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REPORTS

REGIONAL AND INTERNATIONAL ACTIVITIES

ISIDORO ZANOTTI*

ORGANIZATION OF AMERICAN STATES (OAS)

I. MEETING OF CONSULTATION OF MINISTERS OF FOREIGN AFFAIRS

The Twentieth Meeting of Consultation of Ministers of Foreign Affairs was held in Washington, D.C., at the Headquarters of the OAS General Secretariat, to consider the situation between Argentina and Great Britain.

Twenty one member states of the OAS, which are Parties to the Inter-American Treaty of Reciprocal Assistance (the Rio Treaty), participated in this meeting which was held on April 26-28, 1982 and approved a resolution on said situation. Four member states of this Treaty abstained in the voting: Colombia, Chile, Trinidad and Tobago, and United States.

Following is the text of the resolution approved on April 28, 1982.

RESOLUTION I. SERIOUS SITUATION IN THE SOUTH ATLANTIC (Resolution adopted at the Second Plenary Session held on April 28, 1982)

THE TWENTIETH MEETING OF CONSULTATION OF MINISTERS OF FOREIGN AFFAIRS, CONSIDERING:

The principles of inter-American solidarity and cooperation and the need to find a peaceful solution to any situation that endangers the peace of the Americas;

That a dangerous confrontation has arisen between the United

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Kingdom of Great Britain and Northern Ireland and the Argentine Republic, which was aggravated today by the events that have arisen from the presence of the British navy in the South Atlantic, within the security region referred to in Article 4 of the Rio Treaty;

That the primary purpose of the Inter-American Treaty of Reciprocal Assistance is the maintenance of the peace and security of the hemisphere, which, in the case that has arisen, requires ensuring the peaceful settlement of the dispute;

That to facilitate peaceful settlement of the dispute, it is urgent that hostilities cease, since they disturb the peace of the hemisphere and may reach unforeseeable proportions;

That it is an unchanging principle of the inter-American system that peace be preserved and that all the American states unanimously reject the intervention of extra-continental or continental armed forces in any of the nations of the hemisphere;

That Argentina's rights of sovereignty over the Malvinas (Falkland) Islands, as stated in some important resolutions passed by various international forums, including the Declaration of the Inter-American Juridical Committee on January 16, 1976, which states: "That the Republic of Argentina has an undeniable right of sovereignty over the Malvinas Islands," must be borne in mind, and

That the peace efforts being made with the consent of the parties must be emphasized, and that inter-American solidarity contributes to that objective, and

HAVING SEEN:

Resolution 502 (1982) of the United Nations Security Council, all of whose terms must be fulfilled; Resolution 359 of April 13, 1982, adopted by the Permanent Council of the Organization of American States, and the Declaration adopted unanimously by the Ministers of Foreign Affairs at the opening session of the Twentieth Meeting of Consultation (Doc.14/82), and in conformity with the Inter-American Treaty of Reciprocal Assistance,

RESOLVES:

1. To urge the Government of the United Kingdom of Great Britain and Northern Ireland immediately to cease the hostilities

it is carrying on within the security region defined by Article 4 of the Inter-American Treaty of Reciprocal Assistance, and also to refrain from any act that may affect inter-American peace and security.

2. To urge the Government of the Republic of Argentina likewise to refrain from taking any action that may exacerbate the situation.

3. To urge those governments immediately to call a truce that will make it possible to resume and proceed normally with the negotiation aimed at a peaceful settlement of the conflict, taking into account the rights of sovereignty of the Republic of Argentina over the Malvinas (Falkland) Islands and the interests of the islanders.

4. To express the willingness of the Organ of Consultation to lend support, through whatever means it considers advisable, to the new initiatives being advanced at the regional or world level, with the consent of the Parties, which are directed toward the just and peaceful settlement of the problem.

5. To take note of the information received about the important negotiations of the Secretary of State of the United States of America and to express its wishes that they will be an effective contribution to the peaceful settlement of the conflict.

6. To deplore the adoption by members of the European Economic Community and other states of coercive measures of an economic and political nature, which are prejudicial to the Argentine nation and to urge them to lift those measures, indicating that they constitute a serious precedent, inasmuch as they are not covered by Resolution 502 (1982) of the United Nations Security Council and are incompatible with the Charters of the United Nations and of the OAS and the General Agreement on Tariffs and Trade (GATT).

7. To instruct the President of the Twentieth Meeting of Consultation to take immediate steps to transmit the appeal contained in operative paragraphs 1, 2 and 3 of this resolution to the governments of the United Kingdom of Great Britain and Northern Ireland and of the Republic of Argentina, and also to inform them, on behalf of the foreign ministers of the Americas, that he is fully confident that this appeal will be received for the sake of peace in the region and in the world.

8. To instruct the President of the Twentieth Meeting of Consultation immediately to present this resolution formally to the

Chairman of the United Nations Security Council, so that he may bring it to the attention of the members of the Council.

9. To keep the Twentieth Meeting of Consultation open, especially to oversee faithful compliance with this resolution, and to take such additional measures as are deemed necessary to restore and preserve peace and settle the conflict by peaceful means.

II. GENERAL ASSEMBLY

The Eleventh Regular Session of the OAS General Assembly was held in Saint Lucia from December 2 through 11, 1981, during which the Assembly adopted several resolutions on legal, political, economic, social, educational and administrative and budgetary questions. Following is a summary of some of these resolutions:

Admission of two American States to Membership in the OAS

According to resolutions of the General Assembly, the State of Saint Vincent and the Grenadines, and the State of Antigua and Barbuda were admitted as members of the OAS. Now, the OAS has 30 member states. Bahamas has requested admission to the OAS and a decision will be taken at a special session of the Assembly to be held March 3, 1982.

Special General Assembly on Inter-American Cooperation for Development

By Resolution AG/RES.232 (VI-0/76) the General Assembly convoked a special session of the General Assembly to consider topics relating to inter-American cooperation for development. At its meeting in Saint Lucia the Assembly reiterated the mandate contained in said resolution AG/RES. 232. It instructed the Permanent Council to prepare the draft agenda and plan of action for the special session of the General Assembly and to take the necessary steps to set the exact date for holding it in the last quarter of 1982 in Uruguay. In the preamble of this resolution, the General Assembly recalled that the OAS member states have repeatedly indicated the urgent need of holding said special session of the Assembly, and that such special session constitutes the basic instrument for North-South cooperation in the hemisphere, in the search of solutions to economic, social, educational, scientific and technological problems by the countries of Latin America and the Caribbean.

Payment of Quotas of Member States

The General Assembly urged member states that have not yet paid their quotas for 1981 and previous years to do so as soon as possible and requested that payments of their 1982 quotas be made as early in the year as possible within the terms of their payment schedules. It instructed the Secretary General to present monthly reports to the Permanent Council on the status of quota payments and on the financial situation of the regular fund.

It should be observed that the delays in payment of the quotas by some of the OAS member states has been a serious problem for several years and has created difficulties in accomplishing the programs of the Organization. It is recalled that member states of the United Nations, which are in arrears in the payment of their quotas for more than two years, lose their right to vote. Never has a member state of the OAS lost its right to vote because of delay in payment of its quota, and no OAS member state has formally proposed that a system similar to that of the United Nations be adopted by the OAS.

Course on International Law

The General Assembly, recalling that resolution AG/RES.185 (V-0/75) established that the Course on International Law should be "conducted on a permanent basis through the holding of one such course every year," thanked the Inter-American Juridical Committee for organizing and carrying out the course. It also thanked the General Secretariat of the OAS, for its important collaboration in the organization and holding of this activity. The Assembly reaffirmed its support to the Course on International Law for having constituted, ever since its creation, an especially useful activity for the OAS member states and for having contributed to the study an in-depth up-dating of matters of great importance and interest in the context of contemporary international law and inter-American relations.

The Course was created in 1974 and since then it has been held once a year. This is a high level activity and its participants have been law professors, diplomats, judges and attorneys of the American countries.

International Judicial Cooperation in Penal Matters

The General Assembly requested the Inter-American Juridical Committee to undertake a study of questions relating to international judicial cooperation in penal matters, in accordance with a recommendation which had been adopted by the Inter-American Specialized Conference on Extradition held in 1981. The Assembly also requested that the General Secretariat, through the Secretariat for Legal Affairs, prepare technical and informational documents which the Committee may require in order to perform said study.

Situation of El Salvador

The General Assembly expressed the wish that the people of El Salvador attain peace, social justice and democracy within a pluralistic system that enables its citizens to exercise their rights, and the hope that all Salvadoreans will attain an atmosphere of peace and harmony through a truly democratic electoral process. The Assembly repudiated violence and terrorism and any act that constitutes a violation of the principles of non-intervention, and stated that in accordance with the principle of non-intervention, it is up to the Salvadorean people alone to settle their internal affairs.

Human Rights

The General Assembly expressed appreciation for the work performed by the Inter-American Court of Human Rights, and hope that other member countries of the OAS ratify or adhere to the American Convention on Human Rights of 1969. It also expressed its recognition to the Governments of Peru, Venezuela and Honduras for having accepted the compulsory jurisdiction of the Court.

Furthermore, the Assembly took note of the annual report, the special reports of the Inter-American Commission of Human Rights, and of its recommendations. It urged the Governments of the member states that have not already done so to adopt and carry out the necessary measures to preserve and ensure the full effectiveness of human rights. It recommended to the member states that they continue adopting and applying appropriate legislative measures to preserve and maintain the full effectiveness of human rights in accordance with the American Declaration of the

Rights and Duties of Men. On the other hand, the Assembly reaffirmed that the effective protection of human rights should also include social, economic and cultural rights. It recommended that, consistent with the democratic system of Government, the member states seek to ensure that the exercise of power derives from the legitimate and free expression of the will of the people. It affirmed the need to defend and promote human rights, among them the right to life, personal security and freedom, which will contribute to the preservation and observance of human rights.

Inter-American Telecommunications Conference (CITEL)

The General Assembly decided that the Permanent Executive Committee of CITEL may allow Canada and other American countries not members of the OAS to accredit delegations to the Conference under the same conditions as the OAS member states, if they allow special interest in cooperating in the goals of CITEL.

Reorganization of the OAS General Secretariat

The OAS Secretary General was instructed by the General Assembly, in cooperation with the Governments of the Member States, to present to the competent organ of the Organization, during the course of 1982, alternatives for the reorientation of the programs of the General Secretariat, taking into account the following factors among others: coordination among the activities of the OAS and other international organizations, especially those of Latin America and the Caribbean, to prevent duplication of efforts and guarantee better utilization of available resources, and concentration of the activities of the General Secretariat on the priority areas set by the General Assembly and the competent bodies of the Organization.

The Assembly authorized the Secretary General to modify the programs and the structure of the General Secretariat in accordance with the provisions of the Charter of the OAS, and to effect a substantial reduction of staff and programs, with a view to reducing the percentage of appropriation for approved posts in the regular fund from the present 62% to a maximum of 50%. For this purpose, the relevant guidelines should be submitted to the Permanent Council for immediate consideration. These and other steps should be taken by the Secretary General before April 30, 1982. The Secretary General was authorized to adjust the appro-

priations approved in the 1982-83 program budget, in order to defray the cost of the actions taken by the Assembly in this resolution.

III. INTER-AMERICAN JURIDICAL COMMITTEE

The Inter-American Juridical Committee held a regular session in Rio de Janeiro in January 1982. It elected as its Chairman, Dr. Jorge A. Aja Espil, an Argentine jurist and member of the Committee. Dr. Galo Leoro, a jurist from Ecuador, was elected Vice-Chairman.

During this session, the Committee considered some topics of its work program and approved a draft convention on international jurisdiction in the context of extraterritorial validity of foreign judgments. The draft convention establishes some general rules on this matter, but at the same time provides that such rules do not apply to certain matters, such as capacity and personal status, divorce, child support and alimony, bankruptcy, labor matters, social security, and arbitration.

It is, however, provided in the draft convention that the contracting states may, at any time, declare that the convention shall apply to one or more of these matters.

During the same session, the Juridical Committee approved the program for the Ninth Course on International Law to be held in Rio de Janeiro in August 1982. The program includes the following topics among others: public international law — new approaches and perspectives, law of treaties, law of the sea, space law, the law of space telecommunication, nuclear law, legal rules for the protection of refugees, international judicial cooperation in penal law; inter-American system — principles and objectives of the system, collective security in America, peaceful settlement of controversies in the inter-American system; Latin American integration — present status of Latin American integration and cooperation, the ALADI, the Andean Group, the Central American integration; private international law — present status of private international law in the inter-American system, draft convention on jurisdiction in the international field, international transportation of persons and merchandise, and adoption of minors.

According to the procedures adopted in previous Courses, working groups, seminars, or round tables will be organized to discuss some specific topics of the program.

Income tax on the annuities received by retired staff members of the OAS

The Association of Retirees of the Organization of American States (OAS) has been very much concerned with income tax on the annuities paid to retired staff members of the OAS from the OAS Retirement and Pension Fund.

On January 27, 1982 the Association approved a Statement on this matter in which it emphasized that such annuities should be tax exempt and expressed basic points of view in the context of International Law.

The text of this Statement, of particular importance in inter-American relations, follows.

ASSOCIATION OF RETIREES OF THE ORGANIZATION OF AMERICAN STATES (AROAS)

Income tax on the annuity received by retired staff members of the Organization of American States from the OAS Retirement and Pension Fund

(Statement approved by the Board of Directors of AROAS,
January 27, 1982)

The annuity received by retired staff members of the Organization of American States from the OAS Retirement and Pension Fund should be tax exempt.

The Retirement and Pension Fund of the OAS is of an international nature. The OAS is an intergovernmental organization, comprising the United States and Latin American and Caribbean countries.

The contributions to this Fund are as follows: Two thirds, equivalent to 14% of the salaries, are contributed by the governments of the OAS member states through their quotas to the regular budget of the OAS. The other third, equivalent to 7% of the salaries, is contributed by the staff members of the OAS through payroll deductions. Therefore, the governments contribute the equivalent of 21% of the salaries of the OAS staff members, all of which is deposited in the Fund by the OAS General Secretariat.

The possibility of receiving an annuity for life is one of the options of the OAS Pension Fund for OAS employees who satisfy the conditions for retirement. It should be noted that almost all

the OAS retirees live in the United States.

The Retirement and Pension Fund of the OAS is controlled by an international committee, the Retirement and Pension Committee of the OAS. The OAS General Secretariat administers the Fund.

The Retirement and Pension Fund of the OAS is of an inter-governmental nature according to the principles and rules established by the OAS Charter, which is an international treaty ratified by, and in force in, all member states of the OAS, including the United States. If the government of any member state of the OAS imposed or collected taxes on such annuities, these taxes would be received by the Treasury of such a country only. The governments of the other member states of the OAS would not receive any portion of those taxes, although they would have been imposed and collected on annuities from a Fund to which all the member states of the OAS have contributed over a long period of years and continue contributing. Furthermore, this would be contrary to principles of international law and to the basic rules contained in the OAS Charter, which is the "law of the land" in all OAS member states.

It should be emphasized that the annuity received from the OAS Retirement and Pension Fund should be tax-exempt because of the origin of the contributions to the Fund, that is, "*ratione materiae*." Over many years the governments of all the OAS member states have contributed to the OAS Pension Fund. How can the government of one of the OAS member states impose, apply or collect taxes on annuities coming from that Fund?

The OAS has executive jurisdiction over the OAS Retirement and Pension Fund, its income, the annuities to be paid to OAS retirees and how and where they should or could be paid; it also establishes the conditions and requirements for retirement.

Furthermore, there is no inter-American treaty or convention—duly ratified and in force—which specifically and clearly authorizes the government of one OAS member state to receive, impose or collect taxes on annuities or on benefits to OAS staff members who separate from the Retirement and Pension Plan before retirement.

It is obvious that a retired OAS staff member who is a citizen or a resident alien of a member state should pay income tax and other taxes, *but only* on the income from sources other than the

annuity received from the OAS Retirement and Pension Fund, because such annuity should be tax exempt by reason of its very nature, "*ratione materiae*."

Such annuities received by retirees should not be subject to taxes paid to one member state on money coming from a Fund to which all the other member states also contribute.

Hence, quite understandable would be the amazement of a Minister of Finance or any Officer of equal responsibility of an OAS member state, on being informed of the following: While part of the contribution of his country to the regular budget of the OAS is deposited in the OAS Retirement and Pension Fund, another OAS member state, without any international legal basis, imposes and collects taxes on the retirement payments made to retired OAS staff members from that intergovernmental Fund. It should be kept in mind that several OAS member states make great sacrifices in order to pay their quotas to the OAS regular budget.

The amount involved in taxes is very small, no doubt, but the principle is very important. Actually a principle of international law is involved in this matter.

Consistent with the intergovernmental nature of the OAS, its General Secretariat should take or promote the necessary steps to protect and preserve the tax-exempt status of annuities paid from the OAS Retirement and Pension Fund to retired OAS staff members.