United States Department of State

United States Permanent Mission to the Organization of American States

Washington, D. C. 20520

September 7, 1982

Mr. Roger Fontaine
Senior Staff Member
National Security Council
Room 351 - Old Executive Office Building
Washington, D.C. 20506

Dear Roger:

In response to your request I am pleased to enclose for your attention, and that of Judge Clark, an exhaustive study done by the Department's Legal Division on the dispute settlement mechanisms which are available to the American States. In my view the Department's lawyers, particularly Josh Bolten the principal drafter, have produced a fine and highly informative piece of work.

The memorandum has three sections. Part A discusses judicial mechanisms, of which the International Court of Justice is the only one currently available. The Court is open to all American states and would appear flexible enough in its rules on composition to meet concerns of disputants about impartiality. As you will see, however, American states other than the United States have been reluctant to take cases to the Court.

Part B deals with the wide variety of mechanisms available as alternatives to judicial proceedings. These include a wide array of specifically American conventions and agreements providing for arbitration, mediation, conciliation, and good offices. As the memorandum notes, American states also have been reluctant to make use of these mechanisms.

Part C of the memorandum is the drafter's summing up. Unsurprisingly, the drafter notes that the salient feature of the maze of procedures and mechanisms available to the region is that they are not used. The political sensitivity of these territorial disputes means to the drafter that definitive legal solutions are not likely

without dramatic attitude changes by disputants. In other words, any new inter-American dispute settlement mechanism is likely to be as ineffective as the existing ones absent the political will to utilize it.

I trust you will find this research useful. Please do not hesitate to ask should you have further questions.

Sincerely,

Bill

J. William Middendorf, II
Ambassador

Enclosure:
Study by Department's Legal Division

DEPARTMENT OF STATE

Washington, D.C. 20520

August 23, 1982

MEMORANDUM

TO: USOAS - Ambassador Middendorf

FROM: L/ARA - Joshua B. Bolten

SUBJECT: Inter-American Dispute Settlement Mechanisms

You have asked for background information that might be helpful in analyzing proposals for establishment of a new inter-American dispute-settlement tribunal. I gather the interest lies in a mechanism that could deal with important regional inter-state controversies, such as boundary disputes.

In weighing any such proposal, it should be understood that there are three levels of formal mechanisms, established by international agreement, that are already available to address such disputes: (a) judicial mechanisms; (b) arbitral mechanisms; and (c) those providing for conciliation, mediation, and good offices.

All states have a fundamental obligation under international law to settle disputes peacefully.[1/] The existence of many pending regional territorial and other legal

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1/ See, e.g., UN Charter, Arts. 2(4), 33, 36(3); OAS Charter, Arts. 3(g), 23-26. Article 33 of the UN Charter and Article 24 of the OAS Charter list a variety of available dispute-settlement avenues, to which the multilateral and regional mechanisms discussed below correspond.

disputes is not the result of a lack of mechanisms for pursuing that obligation; the succeeding pages outline in only cursory detail some of the many dispute-settlement fora and procedures now available to American states. Rather, what is lacking is often simply the will to have recourse to these mechanisms.

A. Judicial Mechanisms

1. The International Court of Justice

The International Court of Justice is the principal judicial organ of the UN. Successor to the Permanent Court of International Justice instituted by the League of Nations, the ICJ consists of 15 judges elected by the UN from the different member states. Among American states, the United States, Brazil, and Argentina are currently represented on the Court. All members of the UN are ipso facto parties to the Statute of the Court (Art. 93, UN Charter); therefore, the ICJ is automatically open to every American State.

Cases are taken to the Court by states pursuant to their mutual consent, expressed through (a) special agreement between the parties; (b) acceptance in international treaties or conventions of the Court's jurisdiction in particular classes of cases; or (c) general recognition of the compulsory jurisdiction of the Court in international legal disputes. See Statute of the ICJ, Art. 36. As to the last, Art. 36(2) invites the states party to declare their recognition of the Court's compulsory jurisdiction "in all legal disputes" concerning

questions involving international law, treaties, or other international obligations. Among OAS states, 12 have filed such declarations recognizing the Court's compulsory jurisdiction; but several, including the United States, added exceptions or reservations significantly undercutting a general acceptance of compulsory jurisdiction.[2/]

Two additional features of ICJ procedure, involving the composition of the Court, may be significant in the context you have asked about: First, if the Court includes no judge from a

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2/ The 12 are: Barbados, Colombia, Costa Rica, Dominican Republic, El Salvador, Haiti, Honduras, Mexico, Nicaragua, Panama, United States, and Uruguay. Almost all the acceptances are based on reciprocity, that is, on condition of the other party to the dispute also having accepted the Court's compulsory jurisdiction. Several, most notably El Salvador's, carve out significant exceptions to compulsory jurisdiction.

The United States' reservation is quite substantial. One portion of the U.S. declaration excepts from the Court's jurisdiction "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America." Commonly known as the Connally Amendment, the underlined segment purports to enable the U.S. to determine unilaterally whether a particular dispute falls within the jurisdiction of the Court. In submissions to Congress, the State Department has noted that this self-judging provision may be inconsistent with Art. 36(6) of the ICJ Statute (which gives the Court power to settle whether it has jurisdiction) and effectively undercuts general acceptance of the Court's compulsory jurisidiction. The U.S. reservation may be available reciprocally to other states and thus also undercuts the U.S.'s ability to compel another state to appear in an ICJ adjudication.

The texts of Art. 36 and the declarations of the 12 OAS states recognizing compulsory jurisdiction are attached at Tab A.

state party to the dispute, that state may select a judge ad hoc for that case. Second, the Court need not sit as a whole, but may sit as a special Chamber of three or more judges. Thus, parties from a particular region might request a special Chamber made up of judges from that region or from a particular legal tradition, or some variant of this approach.

For the first time in the Court's history, the United States and Canada chose this Chamber option for adjudication of our maritime boundary dispute in the Gulf of Maine. The two governments will soon present the case for decision to a special Chamber consisting of ICJ judges from France, Germany, Italy, and the United States, and an ad hoc judge appointed by Canada.

The decision of the United States to seek resolution of its maritime boundary dispute in the ICJ is consistent with long-standing United States policy favoring increased use of the Court.[3/] The United States has on several occasions taken

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3/ See S. Res. 74, 93d Cong., 2d Sess. (1974) ("Territorial Disputes") (sense of the Senate that the U.S. should submit to the ICJ "as many as possible of those outstanding territorial disputes involving the United States, where such disputes cannot be resolved by negotiation"); S. Res. 76, 93d Cong., 2d Sess. (1974) ("Establishment of Regional Courts Within the ICJ") (sense of Senate that U.S. should give favorable consideration to using special chambers convened to resolve regional disputes; and that U.S. should urge ICJ to sit from time to time outside the Hague); E. McDowell, Digest of United States Practice in International Law 1976 650-80 (reprinting State Department Study on "Widening Access to the International Court of Justice").

cases to the Court (recently for example in the Iran hostage situation) and has encouraged other nations to accept the ICJ as a basic legal forum for dispute settlement. Thus, for example, a standard feature of our bilateral FCN (Friendship, Commerce and Navigation) treaties is recourse to the ICJ in the event of a dispute not resolvable by diplomacy or other agreed means.

In the 1948 American Treaty on Pacific Settlement, the "Pact of Bogota," the 13 contracting states declare their recognition of the compulsory jurisdiction of the ICJ and agree that where mediation or conciliation procedures have failed and there has been no agreement on an arbitral procedure, either party may require compulsory recourse to the ICJ.[4/] Despite such apparently mandatory language, American States other than the United States have rarely adjudicated cases before the ICJ.[5/]

[4/] Twenty-one states signed the treaty, but 7 of these (including the U.S.) have not ratified, and one (El Salvador) has denounced the treaty. The 13 parties are: Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Uruguay. Several states attached significant reservations at signing and/or at ratification. The texts of the Treaty and reservations are attached at Tab B.

[5/] Cases actually referred to the ICJ include a dispute between Peru and Colombia over an asylum case (1949-51) and a boundary dispute between Honduras and Nicaragua (1958-60).

2. Regional Courts

There are no regional courts comparable to the ICJ. The only existing regional American court of which I am aware is the Inter-American Court of Human Rights, whose jurisdiction is limited to human rights issues and which has, in any event, had no cases yet, other than three requests for advisory opinions.6/

A regional American dispute-settlement court, however, is not without precedent. In a 1907 convention, the Central American states bound themselves to decide every difference or difficulty arising between them by means of a Central American Court of Justice. Its jurisdiction extended not only to inter-state disputes, but to complaints of an international character brought by individuals against contracting states. The Court lasted only 10 years. During that period, it considered ten cases, two of which resulted in affirmative judgments.

The Court's final case was brought by Costa Rica and El Salvador against Nicaragua, in a dispute over rights that Nicaragua had purported to grant the United States in the 1916 Bryan-Chamorro Treaty. When the Court gave judgment against

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6/See Statute of the Inter-American Court of Human Rights, Art. 2; American Convention on Human Rights, Arts. 62(3), 65(1). Under the Cartagena Agreement, the Andean Pact countries have also adopted a statute establishing a tribunal to deal with certain controversies arising in the context of their common-market relationship.

Nicaragua, Nicaragua declared the decision null and void and abrogated the Convention. The Convention was to lapse by its own terms in 1918, and, with Nicaragua's withdrawal from the system, was not renewed.7/

In addition to the now extinct Central American Court, there have, over the years, been many proposals for a true Inter-American Court of Justice comparable to the ICJ. Suggestions for an American dispute-settlement tribunal date back to the days of Bolivar. Specific proposals, some of them outlining detailed statutes for a court with areas of compulsory jurisdiction, were presented by various delegations to Inter-American conferences in 1923 (Costa Rica), 1928 (Colombia), 1933 (Mexico), and 1951 (El Salvador). While these proposals seem to have received serious consideration, none was ever

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7/ See C. Fenwick, The Organization of American States 215-16 (1963); 6 G. Hackworth, Digest of International Law 78-79 (1943); Hudson, "Central American Court of Justice," 26 Am. J. Int'l L. 759 (1933). Text of Convention at Tab D.

In 1923 the Central American states adopted a convention replacing the Court with an arbitral mechanism, an International Central American Tribunal. Text at Tab E. Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua signed the convention; but El Salvador never ratified and, in 1953, Honduras denounced it. At the 1923 signing of the convention, the US signed a protocol with the contracting states, in which the US expressed support for the convention and agreed to designate 15 U.S. citizens to be available for service on the tribunal. See Convention for the Establishment of an International Central American Tribunal, Arts. II, III. The U.S. did make such designations in 1925 and 1930, see G. Hackworth, supra, at 79-80; but I have been unable to locate indication of any action taken by the tribunal. See Hudson, supra, at 782-84.

adopted.[8] In explaining its objections to the latest proposal in 1954, the United States delegation asserted that establishment of an Inter-American Court would be an "unnecessary and unwarranted duplication of the ICJ," and noted that the ICJ Statute permits a special chamber that might even be constituted to apply specifically American international law concepts.[9]

B. Non-Judicial Mechanisms

While true international judicial mechanisms are quite rare, there are numerous international agreements on arbitral and other dispute-settlement procedures. Among the most prominent of the many international conventions providing for arbitration to which the United States is a party are the 1899 Hague Convention for the Pacific Settlement of International Disputes, and its 1907 successor (Hague II). Twenty OAS states are parties.

There have also been numerous specifically American conventions for inter-state dispute settlement. Those still in force include the following:

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[8] See C. Fenwick, supra note 7, at 208-13. If a proposal for an Inter-American Court of Justice is revived, it would of course be worthwhile to review the previous drafts and debates.

[9] See id. at 212-13, quoting from Committee on Juridical-Political Matters: Observations of the United States on Resolution C, OEA/Ser. G/VII/AJP-4.

Treaty on Compulsory Arbitration (Mexico City, January 29, 1902).**

Convention for the Establishment of International Commissions of Inquiry, 44 Stat. 2020, TS 717, 2 Bevans 387 (1923).*

Treaty to Avoid or prevent Conflicts between the American States (Gondra Treaty), 44 Stat. 2527, TS 752, 2 Bevans 13, 33 LNTS 25 (1923).*

General Treaty of Inter-American Arbitration (and Protocol of Progressive Arbitration), 49 Stat. 3153, TS 886, 2 Bevans 737, 130 LNTS 135 (1929).*

General Convention of Inter-American Conciliation, 46 Stat. 2209, TS 780, 2 Bevans 745, 100 LNTS 401 (1929); and Additional Protocol, 49 Stat. 3185, TS 887, 3 Bevans 61 (1933).*

Anti-War Treaty of Nonaggression and Conciliation, 49 Stat. 3363, TS 906, 3 Bevans 135, 163 LNTS 395 (1933).*

Convention for the Maintenance, Preservation and Reestablishment of Peace, 51 Stat. 15, TS 922, 3 Bevans 338, 188 LNTS 9 (1936); and Additional Protocol Relative to Non-Intervention, 51 Stat. 41, TS 923, 3 Bevans 343, 188 LNTS 31 (1936).

Treaty on the Prevention of Controversies, 51 Stat. 65, TS 924, 3 Bevans 357, 188 LNTS 53 (1936).*

Inter-American Treaty on Good Offices and Mediation, 51 Stat. 90, TS 925, 3 Bevans 362, 188 LNTS 75 (1936).*

Convention to Coordinate, Extend and Assure the Fulfillment of the Existing Treaties Between the American States, 51 Stat. 116, TS 926, 3 Bevans 348, 195 LNTS 229 (1938).*

American Treaty on Pacific Settlement (Pact of Bogota), 30 UNTS 55 (1948).**

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*Superseded by the Pact of Bogota, as between parties to the Pact only.

**The U.S. is not a party to the Treaty on Compulsory Arbitration or the Pact of Bogota; the U.S. remains a party to the other treaties listed.

Of these, the most comprehensive is the 1948 Pact of Bogota.[10/] The Pact includes a general undertaking to settle disputes by pacific means (Chapter One), and establishes procedures for good offices and mediation (Chapter Two) and investigation and conciliation (Chapter Three). Where these less formal procedures are unsuccessful, the parties commit themselves, as noted above, to the compulsory jurisdiction of the ICJ (Chapter Four) or, if they so agree instead, to binding arbitration (Chapter Five). The comprehensive and indeed preemptive nature of the Pact of Bogota is expressly established in Article LVIII, which stipulates that most of the conventions listed above cease to be in force as between parties to the Pact.

1. Good Offices, Mediation, and Conciliation

Nearly all of the conventions listed above establish some procedures for and include commitments to undertake good offices, mediation, and conciliation. The first two procedures are much the same, in that a state offers "good offices" when it tries to facilitate negotiations between the disputants themselves and "mediates" when it also participates in the negotiations directly; in practice, the two often merge. "Conciliation" resembles arbitration in that a conciliator has the specific task of elucidating the facts or preparing formal

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10/ Text at Tab B.

proposals for settlement--but without the binding character of an award or judgment.[11]

An expressly non-compulsory character with respect to recourse to these procedures is reflected in some of the several inter-American conventions on good offices, mediation, and conciliation. See, e.g., Convention to Coordinate, Extend and Assure the Fulfillment of Existing Treaties Between the American States, Art. 1. Others include a firm obligation to undertake mediation or conciliation if other methods of peaceful settlement are not successful. But it is inherent in the nature of these procedures that regardless of whether states obligate themselves to have compulsory recourse to them, their result is not binding on the parties. See, e.g., Pact of Bogota, Art. XXVIII; General Convention of Inter-American Conciliation, Arts. 1, 9; Gondra Treaty, Arts. I, VI.

2. Arbitration

Arbitration, like adjudication, is a definite legal process, designed to produce terms of settlement dictated by a third party. And like a court judgment, an arbitral award is by its nature considered a formal decision binding on the parties to the case.[12]

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[11] See J. Brierly, The Law of Nations at 293-95 (5th ed. 1955).

[12] See id. at 273-78.

Arbitral procedures differ from judicial ones in that they are more flexible and give greater discretion to the parties in framing the scope and procedures of the process, through the agreement submitting the case to arbitration (the compromis). Further, arbitral mechanisms generally lack the institutional character of judicial fora, including a permanent seat, registrar, secretariat, or membership. The Hague Permanent Court of Arbitration, established by the 1899 Convention, is unusual in that it maintains a list of arbitrators nominated by the contracting states. Most of the other conventions simply specify a procedure for selecting arbitrators ad hoc, without creating a permanent panel. See, e.g., General Treaty of Inter-American Arbitration, Art. 3.

A central issue in the application of the various arbitration agreements, like those on recourse to the ICJ, is whether recourse to these procedures is compulsory. Some of the conventions are expressly non-compulsory in their application. For example, the 1907 Hague Convention stipulates only that "it would be desirable that . . . the Contracting Parties should, if the case arose, have recourse to arbitration, in so far as circumstances permit." Art. 35. Other agreements contain language indicating that resort to their procedures is mandatory. For example, under Article 1 of the 1929 General Treaty of Inter-American Arbitration, the parties bind themselves to submit to arbitration all differences of an international character that cannot be adjusted by diplomacy

and that are juridical in nature. Such provisions, however, may be weakened by reservations[13] or limitations in language of other portions of the treaty.[14] All of the conventions on arbitration make clear that once the process is engaged, the resulting arbitral award is binding.[15]

C. Comment

The preceding sampling of various inter-American dispute-settlement conventions reflects a maze of procedures and mechanisms already available in the region, in addition to the judicial forum of the ICJ. Despite their numbers, and despite the purportedly compulsory language of several, the salient feature of all these conventions is that they are not used. American states have on many occasions sought outside assistance in resolving their differences, often through the

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13/ For example, the Pact of Bogota and the General Treaty of Inter-American Arbitration are diluted by several states' reservations to the scope of the treaties' jurisdiction. See texts at Tabs B and C.

14/ For example, the General Treaty of Inter-American Arbitration contains no provision requiring that disagreements over whether a dispute falls within the jurisdiction of the Treaty be submitted for decision to a tribunal; nor any procedures for constitution of a tribunal should one party refuse to participate. Thus a state might seek to evade its compulsory arbitration commitment by unilaterally declaring that the controversy falls outside the treaty's jurisdiction and accordingly refusing to participate in the creation of a tribunal. Such refusal would frustrate further steps to constitute the tribunal and invoke the Treaty.

15/ See Pact of Bogota, Art. XLVI (arbitral award "shall settle the controversy definitively, shall not be subject to appeal, and shall be carried out immediately"); accord, General Treaty of Inter-American Arbitration, Art. 7.

mechanisms of the OAS and Rio Treaty Meetings of Foreign Ministers,[16] and often through special ad hoc arrangements suited to the particular dispute.[17] But dispute settlement

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[16] Numerous regional inter-state disputes, including territorial disputes, have been addressed in the political fora of the OAS. Among them: Costa Rica-Nicaragua (1948-49; 1955; 1959); Haiti-Dominican Republic (1950; 1963); Honduras-Nicaragua (1957); El Salvador-Honduras (1969); Argentina-United Kingdom (1982).

Although disputes have often ended up in the OAS political fora, the OAS has its own unused mechanisms. For example, the OAS Charter (as revised in 1967) established an Inter-American Committee on Peaceful Settlement as a sub-organ of the Permanent Council to assist the Council in offering fact-finding, good offices, and recommendations for peaceful settlement of disputes. See Arts. 82-88. The current members of the Committee, elected by the Permanent Council, are Argentina, Bolivia, Brazil, Guatemala, and the U.S. While the predecessor Peace Committee at one time maintained an active and apparently valuable mediation and conciliation role, see Inter-American Institute of International Legal Studies, The Inter-American System 82-104 (1966), the Committee on Peaceful Settlement in recent years has been inactive.

[17] Thus, for example, in 1971 Argentina and Chile agreed to refer their dispute in the Beagle Channel region to a panel of arbitrators selected from the ICJ, acting on behalf of the British Crown. Argentina rejected the arbitrators' 1977 award as legally flawed and in excess of the panel's jurisdiction. Subsequently, Argentina and Chile have accepted the mediation of the Pope in seeking a peaceful solution to their dispute.

Another currently prominent example of an ad hoc arrangement for settlement of a boundary dispute is that between Venezuela and Guyana, in an effort to resolve Venezuela's long-standing claim to approximately five-eighths of Guyana. Under the 1966 Geneva Agreement, Venezuela and Guyana have until September of this year to determine a method of peaceful settlement. Thereafter, by the terms of Article IV of the Agreement, they must refer the decision on means of settlement to an agreed "appropriate international organ," and if unable to agree on an organ, to the UN Secretary-General who shall choose the means of peaceful settlement.

Similarly, although less formally, during the course of the Falklands crisis, Argentina and the United Kingdom employed the good offices and mediation of the Secretary of State, the President of Peru, and the UN Secretary-General.

has only rarely been pursued in the context of any of the formal agreements discussed above.

The problem is plainly not one of a lack of appropriate mechanisms available to American states; the Pact of Bogota, in particular, provides a reasonable framework for American states to commit themselves to each of the forms of dispute settlement discussed above. Lack of recourse to existing mechanisms is better explained by lack of interest in them. Many of the conventions discussed above are doubtless unknown to or considered dead letters by many American states.

Moreover, for political reasons, many disputes are simply not susceptible to definitive legal solution. Certain long-standing boundary conflicts, in particular, involve such ingrained and emotional positions that there is little willingness to seek a definitive result or submit to the risks of third-party resolution, especially on the part of the side with the weaker claim. Indeed, if the dispute is politically sensitive, international arbitration or adjudication may be useful in only a limited range of cases: first, where both parties have a sufficient interest in resolution of the issue to risk losing at least some of their claims (international dispute settlements tend toward compromise regardless of the merits); and, in addition, where neither party feels it is in a position to make the compromise a negotiated solution would require, but each believes it can justify domestically acceptance of an "impartial" decision by a third party. In

other circumstances, the parties are more likely to prefer negotiation, in which they have greater control over the outcome; or they may simply prefer to perpetuate uncertainty.

A new inter-American court or truly compulsory arbitral mechanism could conceivably attract more American interest and allegiance than, for example, the ICJ or the mechanisms of the 1907 Hague Convention. But absent a dramatic change in attitude by American states, a new inter-American dispute-settlement mechanism is unlikely to be any more effective than the large collection of international mechanisms now widely ignored. Even if ever used, moreover, a new mechanism would probably duplicate existing ones and, in the case of an actual court, might prove costly[18/] and contribute to undesirable fragmentation of international law and practice.

In lieu of creating an entirely new mechanism, it may be worth considering invigorating or reinvigorating one or more of the many existing mechanisms. The Pact of Bogota, with its comprehensive coverage, may be a good candidate. As a positive initiative, USOAS might consider urging that the Inter-American Juridical Committee (IAJC) conduct a study of existing dispute-settlement mechanisms to recommend how best to promote use of

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18/ Maintenance of the UN-funded ICJ cost approximately $8.9 million in 1980-1981 (during which time four cases were before the Court), of which the U.S. share is 25%. See ICJ Yearbook 1980-1981, at 169. The U.S. share for an inter-American court would be higher, since the U.S. quota of OAS expenses runs to nearly two-thirds.

the most effective. Another initiative might involve requesting the IAJC to develop and/or maintain a list of distinguished American jurists, who would be available for service as arbitrators or conciliators to all American states, perhaps within the general framework of the Pact of Bogota, the General Treaty of Inter-American Arbitration, or other regional agreements. On a purely hortatory level, USOAS might want to consider promoting an OAS resolution urging those countries in the hemisphere with outstanding boundary disputes to submit them to the procedures of adjudication or arbitration specified by international agreement.

In any event, there are a variety of steps that might be taken within the existing framework (including simple publicity for existing mechanisms) to promote peaceful dispute settlement. L remains at the service of USOAS to assist in preparing or responding to any such initiative.

Attachments:

Tab A - Article 36, Statute of the ICJ;
Declarations of 12 OAS states recognizing compulsory jurisdiction of ICJ.
Tab B - Pact of Bogota.
Tab C - General Treaty of Inter-American Arbitration.
Tab D - Convention for the Establishment of a Central American Court of Justice.
Tab E - Convention for the Establishment of an International Central American Tribunal, and Protocol of Agreement (with U.S.).

L/ARA:JBolten:jv
8/23/82 ext. 22160

Clearances: L - Mr. Michel
L - Prof. Morrison
L/ARA - Mr. Gudgeon
L/NEA - Mr. Kozak
L/UNA - Mr. Johnson

CC: L - Mr. Robinson
L/T - Mr. Dalton
ARA - Mr. Gillespie

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2. Statute of the International Court of Justice [1] (with reservation) [2]

Signed at San Francisco June 26, 1945; ratification advised by the Senate of the United States of America July 28, 1945; ratified by the President of the United States of America August 8, 1945; ratification deposited August 8, 1945; proclaimed by the President of the United States of America October 31, 1945; effective October 24, 1945

* * * * * *

ARTICLE 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specifically provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances to the compulsory jurisdiction of the International Court of Justice for the period which they still have to run in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

BARBADOS

1 VIII 80.

I have the honour to declare on behalf of the Government of Bardados that:

The Government of Barbados accepts as comp lsory, *ipso facto*, and without special agreement, on condition of reciprocity, the jurisdiction of the International Court of Justice in conformity with paragraph 2 of Article 36 of the Court until such time as notice might be given to terminate the acceptance, over all disputes arising after the declaration is made, other than:

(a) disputes in regard to which parties have agreed or shall agree to have recourse to some other method of peaceful settlement,
(b) disputes with the government of any other country which is a Member of the Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree,
(c) disputes with regard to questions which by international law fall exclusively within the jurisdiction of Barbados,
(d) disputes arising out of or concerning jurisdiction or rights claimed or exercised by Barbados in respect of the conservation, management or exploitation of the living resources of the sea, or in respect of the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Barbados.

24 July 1980.

(Signed) H. de B. FOZDE,
Minister of External Affairs.

✓ COLOMBIA[1]

[Translation from the French] 30 X 37.

The Republic of Colombia recognizes as compulsory, *ipso facto* and without special agreement, on condition of reciprocity, in relation to any other State accepting the same obligation, the jurisdiction of the Permanent Court of International Justice, in accordance with Article 36 of the Statute.

The present declaration applies only to disputes arising out of facts subsequent to 6 January 1932.

Geneva, 30 October 1937.

(Signed) J. M. YEPES,
Legal Adviser of the Permanent Delegation of Colombia to the League of Nations.

✓ COSTA RICA

[Translation from the Spanish] 20 II 73.

The Government of Costa Rica recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes of the kinds referred to in Article 36, paragraph 2, of the Statute of the International Court of Justice. This Declaration shall be valid for a period of five years and shall be understood to be tacitly renewed for like periods, unless denounced before the expiration of the said period.

San José, 5 February 1973.

(Signed) Gonzalo J. FACIO,
Minister for Foreign Affairs.

DOMINICAN REPUBLIC

[Translation from the French] 30 IX 24.

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On behalf of the Government of the Dominican Republic and subject to ratification[1], I recognize, in relation to any other Member or State accepting the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court as compulsory, *ipso facto* and without special convention.

Geneva, 30 September 1924.

(Signed) Jacinto R. DE CASTRO.

EL SALVADOR[3]

[Translation from the Spanish] 26 XI 73.

In my capacity as Minister for Foreign Affairs and on behalf of the Government of the Republic of El Salvador,

Considering that Article 36, paragraph 5, of the Statute of the International Court of Justice provides that a declaration made under Article 36 of the Statute of the Permanent Court of International Justice makes the jurisdiction of the International Court of Justice compulsory in accordance with the terms of the original declaration,

Considering that the Government of El Salvador, in accordance with the Agreement of the Executive Authority of 26 May 1930, ratified by the Legislative Authority in accordance with Decree No. 110 of 3 July 1930, made a declaration recognizing the compulsory jurisdiction of the Permanent Court of International Justice, with the reservations set forth in the same document and on the basis of the Political Constitution of the Republic which, at the time, was that promulgated on 24 August 1886,

Considering that, after the notification of that declaration, other Political Constitutions of the Republic have been promulgated, the latest being that currently in effect as from 24 January 1962, and that moreover, after that declaration, the United Nations Charter was adopted on 26 June 1945 and the Charter of the Organization of American States on 30 April 1948, revised by the Protocol of Buenos Aires in 1967,

Considering that, consequently, the terms of the declaration must be adapted to accord with those postulated in the Political Constitution currently in effect, and with the present circumstances; bearing in mind, furthermore, the texts of similar declarations made by other States Members of the United Nations,

I therefore make the following declaration:

In accordance with Article 36, paragraph 2, of the Statute of the International Court of Justice, El Salvador recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

(a) The interpretation of a treaty;
(b) Any question of international law;
(c) The existence of any fact which, if established, would constitute a breach of an international obligation;
(d) The nature or extent of the reparation to be made for the breach of an international obligation.

This declaration shall apply solely to situations or facts that may arise after this date; it is made on condition of reciprocity in relation to any other State party to any dispute with El Salvador and is subject to the following exceptions, on which El Salvador does not accept the Court's compulsory jurisdiction:

(i) disputes which the parties have agreed or may agree to submit to other means of peaceful settlement;
(ii) disputes which, under international law, fall exclusively within the domestic jurisdiction of El Salvador;
(iii) disputes with El Salvador concerning or relating to:

(1) the status of its territory or the modification or delimitation of its frontiers or any other matter concerning boundaries;
(2) the territorial sea and the corresponding continental slope or continental shelf and the resources thereof, unless El Salvador accepts the jurisdiction in that particular case;
(3) the condition of its islands, bays and gulfs and that of the bays and gulfs that for historical reasons belong to it or are under a system of joint ownership, whether or not recognized by rulings of international tribunals;
(4) the airspace superjacent to its land and maritime territory;

(iv) disputes relating to or connected with facts or situations of hostilities, armed conflicts, individual or collective actions taken in self-defence, resistance to aggression, fulfilment of obligations imposed by international bodies, and other similar or related acts, measures or situations in which El Salvador is, has been or may at some time be involved;
(v) pre-existing disputes, it being understood that this includes any dispute the foundations, reasons, facts, causes, origins, definitions, allegations or bases of which existed prior to this date, even if they are submitted or brought to the knowledge of the Court hereafter; and
(vi) disputes that may arise over the interpretation or implementation of a multilateral treaty unless (1) all the parties to the treaty are also parties in the case before the Court, or (2) El Salvador expressly accepts the Court's jurisdiction in that particular case.

This declaration revokes and replaces the previous declaration made before the Permanent Court of International Justice[1] and will remain in effect for a period of five years from this date. The above shall not prejudice the right which El Salvador reserves to be able at any time to modify, add to, clarify or derogate from the exceptions presented in it.

This declaration is made in compliance with Executive Agreement No. 826 of 24 November 1973, ratified by the Legislative Authority under Decree No. 488 of 26 November 1973.

I respectfully request you to be good enough to take the appropriate action with this declaration and to have it registered immediately in accordance with the practice established on the basis of the United Nations Charter.

San Salvador, 26 November 1973.

(Signed) Mauricio A. BORGONOVO POHL,
Minister for Foreign Affairs.

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[1] The instrument of ratification was deposited on 4 February 1933.
[2] United Nations, *Treaty Series*, I, No. 3821, Vol. 265.
[3] By a letter addressed to the Secretary-General of the United Nations on 24 November 1978 by the Permanent Representative of El Salvador this declaration, with all the exceptions and reservations it contains, was renewed for a period of ten years as from 26 November 1978.

HAITI

[Translation from the French] 4 X 21.

On behalf of the Republic of Haiti, I recognize the jurisdiction of the Permanent Court of International Justice as compulsory.

(Signed) F. ADDOR,
Consul.

HONDURAS

[Translation from the Spanish] 10 III 60.

The Government of the Republic of Honduras, duly authorized by the National Congress, under Decree No. 99 of 29 January 1960, to renew the Declaration referred to in Article 36 (2) of the Statute of the International Court of Justice, *hereby declares*:

(1) That it renews the declaration made by it for a period of six years on 19 April 1954[1] and deposited with the Secretary-General of the United Nations on 24 May 1954, the term of which will expire on 24 May 1960; recognizing as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes concerning:

(a) the interpretation of a treaty;
(b) any question of international law;
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;
(d) the nature and extent of the reparation to be made for the breach of an international obligation.

(2) This new declaration is made on condition of reciprocity, for an indefinite term, starting from the date on which it is deposited with the Secretary-General of the United Nations.

National Palace, Tegucigalpa, D.C., 20 February 1960.

(Signed) Ramón VILLEDA MORALES,
The Secretary of State for Foreign Affairs:
(Signed) Andrés ALVARADO PUERTO.

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[1] United Nations, *Treaty Series*, I, No. 236, Vol. 190.

MEXICO

[Translation from the Spanish] 28 X 47.

In regard to any legal dispute that may in future arise between the United States of Mexico and any other State out of events subsequent to the date of this Declaration, the Mexican Government recognizes as compulsory *ipso facto*, and without any special agreement being required therefor, the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 2, of the Statute of the said Court, in relation to any other State accepting the same obligation, that is, on condition of strict reciprocity. This Declaration, which does not apply to disputes arising from matters that, in the opinion of the Mexican Government, are within the domestic jurisdiction of the United States of Mexico, shall be binding for a period of five years as from 1 March 1947 and after that date shall continue in force until six months after the Mexican Government gives notice of denunciation.

Mexico, D.F., 23 October 1947.

(Signed) Jaime TORRES BODET,
Secretary of State for External Relations.

NICARAGUA[1]

[Translation from the French] 24 IX 29.

On behalf of the Republic of Nicaragua I recognize as compulsory unconditionally the jurisdiction of the Permanent Court of International Justice.

Geneva, 24 September 1929.

(Signed) T. F. MEDINA.

PANAMA[1]

[Translation from the French] 25 X 21.

On behalf of the Government of Panama, I recognize, in relation to any other Member or State which accepts the same obligation, that is to say, on

[1] An instrument of ratification was deposited on 14 June 1929. Cf. the footnote to Colombia, p. 60, above.

✓ UNITED STATES OF AMERICA

26 VIII 46.

I, Harry S. Truman, President of the United States of America, declare on behalf of the United States of America, under Article 36, paragraph 2, of the Statute of the International Court of Justice, and in accordance with the Resolution of 2 August 1946 of the Senate of the United States of America (two-thirds of the Senators present concurring therein), that the United States of America recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning

(a) the interpretation of a treaty;
(b) any question of international law;
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;
(d) the nature or extent of the reparation to be made for the breach of an international obligation;

Provided, that this declaration shall not apply to

(a) disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or
(b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America; or
(c) disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction; and

Provided further, that this declaration shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration.

Done at Washington this fourteenth day of August 1946.

(Signed) Harry S. TRUMAN.

✓ URUGUAY[1]

[Translation from the French] *Prior to* 28 I 21[2].

On behalf of the Government of Uruguay, I recognize, in relation to any Member or State accepting the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court as compulsory, *ipso facto* and without special convention.

(Signed) B. FERNANDEZ Y MEDINA.

AMERICAN TREATY ON PACIFIC SETTLEMENT
"PACT OF BOGOTA"

Signed at Bogota, April 30, 1948, at the
Ninth International Conference of American States

SIGNATORY COUNTRIES	DATE OF DEPOSIT OF THE INSTRUMENT OF RATIFICATION
Argentina[1]	
Bolivia[1]	
Brazil	November 16, 1965
Chile	April 15, 1974[1]
Colombia	November 6, 1968
Costa Rica	May 6, 1949
Cuba	
Dominican Republic	September 12, 1950
Ecuador[1]	
El Salvador[2]	September 11, 1950[2]
Guatemala	
Haiti	March 28, 1951
Honduras	February 7, 1950
Mexico	November 23, 1948
Nicaragua[1]	July 26, 1950[1]
Panama	April 25, 1951
Paraguay[1]	July 27, 1967
Peru[1]	May 26, 1967[1]
United States[1]	
Uruguay	September 1, 1955
Venezuela	

1. With reservations.
2. Notified denunciation referred to in Art. LVI of the Treaty on November 26, 1973.

The original instrument is deposited with the General Secretariat, which is also the depository of the instruments of ratification. The Treaty entered into force on May 6, 1949, when the second ratification was deposited by Costa Rica. It was registered with the United Nations on May 13, 1949 (Reg. No. 449, Vol. 30).

As this Treaty enters into force through the successive ratifications of the Parties, the treaties, conventions and protocols mentioned in Article LVIII cease to be in force with respect to such Parties.

12. AMERICAN TREATY ON PACIFIC SETTLEMENT "Pact of Bogotá" (Bogotá, 1948)

In the name of their peoples, the Governments represented at the Ninth International Conference of American States have resolved, in fulfillment of Article XXIII of the Charter of the Organization of American States, to conclude the following Treaty:

CHAPTER ONE
GENERAL OBLIGATION TO SETTLE DISPUTES BY PACIFIC MEANS

ARTICLE I

The High Contracting Parties, solemnly reaffirming their commitments made in earlier international conventions and declarations, as well as in the Charter of the United Nations, agree to refrain from the threat or the use of force, or from any other means of coercion for the settlement of their controversies, and to have recourse at all times to pacific procedures.

ARTICLE II

The High Contracting Parties recognize the obligation to settle international controversies by regional pacific procedures before referring them to the Security Council of the United Nations.

Consequently, in the event that a controversy arises between two or more signatory states which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles, or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution.

ARTICLE III

The order of the pacific procedures established in the present Treaty does not signify that the parties may not have recourse to the procedure which they consider most appropriate in each case, or that they should use all these procedures, or that any of them have preference over others except as expressly provided.

ARTICLE IV

Once any pacific procedure has been initiated, whether by agreement between the parties or in fulfillment of the present Treaty or a previous pact, no other procedure may be commenced until that procedure is concluded.

ARTICLE V

The aforesaid procedures may not be applied to matters which, by their nature, are within the domestic jurisdiction of the state. If the parties are not in agreement as to whether the controversy concerns a matter of domestic jurisdiction, this preliminary question shall be submitted to decision by the International Court of Justice, at the request of any of the parties.

ARTICLE VI

The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangements between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty.

ARTICLE VII

The High Contracting Parties bind themselves not to make diplomatic representations in order to protect their nationals, or to refer a controversy to a court of international jurisdiction for that purpose, when the said nationals have had available the means to place their case before competent domestic courts of the respective state.

ARTICLE VIII

Neither recourse to pacific means for the solution of controversies, nor the recommendation of their use, shall, in the case of an armed attack, be ground for delaying the exercise of the right of individual or collective self-defense, as provided for in the Charter of the United Nations.

CHAPTER TWO

PROCEDURES OF GOOD OFFICES AND MEDIATION

ARTICLE IX

The procedure of good offices consists in the attempt by one or more American Governments not parties to the controversy, or by one or more eminent citizens of any American State which is not a party to the controversy, to bring the parties together, so as to make it possible for them to reach an adequate solution between themselves.

ARTICLE X

Once the parties have been brought together and have resumed direct negotiations, no further action is to be taken by the states or citizens that have offered their good offices or have accepted an invitation to offer them; they may, however, by agreement between the parties, be present at the negotiations.

ARTICLE XI

The procedure of mediation consists in the submission of the controversy to one or more American Governments not parties to the controversy, or to one or more eminent citizens of any American State not a party to the controversy. In either case the mediator or mediators shall be chosen by mutual agreement between the parties.

ARTICLE XII

The functions of the mediator or mediators shall be to assist the parties in the settlement of controversies in the simplest and most direct manner, avoiding formalities and seeking an acceptable solution. No report shall be made by the mediator and, so far as he is concerned, the proceedings shall be wholly confidential.

ARTICLE XIII

In the event that the High Contracting Parties have agreed to the procedure of mediation but are unable to reach an agreement within two months on the selection of the mediator or mediators, or no solution to the controversy has been reached within five months after mediation has begun, the parties shall have recourse without delay to any one of the other procedures of peaceful settlement established in the present Treaty.

ARTICLE XIV

The High Contracting Parties may offer their mediation, either individually or jointly, but they agree not to do so while the controversy is in process of settlement by any of the other procedures established in the present Treaty.

CHAPTER THREE

PROCEDURE OF INVESTIGATION AND CONCILIATION

ARTICLE XV

The procedure of investigation and conciliation consists in the submission of the controversy to a Commission of Investigation and Conciliation, which shall be established in accordance with the provisions established in subsequent articles of the present Treaty, and which shall function within the limitations prescribed therein.

ARTICLE XVI

The party initiating the procedure of investigation and conciliation shall request the Council of the Organization of American States to convoke the Commission of Investigation and Conciliation. The Council for its part shall take immediate steps to convoke it.

Once the request to convoke the Commission has been received, the controversy between the parties shall immediately be suspended, and the parties shall refrain from any act that might make conciliation more difficult. To that end, at the request of one of the parties, the Council of the Organization of American States may, pending the convocation of the Commission, make appropriate recommendations to the parties.

ARTICLE XVII

Each of the High Contracting Parties may appoint, by means of a bilateral agreement consisting of a simple exchange of notes with each of the other signatories, two members of the Commission of Investigation and Conciliation, only one of whom may be of its own nationality. The fifth member, who shall perform the functions of chairman, shall be selected immediately by common agreement of the members thus appointed.

Any one of the contracting parties may remove members whom it has appointed, whether nationals or aliens; at the same time it shall appoint the successor. If this is not done, the removal shall be considered as not having been made. The appointments and substitutions shall be registered with the Pan American Union, which shall endeavor to ensure that the commissions maintain their full complement of five members.

ARTICLE XVIII

Without prejudice to the provisions of the foregoing article, the Pan American Union shall draw up a permanent panel of American conciliators, to be made up as follows:

a) Each of the High Contracting Parties shall appoint, for three-year periods, two of their nationals who enjoy the highest reputation for fairness, competence and integrity;

b) The Pan American Union shall request of the candidates notice of their formal acceptance, and it shall place on the panel of conciliators the names of the persons who so notify it;

c) The governments may, at any time, fill vacancies occurring among their appointees; and they may reappoint their members.

ARTICLE XIX

In the event that a controversy should arise between two or more American States that have not appointed the Commission referred to in Article XVII, the following procedure shall be observed:

a) Each party shall designate two members from the permanent panel

of American conciliators, who are not of the same nationality as the appointing party.

b) These four members shall in turn choose a fifth member, from the permanent panel, not of the nationality of either party.

c) If, within a period of thirty days following the notification of their selection, the four members are unable to agree upon a fifth member, they shall each separately list the conciliators composing the permanent panel, in order of their preference, and upon comparison of the lists so prepared, the one who first receives a majority of votes shall be declared elected. The person so elected shall perform the duties of chairman of the Commission.

ARTICLE XX

In convening the Commission of Investigation and Conciliation, the Council of the Organization of American States shall determine the place where the Commission shall meet. Thereafter, the Commission may determine the place or places in which it is to function, taking into account the best facilities for the performance of its work.

ARTICLE XXI

When more than two states are involved in the same controversy, the states that hold similar points of view shall be considered as a single party. If they have different interests they shall be entitled to increase the number of conciliators in order that all parties may have equal representation. The chairman shall be elected in the manner set forth in Article XIX.

ARTICLE XXII

It shall be the duty of the Commission of Investigation and Conciliation to clarify the points in dispute between the parties and to endeavor to bring about an agreement between them upon mutually acceptable terms. The Commission shall institute such investigations of the facts involved in the controversy as it may deem necessary for the purpose of proposing acceptable bases of settlement.

ARTICLE XXIII

It shall be the duty of the parties to facilitate the work of the Commission and to supply it, to the fullest extent possible, with all useful documents and information, and also to use the means at their disposal to enable the Commission to summon and hear witnesses or experts and perform other tasks in the territories of the parties, in conformity with their laws.

ARTICLE XXIV

During the proceedings before the Commission, the parties shall be represented by plenipotentiary delegates or by agents, who shall serve as intermediaries between them and the Commission. The parties and the Commission may use the services of technical advisers and experts.

ARTICLE XXV

The Commission shall conclude its work within a period of six months from the date of its installation; but the parties may, by mutual agreement, extend the period.

ARTICLE XXVI

If, in the opinion of the parties, the controversy relates exclusively to questions of fact, the Commission shall limit itself to investigating such questions, and shall conclude its activities with an appropriate report.

ARTICLE XXVII

If an agreement is reached by conciliation, the final report of the Commission shall be limited to the text of the agreement and shall be published after its transmittal to the parties, unless the parties decide otherwise. If no agreement is reached, the final report shall contain a summary of the work of the Commission; it shall be delivered to the parties, and shall be published after the expiration of six months unless the parties decide otherwise. In both cases, the final report shall be adopted by a majority vote.

ARTICLE XXVIII

The reports and conclusions of the Commission of Investigation and Conciliation shall not be binding upon the parties, either with respect to the statement of facts or in regard to questions of law, and they shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy.

ARTICLE XXIX

The Commission of Investigation and Conciliation shall transmit to each of the parties, as well as to the Pan American Union, certified copies of the minutes of its proceedings. These minutes shall not be published unless the parties so decide.

ARTICLE XXX

Each member of the Commission shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. If the parties do not agree thereon, the Council of the Organization shall determine the remuneration. Each government shall pay its own expenses and an equal share of the common expenses of the Commission, including the aforementioned remunerations.

CHAPTER FOUR

JUDICIAL PROCEDURE

ARTICLE XXXI

In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

a) The interpretation of a treaty;

b) Any question of international law;

c) The existence of any fact which, if established, would constitute the breach of an international obligation;

d) The nature or extent of the reparation to be made for the breach of an international obligation.

ARTICLE XXXII

When the conciliation procedure previously established in the present Treaty or by agreement of the parties does not lead to a solution, and the said parties have not agreed upon an arbitral procedure, either of them shall be entitled to have recourse to the International Court of Justice in the manner prescribed in Article 40 of the Statute thereof. The Court shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of the said Statute.

ARTICLE XXXIII

If the parties fail to agree as to whether the Court has jurisdiction over the controversy, the Court itself shall first decide that question.

ARTICLE XXXIV

If the Court, for the reasons set forth in Articles V, VI and VII of this Treaty, declares itself to be without jurisdiction to hear the controversy, such controversy shall be declared ended.

ARTICLE XXXV

If the Court for any other reason declares itself to be without jurisdiction to hear and adjudge the controversy, the High Contracting Parties obligate themselves to submit it to arbitration, in accordance with the provisions of Chapter Five of this Treaty.

ARTICLE XXXVI

In the case of controversies submitted to the judicial procedure to which this Treaty refers, the decision shall devolve upon the full Court, or, if the parties so request, upon a special chamber in conformity with Article 26 of the Statute of the Court. The parties may agree, moreover, to have the controversy decided *ex aequo et bono.*

ARTICLE XXXVII

The procedure to be followed by the Court shall be that established in the Statute thereof.

CHAPTER FIVE

PROCEDURE OF ARBITRATION

ARTICLE XXXVIII

Notwithstanding the provisions of Chapter Four of this Treaty, the High Contracting Parties may, if they so agree, submit to arbitration differences of any kind, whether juridical or not, that have arisen or may arise in the future between them.

ARTICLE XXXIX

The Arbitral Tribunal to which a controversy is to be submitted shall, in the cases contemplated in Articles XXXV and XXXVIII of the present Treaty, be constituted in the following manner, unless there exists an agreement to the contrary.

ARTICLE XL

(1) Within a period of two months after notification of the decision of the Court in the case provided for in Article XXXV, each party shall name one arbiter of recognized competence in questions of international law and of the highest integrity, and shall transmit the designation to the Council of the Organization. At the same time, each party shall present to the Council a list of ten jurists chosen from among those on the general panel of members of the Permanent Court of Arbitration of The Hague who do not belong to its national group and who are willing to be members of the Arbitral Tribunal.

(2) The Council of the Organization shall, within the month following the presentation of the lists, proceed to establish the Arbitral Tribunal in the following manner:

a) If the lists presented by the parties contain three names in common, such persons, together with the two directly named by the parties, shall constitute the Arbitral Tribunal;

b) In case these lists contain more than three names in common, the three arbiters needed to complete the Tribunal shall be selected by lot;

c) In the circumstances envisaged in the two preceding clauses, the five arbiters designated shall choose one of their number as presiding officer;

d) If the lists contain only two names in common, such candidates and the two arbiters directly selected by the parties shall by common agreement choose the fifth arbiter, who shall preside over the Tribunal. The choice shall devolve upon a jurist on the aforesaid general panel of the Permanent Court of Arbitration of The Hague who has not been included in the lists drawn up by the parties;

e) If the lists contain only one name in common, that person shall be a member of the Tribunal, and another name shall be chosen by lot from among the eighteen jurists remaining on the above-mentioned lists. The presiding officer shall be elected in accordance with the procedure established in the preceding clause;

f) If the lists contain no names in common, one arbiter shall be chosen by lot from each of the lists; and the fifth arbiter, who shall act as presiding officer, shall be chosen in the manner previously indicated;

g) If the four arbiters cannot agree upon a fifth arbiter within one month after the Council of the Organization has notified them of their appointment, each of them shall separately arrange the list of jurists in the order of their preference and, after comparison of the lists so formed, the person who first obtains a majority vote shall be declared elected.

ARTICLE XLI

The parties may by mutual agreement establish the Tribunal in the manner they deem most appropriate; they may even select a single arbiter, designating in such case a chief of state, an eminent jurist, or any court of justice in which the parties have mutual confidence.

ARTICLE XLII

When more than two states are involved in the same controversy, the states defending the same interests shall be considered as a single party. If they have opposing interests they shall have the right to increase the number of arbiters so that all parties may have equal representation. The presiding officer shall be selected by the method established in Article XL.

ARTICLE XLIII

The parties shall in each case draw up a special agreement clearly defining the specific matter that is the subject of the controversy, the seat of the Tribunal, the rules of procedure to be observed, the period within which the award is to be handed down, and such other conditions as they may agree upon among themselves.

If the special agreement cannot be drawn up within three months after the date of the installation of the Tribunal, it shall be drawn up by the International Court of Justice through summary procedure, and shall be binding upon the parties.

ARTICLE XLIV

The parties may be represented before the Arbitral Tribunal by such persons as they may designate.

ARTICLE XLV

If one of the parties fails to designate its arbiter and present its list of candidates within the period provided for in Article XL, the other party shall have the right to request the Council of the Organization to establish the Arbitral Tribunal. The Council shall immediately urge the delinquent party to fulfill its obligations within an additional period of fifteen days, after which time the Council itself shall establish the Tribunal in the following manner:

a) It shall select a name by lot from the list presented by the petitioning party.

b) It shall choose, by absolute majority vote, two jurists from the general panel of the Permanent Court of Arbitration of The Hague who do not belong to the national group of any of the parties.

c) The three persons so designated, together with the one directly chosen by the petitioning party, shall select the fifth arbiter, who shall act as presiding officer, in the manner provided for in Article XL.

d) Once the Tribunal is installed, the procedure established in Article XLIII shall be followed.

ARTICLE XLVI

The award shall be accompanied by a supporting opinion, shall be adopted by a majority vote, and shall be published after notification thereof has been given to the parties. The dissenting arbiter or arbiters shall have the right to state the grounds for their dissent.

The award, once it is duly handed down and made known to the parties, shall settle the controversy definitively, shall not be subject to appeal, and shall be carried out immediately.

ARTICLE XLVII

Any differences that arise in regard to the interpretation or execution of the award shall be submitted to the decision of the Arbitral Tribunal that rendered the award.

ARTICLE XLVIII

Within a year after notification thereof, the award shall be subject to review by the same Tribunal at the request of one of the parties, provided a previously existing fact is discovered unknown to the Tribunal and to the party requesting the review, and provided the Tribunal is of the opinion that such fact might have a decisive influence on the award.

ARTICLE XLIX

Every member of the Tribunal shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. If the parties do not agree on the amount, the Council of the Organization shall determine the remuneration. Each Government shall pay its own expenses and an equal share of the common expenses of the Tribunal, including the aforementioned remunerations.

CHAPTER SIX

FULFILLMENT OF DECISIONS

ARTICLE L

If one of the High Contracting Parties should fail to carry out the obligations imposed upon it by a decision of the International Court of Justice or by an arbitral award, the other party or parties concerned shall, before re-

sorting to the Security Council of the United Nations, propose a Meeting of Consultation of Ministers of Foreign Affairs to agree upon appropriate measures to ensure the fulfillment of the judicial decision or arbitral award.

CHAPTER SEVEN
ADVISORY OPINIONS

ARTICLE LI

The parties concerned in the solution of a controversy may, by agreement, petition the General Assembly or the Security Council of the United Nations to request an advisory opinion of the International Court of Justice on any juridical question.

The petition shall be made through the Council of the Organization of American States.

CHAPTER EIGHT
FINAL PROVISIONS

ARTICLE LII

The present Treaty shall be ratified by the High Contracting Parties in accordance with their constitutional procedures. The original instrument shall be deposited in the Pan American Union, which shall transmit an authentic certified copy to each Government for the purpose of ratification. The instruments of ratification shall be deposited in the archives of the Pan American Union, which shall notify the signatory governments of the deposit. Such notification shall be considered as an exchange of ratifications.

ARTICLE LIII

This Treaty shall come into effect between the High Contracting Parties in the order in which they deposit their respective ratifications.

ARTICLE LIV

Any American State which is not a signatory to the present Treaty, or which has made reservations thereto, may adhere to it, or may withdraw its reservations in whole or in part, by transmitting an official instrument to the Pan American Union, which shall notify the other High Contracting Parties in the manner herein established.

ARTICLE LV

Should any of the High Contracting Parties make reservations concerning the present Treaty, such reservations shall, with respect to the state that makes them, apply to all signatory states on the basis of reciprocity.

ARTICLE LVI

The present Treaty shall remain in force indefinitely, but may be denounced upon one year's notice, at the end of which period it shall cease to be in force with respect to the state denouncing it, but shall continue in force for the remaining signatories. The denunciation shall be addressed to the Pan American Union, which shall transmit it to the other Contracting Parties.

The denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification.

ARTICLE LVII

The present Treaty shall be registered with the Secretariat of the United Nations through the Pan American Union.

ARTICLE LVIII

As this Treaty comes into effect through the successive ratifications of the High Contracting Parties, the following treaties, conventions and protocols shall cease to be in force with respect to such parties:

Treaty to Avoid or Prevent Conflicts between the American States, of May 3, 1923;

General Convention of Inter-American Conciliation, of January 5, 1929;

General Treaty of Inter-American Arbitration and Additional Protocol of Progressive Arbitration, of January 5, 1929;

Additional Protocol to the General Convention of Inter-American Conciliation, of December 26, 1933;

Anti-War Treaty of Non-Aggression and Conciliation, of October 10, 1933;

Convention to Coordinate, Extend and Assure the Fulfillment of the Existing Treaties between the American States, of December 23, 1936;

Inter-American Treaty on Good Offices and Mediation, of December 23, 1936;

Treaty on the Prevention of Controversies, of December 23, 1936.

ARTICLE LIX

The provisions of the foregoing Article shall not apply to procedures already initiated or agreed upon in accordance with any of the above-mentioned international instruments.

ARTICLE LX

The present Treaty shall be called the "PACT OF BOGOTÁ."

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having deposited their full powers, found to be in good and due form, sign the present Treaty, in the name of their respective Governments, on the dates appearing below their signatures.

Done at the City of Bogotá, in four texts, in the English, French, Portuguese and Spanish languages respectively, on the thirtieth day of April, nineteen hundred forty-eight.

RESERVATIONS

Argentina

"The Delegation of the Argentine Republic, on signing the American Treaty on Pacific Settlement (Pact of Bogotá), makes reservations in regard to the following articles, to which it does not adhere:

1) VII, concerning the protection of aliens;

2) Chapter Four (Articles XXXI to XXXVII), Judicial Procedure;

3) Chapter Five (Articles XXXVIII to XLIX), Procedure of Arbitration;

4) Chapter Six (Article L), Fulfillment of Decisions.

Arbitration and judicial procedure have, as institutions, the firm adherence of the Argentine Republic, but the Delegation cannot accept the form in which the procedures for their application have been regulated, since, in its opinion, they should have been established only for controversies arising in the future and not originating in or having any relation to causes, situations or facts existing before the signing of this instrument. The compulsory execution of arbitral or judicial decisions and the limitation which prevents the states from judging for themselves in regard to matters that pertain to their

domestic jurisdiction in accordance with Article V are contrary to Argentine tradition. The protection of aliens, who in the Argentine Republic are protected by its Supreme Law to the same extent as the nationals, is also contrary to that tradition."

Bolivia

"The Delegation of Bolivia makes a reservation with regard to Article VI, inasmuch as it considers that pacific procedures may also be applied to controversies arising from matters settled by arrangement between the Parties, when the said arrangement affects the vital interests of a state."

Ecuador

"The Delegation of Ecuador, upon signing this Pact, makes an express reservation with regard to Article VI and also every provision that contradicts or is not in harmony with the principles proclaimed by or the stipulations contained in the Charter of the United Nations, the Charter of the Organization of American States, or the Constitution of the Republic of Ecuador."

United States of America

"1. The United States does not undertake as the complainant State to submit to the International Court of Justice any controversy which is not considered to be properly within the jurisdiction of the Court.

2. The submission on the part of the United States of any controversy to arbitration, as distinguished from judicial settlement, shall be dependent upon the conclusion of a special agreement between the parties to the case.

3. The acceptance by the United States of the jurisdiction of the International Court of Justice as compulsory *ipso facto* and without special agreement, as provided in this Treaty, is limited by any jurisdictional or other limitations contained in any Declaration deposited by the United States under Article 36, paragraph 4, of the Statute of the Court, and in force at the time of the submission of any case.

4. The Government of the United States cannot accept Article VII relating to diplomatic protection and the exhaustion of remedies. For its part, the Government of the United States maintains the rules of diplomatic protection, including the rule of exhaustion of local remedies by aliens, as provided by international law."

Paraguay

"The Delegation of Paraguay makes the following reservation:

Paraguay stipulates the prior agreement of the parties as a prerequisite to the arbitration procedure established in this Treaty for every question of a non-juridical nature affecting national sovereignty and not specifically agreed upon in treaties now in force."

Peru

"The Delegation of Peru makes the following reservations:

1. Reservation with regard to the second part of Article V, because it considers that domestic jurisdiction should be defined by the state itself.

2. Reservation with regard to Article XXXIII and the pertinent part of Article XXXIV, inasmuch as it considers that the exceptions of *res judicata*, resolved by settlement between the parties or governed by agreements and

treaties in force, determine, in virtue of their objective and peremptory nature, the exclusion of these cases from the application of every procedure.

3. Reservation with regard to Article XXXV, in the sense that, before arbitration is resorted to, there may be, at the request of one of the parties, a meeting of the Organ of Consultation, as established in the Charter of the Organization of American States.

4. Reservation with regard to Article LXV, because it believes that arbitration set up without the participation of one of the parties is in contradiction with its constitutional provisions."

Nicaragua

"The Nicaraguan Delegation, on giving its approval to the American Treaty on Pacific Settlement (Pact of Bogotá) wishes to record expressly that no provisions contained in the said Treaty may prejudice any position assumed by the Government of Nicaragua with respect to arbitral decisions the validity of which it has contested on the basis of the principles of international law, which clearly permit arbitral decisions to be attacked when they are adjudged to be null or invalidated. Consequently, the signature of the Nicaraguan Delegation to the Treaty in question cannot be alleged as an acceptance of any arbitral decisions that Nicaragua has contested and the validity of which is not certain.

Hence the Nicaraguan Delegation reiterates the statement made on the 28th of the current month on approving the text of the abovementioned Treaty in Committee III."