FROM REPRESSION TO RESPECT: AN INTEGRATED APPROACH TO THE INTERNATIONAL PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

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I. INTRODUCTION

This article is composed by this introduction, three interrelated chapters, and a conclusion. The first chapter discusses what kind of Intellectual Property Rights (IPR) system is better from a social welfare perspective. In its assessment, the text identifies three orders of negative effects that may arise as side effects of higher levels of IPR protection: endogenous effects (barriers to innovation), exogenous effects (social costs), and systemic effects (tension with other rights and values). The second chapter discusses different possibilities for enforcement strategies, and suggests a threefold strategy based on a repression component, an educational component, and an economic component. The chapter also recognizes that IP enforcement shall be a collective action rather than an activity solely orchestrated by right holders. The final chapter relates the findings of the two prior ones to the international IP discussions and negotiations. It poses that there is no "one-size fits all" model agreement, and that flexibilities are central to the system inasmuch as they guarantee the policy space required to calibrate international IP provisions to each country-specific reality.

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II. A BALANCED APPROACH TO IPR PROTECTION

It is important to protect Intellectual Property Rights. Therefore, we must take into consideration that more IPR protection is not necessarily better. The IP system is not an end in itself, nor is its objective to grant private actors (the right holders) any sort of unjustified overcompensation. As James Boyle explains, the IP system's:

> [G]oal is to give us a decentralized system of innovation in science and culture . . . . [T]he creation of limited legal monopolies called intellectual property rights gives us a way of protecting and rewarding innovators in art and technology, encouraging firms to produce quality products, and allowing consumers to rely on the identity of the products they purchased. The laws of copyright, patent and trademark are supposed to do just that—at least in some areas of innovation—*provided* the rights are set at the correct levels, neither too broad nor too narrow.[1]

The key concept of the aforementioned excerpt is that IPR may only fulfill its ultimate goal if, and only if, there is a fine balance of the rights' levels.[2]

First, from an endogenous perspective, if the system is off-balance it may hamper innovation instead of fostering it. Originally, copyrights and patents were supposed to confer property rights only in expression and invention, respectively.[3] "The layer of ideas above, and of facts below, remained in the public domain for all to draw on, to innovate anew."[4] Only a proper balance between the public domain and the realm of private property may lead to optimal innovation.[5] Too much protection unnecessarily restricts the knowledge-pool available to the next generation of innovators. The public domain available to "creative manipulation" conducive to innovation may be seriously limited if we have database rights over facts, patents over methods, copyrights over scientific articles. Thus, it is possible that an overprotection of IPR works *against* innovation.

Second, from an exogenous perspective, an IP system is not costless. The protection of IPR has a significant social cost. For example, it has long been recognized that patents impose costs on society because they keep out

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1. James Boyle, *A Manifesto on WIPO and the Future of Intellectual Property*, 9 DUKE L. & TECH. REV. 1, 1 (2004).

2. *Id.* at 8.

3. *Id.* at 2.

4. *Id.*

5. *Id.*

competition, enabling rights holders to raise prices and lower outputs.[6] As Federal Judge Richard A. Posner exposes:

> When patent protection provides an inventor with more insulation from competition than he needed to have an adequate incentive to make the invention, the result is to increase market prices above efficient levels, causing distortions in the allocation of resources; to engender wasteful patent races—wasteful because of duplication of effort and because unnecessary to induce invention . . . to increase the cost of searching the records of the Patent and Trademark Office in order to make sure one isn't going to be infringing someone's patent with your invention; to encourage the filing of defensive patents (because of anticipation that someone else will patent a similar product and accuse you of infringement); and to encourage patent "trolls," who buy up large numbers of patents for the sole purpose of extracting licensee fees by threat of suit, and if necessary sue, for infringement.[7]

Third, from a systematic perspective, IP suppliers' rights must be weighed against IP buyers' rights, which may be entitled to greater protection. This is another example of possible costs associated with an IP regime.[8] The Universal Declaration of Human Rights provides for rights that may eventually be in conflict with IPR protection, such as the right to education (Article 26), the right to proper health care (Article 25), and freedom of expression (Article 19).[9] The Declaration, an expression of a consensus among the international community, represents a binding system of shared values subjectively accepted by the universe of humanity.[10] Accordingly, some argue that the "human rights approach" is necessary to

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6. Gary S. Becker, *Reforming the Patent System Toward A Minimalist System*, THE GARY-POSNER BLOG (Sept. 30, 2012, 9:17 PM), http://www.becker-posner-blog.com/2012/09/reforming-the-patent-system-toward-a-minimalist-system-becker.html (last visited Feb. 23, 2013).

7. Richard A. Posner, *Do Patent and Copyright Law Restrict Competition and Creativity Excessively?*, THE GARY-POSNER BLOG (Sept. 30, 2012, 10:30 PM), http://www.becker-posner-blog.com/2012/09/do-patent-and-copyright-law-restrict-competition-and-creativity-excessively-posner.html (last visited Feb. 23, 2013).

8. If one considers the IP regime as a stand-alone system related to innovation, then these costs would be exogenous. If one adopts a monist approach of a sole international legal system globally related to general welfare, then these costs would be endogenous.

9. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

10. NORBERTO BOBBIO, THE AGE OF RIGHTS 15 (1996).

IP law.[11] Specifically, the type and level of protection afforded under any IP regime shall facilitate and promote progress in a manner that will broadly benefit members of society individually and collectively.[12] "Intellectual property and human rights must learn to live together."[13] Traditionally, there have been two dominant views of the human rights and IPR "cohabitation." The "conflict view" emphasizes the negative impacts of intellectual property on rights, such as freedom of expression or the right to health, while the "compatibility model" emphasizes that both sets of rights strive towards the same fundamental equilibrium.[14] The latter view should be prioritized.

Therefore, there are at least three different dimensions—endogenous, exogenous, and systemic—that point to the necessity of achieving a fine balance for IPR protection. It is just as important to have *maximum* standards for IPR if there is a call for minimum IPR standards. Instead of using a positively inclined line or curve to represent the relationship between IPR protection and global welfare, it is better to use an inverted parabola with a positive relation till, an optimal point, and a negative relation from there on. To add some complexity to the model, one must not forget that the optimal point of this inverted parabola varies according to the specificities of any given economic, scientific, and/or cultural reality. Specifically, the level and type of IPR protection that corresponds to the maximum point of welfare depends on conditions that are close to country-specific.

The assumption that an appropriate IPR protection is necessarily a balanced one is crystallized in the Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).[15] Article 7, which concerns the treaty's objectives, provides that:

> The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation

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11. Audrey Chapman, *Human Rights Perspective on Intellectual Property, Scientific Progress, and Access to the Benefits of Science*, 9 DUKE L. & TECH. REV. 1, 2 (1996); *see also* Peter K. Yu, *Reconceptualizing Intellectual Property Interests in a Human Rights Framework*, 40 U.C. DAVIS L. REV. 1039, 1041 (2007); *see also* Laurence R. Helfer, *Human Rights and Intellectual Property: Conflict or Coexistence?*, 5 MINN. INTELL. PROP. REV. 47 (2003).

12. *Id.*

13. Daniel J. Gervais, *Intellectual Property and Human Rights: Learning to Live Together*, in INTELLECTUAL PROPERTY AND HUMAN RIGHTS 3 (2008).

14. *Id.*

15. Agreement on Trade-Related Aspects of Intellectual Property Rights, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Jan. 1, 1995, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

> and to the transfer and dissemination of technology, *to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.*[16]

Moreover, the TRIPS Agreement expressly recognizes that an IPR regime should not jeopardize public health and nutrition, and that the IPR system should cohabit with a policy space that can be used "to promote the public interest in sectors of vital importance to [the members'] socio-economic and technological development."[17] The TRIPS Agreement also points to the eventual need of "appropriate measures . . . to prevent the abuse of intellectual property rights by right holders,"[18] and incorporates the possibility of flexibility in its provisions.[19] If we interpret the spirit of the TRIPS Agreement and take into account the aforementioned articles, it is clear that the treaty sets the groundwork for the elaboration of country-specific IP systems that will deliver the optimal balance of IPR protection, and maximize the general welfare of their corresponding societies.

Despite this apparently straightforward interpretation of the TRIPS Agreement, the first trend observed after the conclusion of the treaty in 1994 was one of indiscriminate and rapid legislative deployment.[20] The assumption that "more IPR protection is better" was taken for granted, and model laws were adopted in many countries regardless of their development level.[21]

In the years to follow, this "addition phase" could not be justified by empirical data.[22] There was no proof that more IPR protection following a pre-defined model was conducive to development in poorer countries. This

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16. *Id.* art. 7 (emphasis added).

17. TRIPS Agreement, *supra* note 15, art. 8.1. *See, id.* art. 27.2 (discussing the exclusion from patentability of inventions that might attempt against the *ordre public* or morality, or that could do harm to human, animal or plant life or health or cause serious prejudice to the environment). *See also*, TRIPS Agreement, *supra* note 15, art. 27.3(a) (giving the members the option to exclude from patentability "diagnostic, therapeutic and surgical methods for the treatment of humans or animals").

18. *Id.* art 8.2.

19. *Id; see, e.g.*, TRIPS Agreement, *supra* note 15, art. 13 (discussing limitations or exceptions to copyright on special cases), art. 30 (discussing limited exceptions to the exclusive rights conferred by a parent), and art. 31 (discussing other use of the subject matter of a parent without authorization of the right holder).

20. DANIEL J. GERVAIS, INTELLECTUAL PROPERTY, TRADE AND DEVELOPMENT: STRATEGIES TO OPTIMIZE ECONOMIC DEVELOPMENT IN A TRIPS-PLUS ERA 68 (Daniel Gervais ed., 2007).

21. Daniel J. Gervais, *Implenting WIPO's Development Agenda*, WILFRID LAURIER UNIVERSITY PRESS 2009 (Jeremy De Beer, ed.), *available at* http://www.iadb.org/intal/intalcdi/PE/2009/04152.pdf, (last visited Feb. 11, 2013).

22. *Id.*

fact, coupled with escalating public health issues posed by the HIV and malaria pandemics, started a "subtraction phase" ("less IP is better") around the year 2000.[23]

Finally, a certain middle ground was reached coincidental to the discussions that culminated in the launch of WIPO[24] Development Agenda in 2007.[25] This third phase of the TRIPS Agreement is informed by what Gervais defines as calibration narratives.[26] The calibration process is based on:

> 1) The recognition that developing countries are very different . . . and consequently may need different implementations of TRIPs;
> 2) The recognition that below certain developmental thresholds, the introduction of high levels of intellectual property protection will not generate positive impacts . . . ;
> 3) The growing belief that intellectual property protection is necessary to develop innovation and draw foreign direct investment (including technology transfers) but in itself is insufficient to achieve developmental objectives;
> 4) Consequently, the recognition that any complete TRIPs implementation must form part of a broader strategic initiative; and, finally
> 5) The recognition that the sudden introduction of high levels of protection and enforcement may induce significant negative welfare impacts, which must also be managed.[27]

Hopefully, with dynamic adjustments, this calibration process will lead to a perfectly balanced approach to IPR protection worldwide, with tailor-made solutions for countries in different cultural and developmental situations. An important step towards this goal is the recognition that IPR protection is not a panacea. Another step is the understanding that when one talks about Brazil, China, the United States, or Germany, he or she is not talking about "markets," but about countries, nations, people, and societies. These nation-states and societies may have different aspirations and/or views regarding their economic systems, and we must not forget that

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23. *Id.*

24. World Intellectual Property Organization.

25. *See* Gen. Rep. adopted by the Assemblies, 43rd Sess., Sept. 24–Oct. 3, 2007, WIPO Doc. A/43/16 (Nov 12, 2007), *available at* http://www.wipo.int/edocs/mdocs/govbody/en/a_43/a_43_16-main1.pdf (last visited Jan. 9, 2012).

26. Gervais, *supra* note 13, at 11.

27. *Id.*

"essentially, intellectual property is but one of several ingredients of a successful national innovation policy."[28]

III. A HOLISTIC STRATEGY FOR IPR ENFORCEMENT

The previous chapter stressed the relevance of a balanced approach to IPR protection and the importance of solutions that are country-specific. This same approach must be extended and applied to the design of enforcement policies. In fact, the last of the forty-five WIPO Development Agenda recommendations reads as follows:

> To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that "the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations", in accordance with Article 7 of the TRIPS Agreement.[29]

The Development Agenda, therefore, explicitly recognizes that IPR enforcement should also consider the specificities of the *loci* where it is being applied. Again, there is no panacea. While IPR protection types and levels shall be calibrated to respond to concrete situations, the actions to enforce these rights must also be balanced according to each specific case, with the maintenance of policy space for adjustments. This balance must take into account not only the concerns of the right holders, but also all the stakeholders involved.[30] Also, while IPR violations should be remedied, any sort of abuse of IP enforcement procedures must be prevented. A ceiling for IPR enforcement is at least as important as the establishment of minimum standards.

In order to strike a balance on the enforcement side of the IP regime equation, a holistic and flexible strategy must be devised. Very often, the only remedy that is proposed against IPR violations is repression. Even as we acknowledge the importance of repressive measures, it is necessary to

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28. *Id.*

29. WIPO Rep. of the Provisional Comm. on Proposals Related to a WIPO Dev. Agenda (PCDA), Sept. 24–Oct. 3, 2007, WIPO Doc. A/43/13 Rev. (Sept. 17, 2007).

30. The Contribution of, and Costs to, Right Holders in Enforcement, Taking Into Account Recommendation 45 of the WIPO Dev. Agenda, Document Prepared by WIPO President, IQsensato, Geneva, 5th Sess., Nov. 2–4, 2009, WIPO Doc. ACE/5/10 (Sept. 8, 2009).

integrate other tools to the enforcement kit. I suggest a threefold approach, based on a repression component, an educational component, and an economic component.

While the repression leg of the tripod focuses mainly on the supply side of pirated and counterfeit goods, the educational and the economic legs focus on the demand side. This is important because, in many developing countries, even if piracy imposes an array of costs on IP right holders, it also provides to a large percentage of the population access to goods (from recorded music, to film, to software) that they would otherwise be unable to purchase.[31] In this context, the question of pricing and distribution is central.

Multinational companies that practically dominate the international media and software markets maintain in developing countries, with few exceptions, prices near or occasionally above the United States and Europe.[32] At the same time, technological advancements significantly lowered the cost of pirating these companies' products, flooding the bases of the consumption pyramid (the poorer classes) with products that, if original, could not be realistically acquired. In this scenario, possibly more effective than the intensification of repression efforts would be a change in the IP right holders' business models.[33] If they could adjust their pricing to attend the demand of consumers with lower income in developing countries, many of these would shift their purchase behavior from pirated goods to original ones.[34] Many companies are already searching for a pricing strategy that allows them to capture larger chunks of developing mass markets, making them win on scale.[35] Governments may also help these new business models to succeed by providing, for example, tax-breaks to some selected classes of products, making them more affordable to the average consumer.[36] Intuitively, it seems that the resources demanded by this type of strategy are lower than those demanded by pure repression strategies, which rely solely on operational law enforcement.

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31. Media Piracy in Emerging Economies: Price, Market Structure and Consumer Behavior, Document Prepared by Vice President of the American Assembly, 6th Sess., Dec. 1–2, 2010, WIPO Doc. ACE/6/5 (Sept. 6, 2010) [hereinafter Media Piracy].

32. *Id.* at 16.

33. *Id.* at 4.

34. *Id.*

35. Public Policies for Combating Piracy in Brazil, Document Prepared by Executive Secretary for Nat'l Council against Piracy, 3rd Sess., May 15–17, 2006, WIPO Doc. ACE/3/14 (May 9, 2006).

36. *Id.*

The economic component is also instrumental to the success of the educational component. The objective of the latter is to build a stronger "IP culture" in the long run through education and public awareness campaigns.[37] The success of this informational strategy, though, is conditioned by its link to the consumers' economic reality. Thus, a successful educational component rests over the viability of presenting a tangible option to the general public—that, for a reasonable price difference, they may shift from pirated to original merchandise.

What comes clearly out of this proposed threefold approach is that the effectiveness of any effort to prevent IP violations is directly proportional to its ability to congregate the different pertinent stakeholders. A winning strategy must include the support of IP right holders, the Government, consumers, and the society in general. Enforcement should be a collective action. Not only would this raise the possibility of success of the initiatives undertaken, but it would also lower the probability that abusive enforcement measures occur.

Balanced and flexible IPR enforcement policies should have two dimensions of integration: (1) tools, combining repression with educational and economic measures; and (2) agents, congregating all the relevant stakeholders. With this kind of holistic strategy, the simplistic view of enforcement as repression shall give place to a culture of true respect towards IPR.[38]

IV. INTERNATIONAL TREATIES: ONE-SIZE DOES NOT FIT ALL

We already saw that more is not necessarily better—both when we are talking about IPR protection and when we are referring to enforcement actions. Balance in both cases is key. This fine balance is delicately consubstantiated in the TRIPS Agreement and the flexibilities of its regime, which allows each country to dynamically adjust some of the treaty provisions to their own cultural, scientific, and development specificities. One-size does not fit all, even if it is "extra-large."[39]

Nonetheless, there is a proliferation of the treatment of IP issues at bilateral and plurilateral interactions in detriment of multilateral *fora*. It is not uncommon for the developed countries with offensive interests in IPR protection to look for different venues to attain their objectives. If a consensus cannot be reached at the multilateral level, these countries can

37. *See* Media Piracy, *supra* note 31.

38. *Id.* at 6.

39. Boyle, *supra* note 1, at 9.

engage in "forum-shopping," and search for opportunities to push through their agendas in talks with one or a few trade partners.

Usually these talks are asymmetrical and involve partners with significantly different levels of development. In these cases, the developing partners "are not the *demandeurs* in the area of IP where their general attitude has been rather defensive and of damage limitations."[40] In many cases, the defensive, developing partners accept higher levels of IP protection[41] as part of the bargain. Developing partners may gain concessions in other areas where they have offensive interests by accepting IP rules in the package. In the case of talks involving symmetrical, developed partners, there is also room for concerns because any TRIPS-plus agreement may affect the whole international IP system as they regulate the relationships of right holders of those countries and third parties that are either users or distributors of the protected goods across the globe (*e.g.*, border measures targeted at products in transit).

The bilateral or multilateral adoption of higher IPR protection standards collides with the delicate balance that animates the TRIPS regime. Some authors affirm, "TRIPS-plus enforcement standards should be avoided in the negotiation of FTAs and EPAs, as compliance with the TRIPS Agreement already provides a strong framework for the exercise and defense of IPRs."[42] The elimination of the policy space that developing countries are entitled to under the TRIPS flexibilities is certainly harmful. Moreover, these TRIPS-plus agreements almost never contain clauses to prevent distorted uses of a highly protective regime, abusive resort to IPR protection, or enforcement measures that are detrimental to legitimate trade and to public interest issues, such as health or nutrition.[43]

We then face an apparent paradox. We need tailor-made, country-specific solutions to establish effective IP regimes that are conducive to social welfare, but these solutions are better achieved in a multilateral environment, rather than on bilateral or small groups' discussions. At the specialized multilateral *fora*, such as WIPO or the WTO,[44] the discussions are open to more than 140 countries and the decision-making process is

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40. Pedro Roffe, *Intellectual Property Provisions in Bilateral and Regional Trade Agreements: The Challenges of Implementation*, CIEL, Oct. 6, 2006, (emphasis added) *available at* http://ictsd.org/downloads/2009/01/roffe-2020fta20implementation20sa20dialogue-pdf.pdf (last visited February 9, 2013).

41. *Id.*

42. Carlos M. Correa, *The Push for Stronger Enforcement Rules: Implications for Developing Countries*, 22 ICTSD INTELLECTUAL & SUSTAINABLE DEV. SERIES (Feb. 2009).

43. *Id.*

44. WORLD TRADE ORGANIZATION, http://www.wto.org (last visited Feb. 7, 2013).

relatively transparent and inclusive, with the interests of several different stakeholders well represented. Consequently, the answer to the paradox is that, at the multilateral level, it is easier to defend the flexibilities that—as an integral part of the system rather than the suspension of it—assure to each country the necessary policy space to find their own balance for IPR protection.

V. CONCLUSION

The article demonstrated that questions related to IPR are complex. Most of the easy, simplistic assumptions can be quickly refuted as false, or at least incomplete. More IPR is not necessarily better. An IPR regime does not necessarily conduce to innovation and development. There are several social costs related to an IPR system that must be considered. Enforcement of IPR cannot be a one-dimensional action. There is no "one-size fits all" in terms of model laws to be rapidly deployed in different nation-states.

One way to address this complex scenario is through an integrated and multi-dimensional approach that simultaneously recognizes that:

(i) IPR protection needs to be balanced;
(ii) Enforcement policies needs to be holistic and inclusive; and
(iii) International discussions must be multilateral, while preserving the built-in flexibilities of the TRIPS system.

While a maximalist view does not prevail when it comes to IPR protection, it has far more chances to accurately reflect the ideal *locus* for IP discussions. These discussions and the decision-making process related to IPR must be transparent and stretch out to all relevant interested parties. However, we must keep in mind that these discussions do not have to come up with a solution that is globally applicable. Most probably, this kind of solution does not exist. What the exercise must produce is a system of dispositions that takes into account the particularities of each player and leaves room for constant adjustment and calibration.

Each society has its own aspirations, and these aspirations, together with its cultural and developmental realities, will define the right balance of IPR protection and related enforcement measures that shall be applied. If every society can freely decide which IPR system is better, we will have a world where it is much easier for a culture of respect towards Intellectual Property Rights to flourish.

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EDITOR'S NOTE

The *ILSA Journal of International and Comparative Law* seeks to promote the study and knowledge of issues in international law. This Bilingual Edition is dedicated to issues that affect the Hispanic population around the world; these issues range from the social and political situation in Venezuela to a comparative analysis between Spanish and Catalan mediation laws.

The article by Nicole M. Bagdadi discusses the ongoing human rights violations in Venezuela under the Chavez regime. The author primarily focuses on the case of Ivan Simonovis, a law enforcement officer turned into a political prisoner under the Chavez administration, to demonstrate the Venezuelan government's blatant disregard for the rule of law. Further, the author points out that it is the government's ability to bypass the rule of law that allows it to suppress freedom of expression.

The article by Manuel A. Gomez examines the manipulative use of the law for political gain in Venezuela. The author focuses on the so-called "Misiones Bolivarianas," implemented under the Chavez regime, to illustrate how the government's distortion of the law through the use of legislation as well as other legal tools, have helped the Venezuelan government attain self-interested political gains. Further, the author discusses the impact of the social, political, economic, cultural, and historical factors on the instrumentality of the law.

The article by Fernando Garriga analyses the coexistence of Catalan and Spanish family mediation laws in Spain. The author explains the concept and goal of the mediation process as well as the guiding principles of mediation law. In analyzing the coexistence of these two set of laws, the author examines the differences and similarities between the two regulations by focusing on the essential characteristics of the current laws.

Finally, the article by Alejandro Gutierrez compares the doctrine of at-will employment with the system of just cause through an analysis of labor legislation in the United States and Colombia. The author describes the structure of the legislation in both countries, analyzing the benefits present in at-will employment in the U.S., as well as the protections available under the just cause system in Colombia. The author also analyzes defects in both systems and makes recommendations to improve both systems of labor law.

Many people made the publication of this edition possible. I would like to thank each and every one of the individuals who worked long and hard hours to complete this edition. The authors of these articles, along with the Editorial Staff contributed to making the publication of this edition possible. I especially want to highlight the work of the Bilingual Team: Yelina Angulo, Nicole M. Bagdadi, Mar Estrach, Laura Garcia and Luz

Nieto, for their collaborative efforts and continuous dedication. An even warmer expression of gratitude goes to our Assistant Bilingual Editor, Yuna E. Scott, for her contribution and encouragement in the publication of this edition. Finally, I would like to thank my family and friends for their continuous support and patience throughout this process. This edition is dedicated to all the journalists in Venezuela who risk their lives and lead the battle of freedom of expression.

Sylvia G. Cano
Bilingual Editor, 2012-2013

EDITOR'S NOTE

El propósito del *ILSA Journal of International and Comparative Law* es promover el estudio y conocimiento sobre los temas legales en ámbito internacional. El propósito de la Edición Bilingüe es promover el conocimiento de los problemas que afectan a la población hispana en todo el mundo. Esta edición se enfoca en facilitar la comprensión de las diferencias y similitudes entre los sistemas jurídicos de la comunidad internacional. Los artículos en esta edición tratan temas que se extienden desde la situación social y política en Venezuela a un análisis comparativo de la ley de mediación catalana y la ley de mediación española.

El artículo de Nicole M. Bagdadi analiza las violaciones de derechos humanos en Venezuela bajo el régimen de Hugo Chávez. La autora se enfoca principalmente en el caso de Iván Simonovis, un oficial de policía quien se convirtió en prisionero político bajo el gobierno de Chávez, para demostrar la indiferencia del gobierno de Chávez hacia la norma jurídica. Además, la autora señala que es la habilidad del gobierno de evitar la aplicación de las leyes que le permite suprimir la libertad de expresión.

El artículo de Manuel A. Gómez examina la manipulación de las leyes por el gobierno Venezolano para obtener fines políticos. El artículo se centra en las llamadas "Misiones Bolivarianas," implementadas durante el régimen de Chávez, para ilustrar cómo el gobierno distorsiona las leyes utilizando varios instrumentos jurídicos bajo la apariencia de estar al servicio de la justicia. Además, el autor analiza el uso instrumental del derecho y el impacto de los factores sociales, políticos, económicos, culturales e históricos sobre el mismo.

El artículo de Fernando Garriga analiza la coexistencia de la ley de mediación familiar catalana y la ley de mediación familiar española. El autor explica el concepto y el objetivo del proceso de mediación, y describe los principios que gobiernan a la ley de mediación. Al analizar la coexistencia de las dos legislaciones, el autor examina las diferencias y similitudes entre los dos reglamentos, enfocándose en las características esenciales de las leyes actuales.

Por último, el artículo de Alejandro Gutiérrez compara la doctrina del empleo a voluntad con el sistema de causa justa a través de un estudio de la legislación laboral en los Estados Unidos y Colombia. El autor describe la estructura de las leyes laborales en ambos países, analizando los beneficios otorgados bajo el sistema de empleo a voluntad en los EE.UU., así como las protecciones concedidas bajo el sistema de causa justa en Colombia. El autor también analiza los defectos en ambos sistemas y hace sus propias recomendaciones para mejorar los sistemas de derecho laboral.

Muchas personas hicieron la publicación de esta edición posible. Quiero agradecer a cada una de las personas que trabajaron largas y arduas

horas para completar esta edición. Los autores de estos artículos junto al equipo editorial, hicieron posible la publicación de esta edición. Me gustaría resaltar el trabajo del Equipo Bilingüe: Yelina Angulo, Nicole Bagdadi, Mar Estrach, Laura Garcia y Luz Nieto, por su colaboración y dedicación a la publicación de esta edición. En especial, quiero agradecer a nuestra Editora Asistente Bilingüe, Yuna E. Scott, por su contribución y apoyo en la publicación de esta edición. Por último, quiero agradecer a mi familia y amigos por su apoyo continuo y paciencia durante este proceso. Esta edición va dedicada a los periodistas venezolanos, quienes arriesgan sus vidas y encabezan la batalla por la libertad de expresión.

Sylvia G. Cano
Editora de la Edición Bilingüe, 2012-2013