament and ratified by the President. In fact, however, the Declaration was simply signed by both the President and the Prime Minister. Furthermore, the Statutes were signed only by the Minister of Foreign Affairs, as if denoting that the procedure of conclusion of the treaties was not yet perfect. The original construction is however problematic since article 21 of the Statutes foresees that the document will immediately enter into force (and with it, the Organisation). And even if it also foresees that this entering in force is on a provisional basis, pending the conclusion of the constitutional procedure to be bound by the treaties, the fact remains that, meanwhile, Portugal is already bound and the constitutional procedure has not been completed. The problem is aggravated by the fact that in the Portuguese Constitution there is not, differently from what happens with the Brazilian, any procedure of this kind.

30 In this sense, see *H.G. Schermers,* "The International Organizations", in *M. Bedjaoui (ed.),* International Law: Achievements and Prospects, 1991, p. 58. This double functionality of the Constituent Treaty also transpires in *Barbosa de Melo's* lesson, Notas de Contencioso Comunitário, Coimbra, 1986, mimeo, p. 32.

the Conference of Heads of State and Government, the Council of Ministers, the Permanent Concert Committee and the Executive Secretary.

Beyond these, and thus giving a legal indication of the pragmatism and functional economy that seem to preside over the functioning of the *CPLP*, the Organization "*supports itself*" "*on the mechanisms of political and diplomatic concert and of the cooperation* between the member States of the CPLP which already exist or are to be created. Apparently, however, this means that the member States resort to them on an '*ad hoc*' basis, and thus in legal–formal terms they cannot be considered to be organs of the Organization or can only be so on an incidental basis.

In addition, line c) of article 8 of the Statutes foresees the possibility of the creation of "*necessary institutions for the good functioning of the CPLP*". The designation of "*institutions*" seems to suggest organs with a certain functional dignity, as would happen if, as has already been foreseen[31] and as seems to continue on the political agenda of the novel Organization, it were decided to create an organ with powers of a parliamentary nature, the so-called "Parliament of the Seven", even though the powers entrusted to it would not necessarily be legislative, or at least would not initially be as such[32] [33]. This provision is

[31] See the final communication of the VI Afro-Luso-Brazilian Round Table, held at Cape Verde in June of 1994, as well as *Embaixada do Brasil em Lisboa,* A Comunidade de Países de Língua Portuguesa, 1994, pp. 19-21.

[32] This is the well advised cautious suggestion of *Fernando Oliveira* in his "O Parlamento dos Sete", Communication presented to the first Colloquium of the Ius Gentium Conimbrigae, 1997, Mimeo, unpublished, p. 8. In the same vein, one may also recall the recommendations of the IV Afro-Luso-Brazilian Round Table, where it is foreseen namely that the implementation of the project of such an institution be progressive and serve initially as a '*forum*' of "*rotative semestrial meetings to hold debates between deputies of the national assemblies*". (See *Embaixada do Brasil em Lisboa,* A Comunidade dos Países de Língua Portuguesa, 1994, p. 21). The idea was deeply discussed in successive Round Tables and more particularly in the already mentioned IV which took place in Rio de Janeiro in 1992, as well as in the one of Lisbon of 1993 and the one which met in Luanda in 1994. It even came to inspire some projects of Statutes, especially from Brazilian origin, some of which went so far as to conceive a kind of replica of the European Parliament. But, in more recent times, especially considering the very immature situation of the parliamentary organs of some CPLP countries, the idea came to prevail that it would be more advised to postpone the concretisation of an even very "soft" formulation. (For a summary of the history, diplomatic and non-diplomatic, of the evolution of the idea of the "Parliament of the Seven", see *Fernando Oliveira, op. cit.*, pp. 3-4). This may explain the non figuration of the "Parliament" or even a direct allusion to this idea in the Statutes of the CPLP, especially in the list of organs constituted by article 7. But article 8 of these Statutes already comports it when it foresees, among the competences of the Conference, the one of "*create[ing] the institutions necessary to the good functioning of the CPLP*" (line c), as also does article 9 (although in an even more indirect or remote way), whose line g) discriminates the power of the Council of Ministers to "*convoke conferences and other meetings in view of promoting the objectives and programs of the CPLP*". And the Constituent Declaration goes even further since it clearly enunciates the "*stimulus of development of action of interparliamentary cooperation*" as an objective of the CPLP. What seems certain and what these references (even the more criptic and indirect) also denote is the

also significant on another account: by conditioning the exercise of competence of the creation of other institutions on the criterion of necessity, determined by the instrumental adequacy vis-à-vis the "*good functioning of the CPLP*", the disposition is giving an indication that the CPLP is conceived as a *dynamic Organization*, designed to assume an increasing number of responsibilities, but also requiring that the process of institutional consolidation be "sustained" and founded on the respect of a general principle of proportionality. But if it is indeed like this, one may add, and although there is no express provision in this sense, it also does not seem inconceivable the creation of other organs – which, in relation to those nominally designated in § 1 of article 7 and even the institutions foreseen in article 8 § 2, line c), would probably be adequately called *subsidiary organs*, functionally dependent on the creating organ. In such a case, those organs already identified, would, parallelly, deserve the qualification of *principal organs* (original or not), such as is done by the UN, for example, in accordance with article 7 of the Charter of the United Nations. It seems to us that a principle of economy of means and of pragmatism, which seems to inform various dispositions of the Statutes, habilitates this interpretation. Such an evolution would also follow the international practice of development of other International Organizations. It is, moreover, a solution which is preferable to the requirement of having to review the constituent treaty. Such a possibility seems also preferable to another conceivable alternative, which would be the understanding of the reference to "institutions" in article 8 as comporting any type of organ (and not only those of constitutional dignity or of direction, in which case only the Conference of Heads of State and of Government would be habilitated to initiate these developments). In light of this, it seems that the material criterion of the functional necessity, foreseen in article 8 § 2 line c), is generically valid for the hypothesis of the creation of any (type of) organ.

4.1. The Conference of Heads of State and of Governement

In relation to the *composition* and *attributions* of the aforesaid organs and following the order set in article 7, the *Conference* is constituted, as the designation indicates, by the highest representatives of the member States. One should not be surprised that article 8 § 1

conscience that this "Parliament" will have, sooner or later, to be created if the Organization is indeed to surpass its present "democratic deficit" and meet the expectations of having a direct (nongovernmental) representation of the human communities involved in what in this light was properly called a "Community of Countries". At the same time this very debate also excellently depicts the present state of *uncertainties* and *ambiguities* of a recent project and a project destined to evolve and mature.

33 Another institution whose creation continues to be demanded by several sectors of the civil societies of the member States is the already denominated "University of the Seven". See *Embaixada do Brasil em Lisboa,* A Comunidade dos Países de Língua Portuguesa, 1994, p. 20 and *José Raymundo M. Romeo,* "A Universidade dos Sete", Communication presented to the first Colloquium of the Ius Gentium Conimbrigae, 1997, Mimeo.

qualifies it as the "*maximum organ of the CPLP*". This is indeed the organ that, in the structure of the CPLP, has the highest functions in terms of political decision-making and is responsible, namely in the terms of § 2, for: "a) *Define[ing] and orient[ing] general policy and the strategies of the CPLP*; b) *implement[ing] (...) Statutes (...);* c) *create[ing] the necessary institutions (...)*; d) *elect[ing](...) a President (...)*; e) *elect[ing] the Executive Secretary and the Assistant Executive Secretary of the CPLP*". It therefore has the competences that one could qualify as constitutional (line c)), legislative (lines a) and b)), executive (lines a), b), c), d) and e)), and the corresponding exercise of powers, which are as much of external efficacy (line b) and maybe a)), as internal. To be noted is also that its deliberations, which are adopted by consensus, assume the value of "*decisions*" and are "*binding for all member States*". From the conception of the Conference as the maximum organ of the CPLP as well as from other *tópoi* (for example, the provision which foresees the power of *delegation* to the Council of Ministers of the competence to adopt the necessary legal instruments to implement the Statutes) an image of the CPLP is derived in which its organic structure as well as its decision-making process appear ordered along a *principle of hierarchy* or *of subordination.* From this it also seems to result that the deliberations that contend with the other organs of the CPLP are to enjoy the same binding efficacy.

The Conference is, of all of the top organs, the one which meets normally with the widest periodicity: every two years, as foreseen in § 3 of article 8, although it is possible to call an extraordinary meeting as long as there is a two thirds agreement of the member States. This is a condition of functionality that underlines its character as the organ of impulsion of the process of integration institutionalized by the creation of the CPLP.

4.2. The Council of Ministers

The *Council of Ministers* is constituted by the Ministers of Foreign Affairs and of External Relations of all of the member States. As is the case of the former, this is an organ of "direct democracy" of the member States, to employ a useful formula by R.-J. Dupuy[34], represented, at the ministerial level, by those responsible for the external policy sector. The *competences* of the organ translate this condition of the representatives of each State, being predominantly executive (manifestly in this way lines a), d), e) and f) of number 2 of article 9), and even of subordination to the prior organ (explicitly stated, in line h) when it foresees the duty to "*carry out (...) tasks that were assigned to it by the Conference*"). But it also has powers of initiative (lines e) and f)) and even typical legislative "powers" (see the provision in line c) of the power to "*define (...) the policies and the programs of action of the CPLP*"). In any case the instruments of realization of this legislative competence – "*policies*", "*programs of action*"- appear as minor instruments in comparison with those

[34] See *R.-J. Dupuy,* Le droit international, 1986, 7th ed., p. 79.

which the Conference is habilitated to produce and to utilize –"*general policy*", "*strategies*", "*legal instruments of* [direct] *implementation of the Statutes*". To the competences discriminated in article 9, one may add those which the Conference decides is appropriate to delegate, in the terms of the provision of article 8 § 2, line b).

The political *subordination* of the Council relative to the Conference is patent in the provision of § 5, namely when it states that it "*reports to the Conference, to whom it must present (...) reports*". Already the *efficacy* of its deliberations is not completely clear. Albeit the reference, in § 6 of article 9, to "*decisions*" can only signify that its *objective efficacy* is binding, the *subjective circle of addressees* is less clear. It seems to us, however, that it must not be more restrictive than the circle of addressees of the decisions of the Conference. As is the case of these, the deliberations of the Council are also adopted by consensus.

As an organ vocationed for execution, the Council, which also is not a permanent organ, "*meets ordinarily once a year and extraordinarily when solicitated by two-thirds of the member States*".

In terms of a first critical appreciation, one could say that, in regard to the organic-functional structure of the CPLP and in light of the many objectives of the CPLP (that surpass the political-diplomatic dimension and contend with all sectors of the life of human communities), the restriction of the organ of the Council of Ministers to those responsible for foreign policy seems less adequate. It is true that there are advantages resulting from them being natural vehicles of the positions of the State that they represent, from the fact that these Ministers concentrate in them the sectorial positions of the State (which thus appears, with some possible advantages, unitarily represented) and even from their certainly presumable special sensibility to the proper nature of international relations. But, on the other hand, these advantages seem to be outweighed by the disadvantage of bureaucratisation in which it will redund. In this aspect the experience of the Commonwealth seems preferable: it follows a principle of parallelism of internal and external competences in the determination of the Ministers that compose each meeting of the Council. We may foresee that the desirable success of the CPLP may eventually prove this suggestion to be true.

4.3. The Committee of Permanent Concert

The organ that is discriminated next by the Statutes, is the *Committee of Permanent Concert*. In the terms of § 1 of article 10, this is composed by a representative of each of the member States. Practice has already shown a tendency for the representative to be a diplomat. In spite of its designation, the organ can only approximately be considered permanent. In fact, the periodicity of its ordinary meetings is monthly, but it can also be called extra-

ordinarily, in an expedite way, in view of the absence of formal conditions; the Statutes only foresee a material criterion of necessity for the calling.

In the terms of § 2, the Committee, which is, just as the former, of strict intergovernmental composition, is conceived as a functional "bridge" between member States as well as the decisionary organs of intergovernmental composition (Conference and Council of Ministers) and that organ which, as we shall see, is the organic translation of integration or of the community spirit which should preside over the CPLP, the Executive Secretariat. It is competent specifically to "*accompany the execution by the Executive Secretary of the decisions and recommendations emanating from the Conference and the Council of Ministers*". It thus reminds us of the COREPER and the relations it maintains with the Commission, the Community organ by excellence, in the framework of the European Community, which is nevertheless an Organization of a different nature (supra-national) and which has (profound) differences at the level of powers and at the level of hierarchy that it enjoys in this relation. The Committee's deliberations, which can be over a limited circle of matters, are also adopted by consensus and equally have the quality of decisions. But they are susceptible to "ratification" by the Council of Ministers in the terms of § 6 of article 10, only then being truly perfected.

Also discussed here are true decisions, with external subjective efficacy in the relations with the Secretariat, who, as line a) of § 1 of article 11 indicates, must apply them, and whose director, the Executive Secretary of the CPLP, is also bound to exercise the functions that the Committee sees fit to assign (article 12, § 2, line j)). In this manner, a hierarchical chain is being completed, whose final element is constituted precisely by the Secretariat.

4.4. The Secretariat

Article 11 describes it as an executive organ of the CPLP. And, in fact, the list of competences (implement the decisions of the other organs, design and guarantee the execution of the programs of the CPLP, participate in the organization of the various organs of the CPLP and answer for the finances and the general administration of the CPLP) make it, undoubtedly, an organ of such a nature. What is more difficult to understand is how it deserves the qualification, also operated by § 1 of article 11, of "the principal executive organ of the CPLP". The explanation appears to be one of two: either the other organs. and especially the Committee of Concert, can also be considered as executive organs, but, in any case, having a greater importance – which is expressed in the power to subject the Secretariat -, or, if one looks especially at their decisory powers, it no longer becomes possible to qualify them as executive organs and in that case one cannot see in what sense a relative notion in the treatment of the only executive organ could be used.

This lesser priority of the Statutes is also manifested in the juridical definition of the Executive Secretary: he is chosen by election carried out by the Conference of Chiefs of State and of Government (article 8, § 1, line e)), on the basis of rotation of representation of the member States and who should have personal and/or functional qualities that permit him to be characterized as a high personality of the member State in question in this electoral act. His mandate is for two years, extendable for an equal period.

This lesser propriety results from the fact that the very text which defines the principal competences of this organ reveals that it does not have a mere executive vocation, contrarily to what the designation suggests. So it is immediately in line a) of number 2 of article 12 that one acknowledges that it has a right of initiative to promote and adopt ("undertake") means to accomplish the objectives of the CPLP and to reinforce its functioning. On the other hand, this time in the terms of the prevision of line c), it is its duty to carry out consultations and the articulation with the governments of the member States and remaining institutions of the CPLP, making it an entity with a political-diplomatic status. This is furthermore confirmed by line e), when it attributes to the Secretary the power of representation of the CPLP in the pertinent '*fora*'. This characteristic should be understood as even more relevant because, as we will later attempt to demonstrate, the CPLP is a juridical community open to and even dedicated to the relation with other Organizations or juridical communities. The political component of the attributions of what would better be designated as, simply, the Secretary of the CPLP (it seems to us that it is to gain in "dropping" the qualification of "executive") could, in this way, be emphasized. It would even be a sign of vitality and of the "accrediting" of the CPLP as a united block before other Organizations and remaining partners of the international community. And, on the other hand, the autonomous use of powers by the Secretary-General would also contribute, without doubt, to the reinforcement of the capacity of its own initiative and of the "specific weight" which it would enjoy in the "internal" relations, be them the interorganic relations or the relations with the member States.

Besides these "juridical openings", what will nevertheless be determinant, as the history of other International Organizations seems to have proven, is the prestige and the dynamism that the personality in question is able to effectively lend to the exercise of its functions.

Finally, one may note that there does not seem to be a real risk of collision between the figure of the Secretary-General and that of the President of the Conference foreseen in article 8, § 1, line d) or of identical presidencies of the remaining organs (articles 9, § 3 and 10, § 4). These figures seem, in fact, conceived to function as mechanisms of facilitation and organization of the work of the respective organs and of interorganic representation of the conclusions of this work.

4.5. First general evaluation

If we want to make a general evaluation of this institutional structure, we can consider that there is nothing especially original about it. Nothing, unless, perhaps, the fact that it may be more than the diplomatic experience of many of the States members of the CPLP. It is certainly so for Portugal as for the experience that expresses itself in the model of the Summits, already usual in the Ibero-American framework and more recently in the Portuguese-Spanish relationship. Even in these cases, which can be considered of special relationships, they do not suppose more than an episodic meeting of wills of the administrations of the States involved. It is also more than the British Commonwealth. This entity, only in 1965 conceived a "greyish" Secretariat[35], which is practically only competent to assure the meetings of the Commonwealth, the publication of various texts and assist, in general, the communication between the Members of the Commonwealth[36] [37]. Furthermore, its "meetings", even though regular, can be characterised by their informality and absence of true deliberations[38]. We are hence before a sign that the CPLP looks far ahead, a sign which is in harmony with its wide objectives. One cannot, in fact, help but verify that the organics of the CPLP rather reminds us, here and there, of other ambitious Organizations, such as, the OAU[39]. This is so especially given the resemblance of the organs in cause, the "vertical" ordination of the diverse organs and the importance of the Presidents of the countries involved in the works of the Organization[40].

A different problem would be to evaluate this structure under the perspective of its adequacy to the objectives and programs to which it is committed. However, this cannot be done without a prior explicitation of these last ones.

35 See "Current Legal Developments – Commonwealth", ICLQ, 1966, v. 5, pp. 577-578.

36 Commonwealth's Law Bulletin, published annually since 1974. See as well the Annual Survey of Commonwealth Law.

37 On the other hand various Authors point toward the practical importance that the mechanism of functional cooperation, designated as the "Commonwealth Fund for Technical Cooperation", assumes. See *L.C. Green,* "British Commonwealth", EPIL, vol. 10, p. 35.

38 *Jennings and Watts,* Oppenheim's International Law, say they are "*consultative in character*".

39 See on this Organization, for all, *Ph. Kunig,* Das völkerrechtliche Nichteinmischungsprinzip. Zur Praxis der Organisation der afrikanischen Einheit (OAU) und des afrikanischen Staatsverkehrs, Baden-Baden, 1981, and later, still *Ph. Kunig,* "Die Organisation der afrikanischen Einheit und der Prozess des Nation Building", AVR 1980, vol. 20, pp. 40-57.

40 Apart from Ph. Kunig's works mentioned in the previous footnote, see also *E.K. Kouassi,* Les rapports entre l'Organisation des Nations Unies et l'Organisation de l'Unité Africaine, 1978, notius, pp. 111-112; *E. Jouve,* L'Organisation de l'Unité Africaine, 1984, especially, pp. 55-94.

§ 2. Its objectives : an ambitious Organization

What immediately identifies the CPLP are especially the *intentions*, the objectives it pursues and for which it was constituted. The first objectives of the CPLP, that the Statutes qualify as "*general*"[41] , are expressed in article 3, even though one can also find their translation in article 1 and in the norms relative to the competences of the organs. They correspond, certainly, to a parallel number of privileged dominions of action of the CPLP.

1. Political and diplomatic concert

In the first place, the CPLP, an Organization of States, seeks to achieve the *political and diplomatic concert* between its Members in the dominion of international relations.

In this measure, the Organization will be a form of potentiating the external action of each State. Visibly, it is still understood, as always happens in the beginning of the life of any bureaucratic body, as an instrument of direct utility of these States[42]. The underlying idea is, of course, that force comes through union, that the solidarity of positions, in accordance with D'Artagnan's cry ("*all for one and one for all*") will reinforce the credibility of the interests or values defended or represented. One could note, however, that the disposition in cause (line a) of article 3) immediately particularizes that the concert, facilitated by the existence of the CPLP, should be directed towards "*the reinforcement of its presence (of the member States) in the international forums*". It is as if the founding Members were well aware of the unwritten rules of "*multilateral diplomacy*"[43] that increasingly characterise the regulation of the world, that is, that the member States would have known that, if they appear with only one voice, or act as one entity, they will have a greater probability of seeing their positions adopted. In fact, multilateral diplomacy, as is known to all that have been involved in it, is, in the first place, a *diplomacy of number*, and therefore, of alliances. On the other hand, it is the *diplomacy of language*, of the rhetoric and of the eloquence (or were not its maximum symbol, the UN, the home of the world public opinion and conscience). In both camps the member States of the CPLP were before in loss. Today, and under the condition that they truly appear united, they may aspire to be recognized the right to be heard in their own language – which is an only just development, since it is one of the

41 This reference appears to imply the assumption of other objectives of a narrower or particular scope and nature, or objectives which are conjectural. And, in fact, these are translated in the Declaration.

42 Most appropriately, *Virally,* in L'Organisation Mondiale, 1972, p. 26 calls attention to the fact that the reason of being of any International Organization is *functional*, so that the Organization initially is always an *instrument* of its founders.

43 On the subject, see *G.E. Nascimento e Silva,* Diplomacy in International Law, 1972 and *J. Calvet de Magalhães,* A Diplomacia Pura, 1982.

most spoken in the world, although, unlike some others, which correspond to fewer people speaking it, is not yet considered an official language of the UN.

Even though the precept does not expressly foresee it formally, and even refers to and assumes the preservation of the autonomy of each State (this only has to go "*de concert*" with the partners), it does not seem inadmissible that this concert also translates, in certain situations, in the appearance of all Members as subsumed to a *unity*, to one face and to one voice. This voice may even be that of one of its Members, mandated to that effect by the others. In light of the orientating principles of the CPLP, it would seem preferable that the *voice of CPLP* be represented by a *plural individuality*. This would more likely be identified by the organic figure which is most communitarian, *i.e.* the Executive Secretary. One form of enhancing this possibility would be via the CPLP claiming at this very moment the *status of observer* in the UN family. The CPLP would thereby ascend from the condition of object or instrument to the dignity of subject or agent: From *creation,* the CPLP would become *creator.*

2. Cooperation

In the second place, the CPLP seeks *cooperation*, especially in the economic, social, cultural, legal and scientific-technical dominions.

Directed towards the member States and creating intersubjective obligations and rights, the Treaty first signifies with this disposition that it intends that the States help each other reciprocally in their sectorial policies and that they act in conjunction in such dominions[44]. Simply, these are also sectors in which, whether constitutionally or of fact, the principal agents are elements of the civil society, mainly leaving the tasks of regulation and promotion to the State. If this perspective makes sense in internal relations, it also most certainly does so in international relations.

The precept may secondly contain an obligation of the diverse States to act in conjunction in aiding the relevant sectors of some of their *civil society(ies).*

Thirdly, it does not seem impossible to understand it also as *authorizing* a State to *directly help* a cultural, economic or social agent of another member State without this being considered as an unfriendly act or an interference in the internal matters of the State of nationality of the agent. The legitimacy of this understanding comes from the fact that these States proclaim to be friends of international law and that they are open to the international com-

[44] It is in this perspective, and in the one referred to next, that it seems insufficient that the composition of the Council of Ministers is restricted to the Ministers of Foreign Affairs.

munity (which will be reinforced in the case of the particular community which is the CPLP). One might add that the qualification of "Community" -and we believe it is acceptable to use it as a hermeneutic pattern- seems then to acquire a useful meaning. The action must however demonstrate care at least, in not challenging the sectorial policy followed by that State. Apart from historical considerations, this seems also to be normatively well advised by the clear emphasis of the founding documents on the principles protecting the sovereign equality of the States.

Finally, the effort of cooperation can be directed towards exogenous entities: this would be the case, for example, if Portugal internationally lends its credibility to a Portuguese-Guineense fishing joint- venture in search of international financing.

3. Promotion and diffusion of the Portuguese language

The *third objective* only seems understandable precisely in this same sense. The reference to the implementation of projects of *promotion and diffusion of the Portuguese Language* will only aquire useful meaning if, beyond the interstate *horizontal action*, it can be referred to both the *horizontal* and *vertical action, i.e.* if it serves to relate both the State or State's structures *and* the individual members or structures of the civil society.

Once again the notion of Community can be mobilized as an interpretative parameter, thus demonstrating that the States did not want to exhaust the utility of the compromise corresponding to the Treaty in a mere intersubjective efficacy of which they would have the monopoly, but that they rather sought to reach what we might call an "*external effect*". This would be so, in fact, on several accounts: on the one hand, they wished to place it internationally; on the other hand, they also wished to cover and integrate actions of relation with "third parties" constituted by private persons, individual or collective, of one of the nationalities of the CPLP.
Various other *'tópoi'* concur in the "legitimation" of this understanding. In the first place, one can note that this community is designated a community of "*countries*" of the Portuguese Language (art. 1), which is in contrast with the designation, much more common in the text, of "*States*". This can be understood as denoting *a 'plus'* or an even closer allusion to the human component, *i.e.*to the civil societies. Secondly, article 1 (whose final part may be taken as a gloss of the objectives enunciated in article 3) refers to the deepening of friendship, of "*mutual friendship*", which seems to be the ultimate end of the projects of promotion and diffusion of the Portuguese language enunciated in article 3 c). Furthermore, if we continue to accept the validity of Nietzsche's observation that States are the coldest of

the monsters[45], and thus do not have emotions, we are left, *'per necessitatem'*, with the understanding that the allusion to the Members effectively comports a reference to the corresponding civil society of each State.

On the other hand the third objective also has an external dimension which is the international placement of the language.

§ 3. Orientating Principles

These objectives naturally suppose that a path be followed. This path is "constitutionally" framed by the orientating principles of the action of the CPLP. They are foreseen in article 5.

Reading them, one is immediately struck by their *ample* and *plural* nature. They hence remind us of those that, at least in part, generically preside over the action of International Organizations of global ends.

1. Defensive principles

One cannot help then but note the quantitative emphasis which the Statutes place on the *principles* that might be called *defensive*, such as those found in lines a), b), c), f) and, in some way, d) (the principles of sovereign equality, of the non-interference in internal matters, of the respect for the national entity, of the respect for territorial integrity and of the reciprocity of treatment). These are normative principles that will more typically give rise to obligations of *non facere*, abstentions or even interdicts. The fact of this insistence on them may find historic explanation in some of the fears and mistrusts that existed at the outset of the CPLP and which even justified the repeated "false start" of the CPLP. Today, however, these hesitations seem, apparently in a definitive way, surpassed. The insistence on these principles should constitute a warning though: if they are not respected, those fears may arise again and paralyse the CPLP. It would certainly be very difficult for the CPLP to subsist in the dimension of its present internal constitution.

[45] The most cold of the cold monsters! ("*Staat heisst das Kälteste aller Kalter Ungeheur*"). See Also Sprach Zarathustra, in *Nietzsche,* Sämtliche Werke, vol. VI, Stuttgart, 1964, p. 51.

2. Dynamic principles

Beyond these principles, common to the old *Model of Westphalia* of organization of the international society, the CPLP is also obligated to abide by and fulfill more *dynamic principles*, and principles that potentially may *regenerate* the international society. These are the principles of the *Model of the Charter*[46], conceived to transform the international society into a a real "*communitas*", *i.e.* into a reality more *axiologically informed* and *teleologically orientated* by *ends* or *values* such as the ones of humanization, freedom of peoples, democratization, participation and pacification (in a *positive* sense that goes beyond the absence of war, even requiring that it be informed by an idea of justice). Like this, more clearly, the provisions in lines d), e), g) and h) of the same article 5. However, differently from what we suggested would probably happen in the case of the non observance of the first set of principles, it might be predicted that, in a parallel situation of non respect for the second set of principles, the CPLP might subsist. But it would also become sadly hollow of ideals and, finally, would only survive in a state of permanent "depression".

What remains indisputable is the necessity of a better definition or content of this project still to a great extent very undetermined. Might it be inspired by the Commonwealth?

II. Commonwealth: model or contrast?

The answer to the question as to whether or not the CPLP project might be determined by the Commonwealth may be given, it would seem, straight away. In view of the brief experience of the CPLP, born only on the 17th of July of 1996, and the already long life of the Commonwealth, that can be traced back to the beginning of the century, as well as the consideration of the founding texts of the CPLP, immediately permit us to sustain that the CPLP should not try to copy the Commonwealth. The historical , political and legal model

[46] The concepts of the "*model of Westphalia*" and "*model of the Charter*" correspond to two paradigms of legal organization of the international society -classic international law and modern international law. These notions were identified by *Richard Falk,* "The Interplay of Westphalia and Charter Conceptions of International Legal Order", in *C.A. Black and R.A. Falk (eds.),* The Future of the International Legal Order, Princeton, 1969, vol. I, pp. 35 ff., although they had already made their way into the work of *L. Gross,* "The Peace of Westphalia: 1648-1948", AJIL, 1948, v. 42, pp. 20 ff. See also *A. Cassese,* International Law in a Divided World, Oxford, 1991, who equally adopts this terminology. Other Authors prefer other dichotomies that conceptualize the same substantive idea, simply in a different form. Thus, R.J. Dupuy, A. Queiró and Friedman use the conceptual duality coordination/subordination, Kaufmann prefers law of procedure/law of common ends, while Jessup differentiates international law/transnational law. See the collection that we made and the respective bibliographical references in *P. Canelas de Castro,* Mutações e Constâncias da Neutralidade, Coimbra, 1990, Mimeo, pp. 68-69, note 128.

on which the CPLP is founded is indeed radically diverse from that of its congener in the "English" language. The differences could not be more apparent.

§ 1. The Historic Level

The "contrast" with the Commonwealth can be verified first in History, whose importance to the study of an International Organization has been rightly pointed out by Virally[47]. History indeed reveals that the CPLP is *a product of a mature will* of States, most of which have been independent for more than 20 years, in the case of Brazil for over a century[48] and with respect to Portugal , for almost a millenium. The Commonwealth, for its part, was initially[49] a form of slowing down self-determination for the non self-governing peoples and territories or a means of creating an intermediate state between the total inclusion in the British Empire and total independence[50] – the process of "devolution" of powers and competences[51] – and, after 1945, a reality to which new States normally adhered to immediately, without really experiencing the downfalls and joys of independence[52]. The Commonwealth appeared thus as a *natural result of decolonization*[53].

The CPLP, for its part, is based on ties of historical friendship that colonization and decolonization surely conditioned but it is not necessarily a product of them[54]. The discon-

47 *M. Virally,* L'Organisation mondiale, p. 29.

48 Brazil's independence dates back to 1822 and was recognized by Portugal in 1825. See *Waldemar Ferreira,* História do Direito Constitucional Brasileiro, 1954, pp. 34-35; *Marcelo Caetano,* Direito Constitucional I, 1977, pp. 469-470 and *Paulo Bonavides and Paes de Andrade,* História Constitucional do Brasil, Brasília, 2nd ed. 1990, pp. 5-87.

49 One may reconduct the beginning of the Commonwealth to the conclusion of the peace treaties following World War I or, as other Authors prefer, to the year of the adoption of the 'Statute of Westminster': 1931.

50 *Jennings and Watts,* Oppenheim's International Law, p. 261, admit that until 1945 there was some ambiguity as to the complete independence of some of the former colonies or dominions.

51 See *Crawford,* The Creation of States, 1979, pp. 215-246.

52 See the counted *exceptions in Jennings and Watts,* Oppenheim's International Law, pp. 261-262.

53 See *Michel Fromont,* "France: Overseas Territorial Entities", EPIL, vol. 12, pp. 112-120, *notius,* 112-113 and *Albert Bleckmann,* "Decolonization: French Territories", EPIL, vol. 10, pp. 89-93, *notius,* 91-92.

54 This may still only happen in the particular case of that community which, having been under Portuguese colonial rule in the past, has not attained the self-determination to which it is entitled, *i.e.* the Timorese Community. On the Timor case and ordeal, apart from the bibliography already indicated in footnote 15, see *T.M.Franck and P.Hoffman,* "The Right of Self-Determination in Very Small Places", NYUJILP, 1975-6, pp. 331-386; *J.F. Guilhaudis,* "La question du Timor", *AFDI,* 1977, pp. 307-324; *P.D. Elliot,* "The East Timor Dispute", ICLQ, 1978, pp. 238-49; *R.S. Clark,* "The Decolonization of East Timor and the United Nations Norms on Self-Determination and Aggression", YJWPO, 1980, pp. 2-44; *R.S. Clark,* "Does the Genocide Convention go far

tinuity is here frankly assumed. Historically, the CPLP does not even have the intention of *accommodating* the decolonization: it *supposes* it and even seeks to surpass the difficulties and mistrusts that it proportioned[55].

enough? Some thoughts on the nature of criminal genocide in the context of Indonesia's invasion of East Timor", Ohio Northern University Law Review, 1981, vol. 8, pp. 321-328; *K. Suter,* East Timor and West Irian, London, Minority Rights Group, Report n°42, 1982; *K. Rabl,* "Das Selbstbestimmungrecht der Völker in der neuesten Praxis", in *D. Blumenwitz and B. Meissner (eds.),* Das Selbstbestimmungsrecht der Völker und die deutsche Frage, Köln, 1984, pp.132 ff.; *Blay,* "Self-Determination v. Territorial Integrity", NYUJILP, 1985-1986, pp. 441 ff.; *Willheim,* "Australia/Indonesia Seabed Boundary Negotiations: Proposals for a Joint Development Zone in the Timor Sea", Maritime Studies, n°5, 1987; *P.Lawrence,* "East Timor", EPIL, vol.12, 1990, pp. 94-96; *H. Burmester,* "The Zone of Co-operation between Australia and Indonesia: a preliminary outline with particular reference to applicable law", *in H.Fox (ed.),* Joint Development of Offshore Oil and Gas, vol. II, London, 1990, pp. 128-140; *J.P.L. Fonteyne,* "The Portuguese Timor Gap Litigation before the International Court of Justice: A brief appraisal of Australia's position", Australian Journal of International Affairs, 1991, vol. 45, pp.170-181; *R.S. Clark,* "Some International Law Aspects of the East Timor Affair", LJIL, 1992, pp. 265-271; *Assembleia da República,* Obrigações de Portugal como Potência Administrante do Território não autónomo de Timor-Leste, Lisboa, 1992; *P. Escarameia,* "O que é a autodeterminação? Análise crítica do conceito na sua aplicação ao caso de Timor", Política Internacional,1993, n°7/8, pp. 65-110; *C. Chinkin,* East Timor moves into the World Court", EJIL 1993, vol. 4, n°2, pp. 206-222; *M.C. Maffei,* "The case of East Timor before the International Court of Justice – Some tentative comments", EJIL, 1993, vol. 4, n°2, pp. 223-238; *P. Escarameia,* Formation of Concepts in International Law – Subsumption under self-determination in the case of East Timor, Lisboa, 1993; *J.J. Pereira Gomes,* "As lutas de libertação nacional e o direito internacional humanitário – O caso de Timor Leste", Política Internacional, 1994-1995, vol.1, n° 10, pp. 29-65; *A. Cassese,* Self-Determination of Peoples. A Legal Reappraisal, Cambridge, 1995, pp. 223-230; *CIIR/IPJET,* International Law and the Question of East Timor, London, 1995. Permit us also to recall our own remarks in *P.J. Canelas de Castro,* "Das demokratische Portugal und das Selbstbestimmungsrecht der Völker – Der Fall Ost-Timor", in *E. Jayme (ed.),* 2. Deutsch-Lusitanische Rechtstage, Baden-Baden, 1994, pp. 152-170 as well as Discussion, pp. 171-175 and, already in conjunction with *Miguel Galvão Teles,* "Portugal and the Right of Peoples to Self-Determination", AVR 1996, pp. 3-46,where further bibliography may be found.

On the historical development and factual situation corresponding to the legal question, *vide* in particular, apart from United Nations' documents such as UN Doc. A/AC.109/623, of 11 August 1980, *J. Ramos-Horta,* FUNU, the unfinished saga of East Timor, Trenton, 1987; *M. Lemos Pires,* Descolonização de Timor. Missão Impossível?, Lisboa, 1991; *Assembleia da República,* Timor-Leste. Factos e Documentos, Vol. I, Lisboa, 1991; *G. Defert,* Timor Est. Le Génocide Oublié. Droit d'un peuple et raisons d'Etats, Paris, 1992; *A. Barbedo de Magalhões,* East Timor, Indonesian Occupation and Genocide, Porto, 1992; *J.G. Taylor,* Timor: a História oculta, Lisboa, 1993; *G.J. Aditjondro,* In the Shadow of Mount Ramelau. The Impact of the Occupation of East Timor, Leiden, 1994; *Xanana Gusmão,* Timor Leste – Um Povo, uma Pátria, 1994, 2nd ed..

55 In the peculiarities of the Portuguese decolonization model, we have already indicated the study by *Miguel Galvão Teles and Paulo Canelas de Castro,* "Portugal and the Right of Peoples to Self-Determination", *AVR* 1996, 34/1, pp. 2-46 and the bibliography there cited. See also A.Rigo Sureda, *The Evolution of the Right of Self -Determination,* Leiden, 1973, especially pp. 329-340; *Afonso Rodrigues Queiró,* Do direito à colonização ao dever de descolonização, Coimbra, 1974 and Ultramar: direito à independência?, Coimbra, 1974; *C. Anderson,* "Portuguese Africa: A Brief History of United Nations Involvement"; Denver Journal of International Law and Policy, 1974, vol. 4, pp. 133-151; *M. Bothe,* "Völkerrechtliche Aspekte des Angola – Konfliktes", *ZaöRV* 1977,

§ 2. The Political Level

The differences are also visible at the political level: the Commonwealth is an immense club of States of very diverse strengths with some of its Members being, in many domains, extremely powerful and even leaders of the world order.

In contrast, the CPLP is a very restricted community, mostly composed of States that we could certainly qualify as weak, with only one (Brazil) which may be considered an (emerging) regional power. Moreover, the Commonwealth translates, still today, problems of *disequilibrium*, even formal, between its Members, as much as this may seem almost paradoxical for an entity claimed by the legal international science of British origin as being informal[56]. This is what one learns, for instance, when considering the notion of "*Head of the Commonwealth*" established by the London Declaration, document of reference of the Commonwealth[57] [58], or the fact that the "*British Judicial Committee of the Privy Council*" still functions as the supreme jurisdictional organ of some of the Commonwealth States[59] or even when one learns that the British Parliament kept legislative and even constitutional powers (even if residual) in relation to Canada until 1982[60]. At times, the lack of equilibrium results even in what one may see as outdated paternalism. This seems to be the case when the nationals of each independent State of the Commonwealth were simultaneously "British nationals"[61] or when Great Britain grants the status of non-foreigner to the Republic of Ireland's nationals, a State which is not even a member of the Commonwealth[62]!

vol. 37, pp 572-603; *J. Borges Macedo,* "Descolonização", Polis, 1984, vol. 2, pp 134-161 and *Fausto de Quadros,* "Decolonization: Portuguese Territories", EPIL, vol. 10, 1987, pp.93-96.

56 See, for instance, *Fawcett,* The British Commonwealth in International Law, 1963 and *Green,* "British Commonwealth", EPIL, v. 10, p. 35.

57 See *D.P. O'Connell,* "The Crown in the British Commonwealth", ICLQ, 1957, vol. 6, pp. 103-125.

58 The maintenance of the United Kingdom's sovereign as the "Head of the Commonwealth" is even more notable when some of the Members of this informal association of States are themselves monarchies with their own monarch (who, in the case of the Malaysian Federation, is even elected) and the majority are even Republics. The only "concession" to reality that the construction of the Commonwealth made was to drop the qualification of "British". In this way, *C. Green, op. cit.*, p. 32 and *Jennings and Watts, op. cit.*, p. 256.

59 See *Green, op. cit.*, p. 33.

60 See *Green, op. cit.*, p. 34.

61 See *Green, op. cit.*, p. 34.

62 See *R. Plender,* "British Commonwealth, Subjects and Nationality Rules", EPIL, vol. 8, p. 505.

The conclusion seems unavoidable: politically the CPLP is diverse. And one especially wants it to remain so! It supposes and postulates the sovereignty and its corollary, the *full equality* between its member States.

It does not even have an *epicentre* that influences the rest. Politically, one can hardly admit this as possible. And this is certainly also the explanation for the multiplicity of the permanent headquarters that are antecipated for the institutions in which the CPLP will unfold, an idea which is still comported by the actual Statutes [63] [64].

§ 3. The Legal Level

Finally, the CPLP and the Commonwealth are *legally* different, and on so diverse accounts.

1. An informal club of States v. a true International Organization

The Commonwealth is, still today, a *self-absorbed* entity. It is or claims to be an informal club of States who are only accomplices of themselves[65]. This conception is excellently revealed in the *'inter se' doctrine* that it adopted for a long period of time and according to which the diverse forms of relations that were established between the Members of the Commonwealth[66] were not international and, therefore, were incapable of originating international legal rights and duties.

63 In saying that the "headquarters of the CPLP are, in its initial phase, in Lisbon", article 4 clearly accepts the idea that the CPLP is a process *'in fieri'*. This comports clearly the idea that in the future the headquarters be installed in another location. There isn't indeed yet any agreement "de siège". The formulation also opens the door to the installation, possibly in other member States, of other headquarters for other organs or institutions to be created at a later date.

64 From the IV Afro-Luso-Brazilian Round Table came the recommendation that the Parliament of the Portuguese Speaking Peoples was to be located in Angola, that the seat of the International Institute of the Portuguese Language was to be in Mozambique, that the coordination of the University of Seven would fall to Cape Verde, that Portugal be responsible for the coordination of the implementation of the Written Language Agreement, that the first mandate of the Executive Secretary of the CPLP would be entrusted to Brazil, that Guinea-Bissau was to make the articulation of the audio-visual policy, and that S. Tomé and Príncipe would assure the coordination of economic and social cooperation. See *Embaixada do Brasil em Lisboa,* A Comunidade de Países de Língua Portuguesa, Lisboa, 1994, p. 32.

65 This tendency is furthered in view that the Commonwealth has lost its former utility as a group for the partition of seats reserved to the non permanent members of the Security Council. The practice, founded on a "gentlemen's agreement", dates back to the founding of the UNO, and ended in 1965, when it was decided that it was necessary to give a more adequate representation to the African and Asian members. See *Green, op. cit.* p.33.

66 See *J. Fawcett,* The British Commonwealth in International Law, 1963, pp. 144-194 and *F. Wooldridge,* "Inter Se Doctrine", EPIL, vol.10, pp. 235-238.

The CPLP is, on the contrary, a true International Organization[67]. It is, furthermore, and as we shall better see later, an *Organization* open to an external relation[68]. The "we" of the CPLP, in the sense given by Gurvitch, is a "we *and the* others" or, even better, a "we *with the* others".

2. Absence of constituent treaty v. an Organization with a "Constitutional Charter"

In this context it is not surprising that, while the Commonwealth does not have a Constitutional Charter[69], the CPLP does: this is a true *international treaty* in which, in spite of some uncertainties and misfortunes in the wording (and maybe even because of them), a clear compromise of positions is enshrined, stabilized in the definition of structures, objectives and principles.

On the other hand, the Commonwealth´s acts are mere "gentlemen's agreements" or, at the most, declarations deprived of legal value[70], not to mention binding legal efficacy. In the CPLP, in turn, article 15 of the Statutes speaks with propriety, of "*decisions*", which, in the theory of international acts, signifies that a deliberation is mandatory, in full contrast to recommendations which are simply "*invitations to action*", as Virally used to put it. In any

67 On the other hand, the legal nature of the Commonwealth and its categorization in the list of legal international persons is, at the minimum, difficult, as recognize so many authors who also unite, in a quasi unanimity, in rejecting the quality of an International Organization. It is worth recalling that in 1929, *Kunz,* in his Staatenverbindungen, pp. 796, ff., considered it to be an *almost composite State close to a royal union*. It is however uncertain, one must recognize, that, first, at the time one could truly speak of a Commonwealth and that, secondly, this analysis could be applied to the present form of the Commonwealth's configuration.

68 *L.C. Green,* "British Commonwealth", EPIL, v. 10, p. 35 says that "*although there exists a Secretariat (the Commonwealth) does not have any characteristics of an International Organization*".

69 *W. Dale,* The Modern Commonwealth, 1983, p. 55 and *Woolridge,* "Inter se Doctrine", EPIL, vol.10, pp. 237-238, sustain however that the Commonwealth obeys to three fundamental non conventional texts: the London Declaration of 1949, that establishes that the British monarch is the head of the Commonwealth, the Singapore Declaration of 1971, that enumerates the guiding principles of the Commonwealth and the Lusaka Declaration of 1979, that has the value of a declaration against racism (for the texts of these two Declarations, see *Background Documents – Commonwealth Heads of Government Meeting*, 1981). To this list may be added the Agreed Memorandum on the Commonwealth Secretariat (text *in* A.N. Papadopoulos, Multi-Lateral Diplomacy Within the Commonwealth – A Decade of Expansion, 1982, p. 180) and the relatively recent Harare Declaration of 1991.

70 The truth, however, is that the States of the Commonwealth themselves, for reasons of simple realism (it would be naive to believe that third parties would accept the consequences of this conception), for reasons of security (the States themselves notice its limits), and in view of the palpable disadvantages of this conception (how would one generalise the most favoured nation clause, for instance?) are abandoning the idea.

way the CPLP will be a privileged space of conventional creation (formal treaties or informal conventional acts[71] of a particular international law[72]).

3. An entity which resists international law v. an Organisation which integrates it

The Commonwealth, constituted by States that, with the exception of the "top member", were always a product of a legal act produced by this one[73], was, and according to some, still is today, even if in a decreasing measure, a process of bypassing or resisting the "laws" of international law, a process which rather sought to perpetuate a form and a logic which was constitutional, even if dynamic and evolutive. This process leads to strange legal fictions[74] [75], from which we may highlight three *examples*.

3.1. A special notion of foreigner

Firstly, the member States – and even the Republic of Ireland which is certainly not a Member of the Commonwealth – are not considered *foreign States* by the other member States, which makes for some imaginative solutions in the adequacy of such a consideration to the mechanisms that are typical of international law. One may think, for example, of the functioning of the regime of the most favoured nation clause[76].

71 See the notion in *Oscar Schachter,* "Non-Conventional Concerted Acts", in *Bedjaoui (ed.),* International Law: Achievements and Prospects, pp. 265-269 as well as the Reports (by Virally) of the 7th Commission of the Institut de Droit International and respective discussions, in Annuaire de l'Institut de droit international, Paris, respectively, vol. 60-I, 1983, pp. 160-374 and vol. 60-II, 1984, pp. 117,ff.. See also *W. Wengler,* "Die Abgrenzung zwischen völkerrechtlichen und nicht völkerrechtlichen Normen im internationalen Verkehr", Legal Essays, A Tribute to Frede Castberg, 1963, pp. 332-352, *F. Münch,* "Non-binding agreements", ZaöRV, 1969, vol. 29, pp. 1-11, *M. Rotter,* "Die Abgrenzung zwischen völkerrechtlichem Vertrag und außerrechtlicher zwischenstaatlicher Abmachung", Internationale Festschrift für Alfred Verdross, 1971, pp. 412-434 and *M. Bothe,* "Legal and Non-Legal Norms", NYBIL, 1980, vol.11, pp. 65-95.

72 The conscience of this goes beyond line b) of article 8§ 2.

73 *Green, op. cit.*, p. 33 says it expressly: "Each independent Commonwealth country owes its independence to an English statute terminating the colonial status of the territory".

74 At the level of the law of treaties, see *J.E.S. Fawcett,* "Treaty Relations of British Overseas Territories", BYBIL, 1949, vol. 26, pp. 86-107.

75 *Jennings and Watts,* Oppenheim's International Law, p. 263 are of the opinion that the relations of the "Members of the Commonwealth (...) are, in some aspects, of a special character".

76 See *Jennings and Watts, Oppenheim's International Law,* p. 263 and § 669.

3.2. *A special notion of diplomats*

On the other hand, the official representatives of the Members of the Commonwealth in other member States are not Ambassadors or Consuls but *High-Commissioners.* This situation then imposes that national laws, *i.e.* formal internal acts, artificially recover the substance of the formal regime of the Conventions of 1961, to guarantee to these representatives, when credited in other member States of the Commonwealth, the rights and privileges proper of their condition[77].

3.3. *The reservations to ICJ's compulsory jurisdiction*

A third symbol of this tendency is the fact that still today[78] (as used to happen more frequently in the past) some member States of the Commonwealth at the moment of recognising the compulsory jurisdiction of the International Court of Justice by subscribing the optional clause foreseen in § 2 of article 36 of the Statute, make a *reservation of conflicts between Members of the Commonwealth* [79]. The truth is that even the United Kingdom altered its declaration in 1969 (but it maintained the reservation relative to conflicts with other Members of the Commonwealth in regard to situations or facts prior to 1969) and that so many more recent treaties in which Members of the Commonwealth are parties, foresee the recourse to the ICJ without any reservation[80].

3.4. *A special regime of extradition*

The only legal international form that the Commonwealth knowledgeably practises is a *special regime of extradition* that, in the relations between (still only some) member States of the Commonwealth, do not recognise any efficacy to the exemption, however generally recognized[81], of a political crime[82]. Surely it is not through such a way that the CPLP will

77 See *Fawcett,* The British Commonwealth in International Law, 1963, pp. 197-201 and *Wilson,* The International Law Standard and Commonwealth Developments, 1966, pp. 40-65.

78 A list, which is still very significant, may be found in *Jennings and Watts (eds.),* Oppenheim's International Law, p. 264.

79 See *Jennings,* "The Commonwealth and International Law", BYBIL, 1953, vol. 30, pp. 326-380 and *Fawcett,* The British Commonwealth in International Law, 1963, pp. 153-154 and 202-208.

80 See last years' ICJ Yearbooks.

81 See *M.C. Bassiouni,* International Extradition and World Public Order, 1974; *V. Defensor-Santiago,* Political Offences in International Law, 1977; *T. Stein,* Die Auslieferungsausnahme bei Politischen Delikten, 1983; *P. L. Robinson,* "The Commonwealth Scheme relating to the Rendition of Fugitive Offenders", ICLQ 1984, vol. 33, pp. 614-633.

be implanted in view of the already traditional constitutional solutions that configure their territories as sanctuaries of freedoms for those who fight for them and for that reason are persecuted[83].

4. Evaluation

In all such traces the Commonwealth is thus definitely a *contrast*, a negative in relation to what the fundamental texts affirm the CPLP to be. This is a sign of an institutional identity of its own. The CPLP certainly does not have a model. We even submit that it does not have to find one[84]. This does not mean though that its program of action does not need clarification or densification, that the *we* of the CPLP, so structured, and with so many differences vis-à-vis other entities, does not still need to better define its "*soul*". In fact the crisis of development that some commentators believe it is enduring as it approaches its first year rather imposes this effort.

82 As explained by *Green, op. cit.*, p. 33, we are again before a unitary conception of the British Empire, inspired on the "Fugitive Offenders Act" of 1881.

83 See article 33 § 2 of the Constitution of Portugal, article 5, LII of the Constitution of Brasil, article 40 § 2 of the Constitution of S.Tomé and Príncipe, article 27 § 2 of the fundamental law of Angola, article 35 § 2 of the Constitution of Cape Verde, article 103 § 2 of the Constitution of Mozambique and article 43 § 2 of the Constitution of Guinea-Bissau. This common ground in the subject, which according to recent news on the forthcoming revision of Portugal's Constitution may be severely affected in the future, is precisely one of the reasons why we do not favour the review of the established discipline.

84 Also clearly in this sense, *A. Monteiro,* "A Comunidade dos Países de Língua Portuguesa", Nação e Defesa, 1996, n°77, p. 50.

ABSTRACTS

The Community of the Portuguese Speaking Countries (1)

By *Paulo Canelas de Castro*

On July 17, 1996 the Community of the Portuguese Speaking Countries (*Comunidade dos Países de Língua Portugesa* – CPLP) was created as an association of seven States, not characterized by a regional coherence, but primarily by a language and a "regionalism of identity". The article surveys the constituent treaty, especially regarding the institutions provided and their functioning. The second focus is on the objectives of the international organization in multilateral diplomacy, internal cooperation and promotion and diffusion of the Portuguese language and its orientating principles. Finally, the author compares the CPLP structures to the British Commonwealth from a political and legal perspective.
The second part of the article on the emerging identity of the CPLP, its status in global international relations and perspectives of an own human rights policy will be published in the coming volume of VERFASSUNG UND RECHT IN ÜBERSEE.

Issues on the "Small Judiciary" Policy in Japan

By *Akira Ishikawa*

Facing serious problems regarding the effectiveness of its judicial system, the Japanese public has been discussing different concepts for a reform from the "Small Judiciary" *(Chiissna Shiho)* to the "Big Judiciary" *(Ohkina Shiho)* policy. The present "Small Judiciary" concept is based on a low number of legal professionals and, in the eyes of the author, inadequate human and material resources and an inaccessible court system. This not only causes delays in court jurisdiction and high costs, but at the same time minimizes the role of the judiciary in relation to the administration. The paper compares the figures marking the situation of the legal profession in comparison to other industrialized nations.
The article discusses some of the aspects of the present system and the criticism within the Japanese society, especially from lawyers and executive managers. Reform measures towards a "Big Judiciary" system are suggested – such as creating a new legal aid system, a reform of legal fees and the number of courts – and their effects are discussed.