

6-1-1971

Inter-American Bar Association

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Recommended Citation

J. O. Dahlgren, *Inter-American Bar Association*, 3 U. Miami Inter-Am. L. Rev. 401 (1971)

Available at: <http://repository.law.miami.edu/umialr/vol3/iss2/14>

INTER-AMERICAN BAR ASSOCIATION

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XVII CONFERENCE

The Executive Committee has not as yet decided on the date and place for the XVII Conference of IABA. A decision is expected shortly.

NUCLEAR LAW

It is believed that readers of *The Lawyer of the Americas* will be interested in the revised text of the Draft Treaty to establish the Latin American Nuclear Common Market (MECLAN) submitted by Committee XX, Nuclear Law and approved by the XVI Conference of the Association (Rec. 52), Caracas, Venezuela, November 1-8, 1969.

DRAFT TREATY ESTABLISHING THE LATIN AMERICAN NUCLEAR COMMON MARKET (MECLAN)*

THE CONTRACTING STATES

Persuaded that the peaceful uses of nuclear energy offer great opportunities for scientific and industrial progress, in such fields as agriculture, medicine, and research, and the production of energy and other industrial uses;

Convinced that encouraging reciprocal commerce in nuclear materials and equipment and the ready exchange of services, capital and techniques among the Latin American countries will contribute to their technical and economic development and will strengthen their relationships with the rest of the world;

*These initials are taken from the Spanish version of the title of the draft treaty (Mercado Común Latinoamericano Nuclear).

Aware that actions designed to establish a Latin American nuclear common market must be related to other measures for Latin American economic integration; and

Taking into account the Latin American Free Trade Association, the Central American Common Market, the Inter-American Nuclear Energy Commission, and the Declaration of the Presidents of America signed at Punta del Este;

Have decided to conclude a treaty for such purposes, and to that effect have agreed as follows:

CHAPTER I

LATIN AMERICAN NUCLEAR COMMON MARKET

Article 1. By the present Treaty the Contracting States agree to institute the Latin American Nuclear Common Market (MECLAN) in the peaceful uses of nuclear energy. It shall be the aim of this Common Market:

1. To ensure extensive markets and access to the best technical means of the peaceful uses of nuclear energy by eliminating barriers to trade in nuclear materials and equipment, by providing for free movement of capital for nuclear investment, and by creating freedom of employment for specialists among the Contracting States.
2. To establish with other countries and with international organizations relationships which will promote progress in the peaceful uses of nuclear energy; and
3. To promote scientific and technological investigation and development in the field of nuclear energy for peaceful uses.

CHAPTER II

DEFINITIONS

Article 2. When mentioned in this Treaty —

1. The expression "nuclear materials" means the materials listed in Annex A hereto, as that list may be revised from time to time.
2. The expression "nuclear equipment" means the items listed in Annex B hereto, as that list may be revised from time to time.

3. The expression "Conference" means the Conference of the Latin American Nuclear Common Market established by Article 18.

CHAPTER III

APPLICATION OF THE TREATY

Article 3. The provisions of the present Treaty shall apply to all the materials listed in Annex A hereto and all the items of equipment listed in Annex B hereto. Annexes A and B form an integral part of this Treaty. The Council may, from time to time, revise the lists set forth in these Annexes.

CHAPTER IV

PROGRAM OF LIBERALIZATION OF INTERCHANGE

Article 4. The common market, established under the Treaty, shall come into force on

Article 5. (a) At the time specified in Article 4, nuclear materials occurring in nature or equipment manufactured in the territories of the Contracting States shall be and shall remain exempt from the payment of import and export duties, including consular fees, and from all other taxes, overcharges and contributions which are caused by importation or exportation among the Contracting States, or which are collected by reason of the same.

(b) Nuclear materials and equipment originating and coming from the territory of one of the Contracting States shall enjoy national treatment in all of them and shall be exempt from all restrictions or measures of a quantitative character.

(c) The Council, acting by means of a vote of an absolute majority of the Contracting States, may establish exceptions to the exemptions provided in the two preceding paragraphs with respect to:

- 1. Assessments or charges of lightering, wharfage, storage and handling of products, and other assessments or charges that may be exacted for services of harbor, custody or transport;
- 2. Exchange differences which result from the existence of two or more markets of exchange or other measures adopted by any of the Contracting States, and

3. Measures of control that may be lawfully applicable in the territories of the Contracting States for reasons of health, safety or police.

(d) After the Conference has been consulted, the Council, acting by means of a vote of an absolute majority of the Contracting States, may issue directives as to the particulars of application of this Article.

Article 6. (a) Prior to the date established in Article 4, each Contracting State will eliminate the burdens and restrictions of every class which bear upon the importation and exportation of nuclear materials and equipment originating in or destined for the territory of any other Contracting State.

(b) On the date established in Article 4, any advantage, favor, exemption, immunity or privilege which is applied by a Contracting State in relation to nuclear materials or equipment originating in or destined for any one of the other Contracting States shall be immediately unconditionally extended to similar nuclear materials or equipment originating in or destined for the territory of all the other Contracting States.

CHAPTER V

ESTABLISHMENT OF ORIGIN AND DESTINATION

Article 7. (a) The nuclear materials and equipment that enjoy the benefits stipulated in this Treaty, shall be protected by a customs form signed by the exporter, which contains the declaration of origin and which shall be subject to the visa of the customs officials of the country of dispatch and of destination.

(b) When there is any doubt concerning the origin of a product and the problem is not resolved by bilateral action, either of the States affected shall be able to ask for arbitration before an arbitration tribunal. The tribunal shall be composed of three arbitrators, one to be appointed by each State concerned and one, unless the parties otherwise agree, by the Secretary General of the Organization of American States. If all efforts of the tribunal to reach a unanimous agreement fail, the decision shall be made by a majority vote of the arbitrators. The arbitrator appointed by the Secretary General shall be empowered to settle all questions of procedure in any case where the parties are in disagreement with respect thereto. The arbitration tribunal shall not consider as products originating in one of the Contracting States those which, being originated or manufactured in a third country, merely are assembled, packaged, separated or diluted in the exporting country.

(c) In those cases referred to in the preceding paragraph the importation of the product in question shall not be impeded, so long as a surety is furnished which guarantees to the importing country the payment of the duties or other charges that the importation will cause. That surety shall become effective or shall be cancelled, as the case may be, when the problem raised is definitely resolved.

CHAPTER VI

TRANSIT AND TRANSPORT

Article 8. (a) Each of the Contracting States shall maintain full freedom of transit across its territory for the nuclear materials and equipment destined for or proceeding from any one of the other Contracting States, as well as for the vehicles that transport such products. Such transit shall be without quantitative deductions, discriminations or restrictions. In case of congestion of freight or other cases of *force majeure*, each one of the Contracting States shall treat equitably the movement of products destined for the supply of its own population and products in transit to other States.

(b) Transit operations shall be by routes legally provided for this purpose and shall be subject to the laws and the customs and transit regulations applicable in the territory of passage.

(c) Nuclear materials and equipment in transit from or to a Contracting State shall be exempt from all classes of duties, taxes or fiscal contributions, municipal or of other class having to do with transit, but they shall remain subject to the payment of such normal charges applicable to the furnishing of services as are permitted by regulations of the Council, adopted by means of a vote of an absolute majority of the Contracting States.

(d) After the Conference has been consulted, the Council, acting by means of a vote of an absolute majority of the Contracting States, may issue directives as to the particulars of application of the foregoing paragraphs of this Article.

(e) Each Contracting State undertakes to establish, with respect to packaging, marking, and methods of shipment of nuclear materials, regulations which, so far as possible, are compatible with the regulations of the other Contracting States. The Council may make recommendations to the Contracting States in this respect, after taking into account the model regulations prepared by the International Atomic Energy Agency.

CHAPTER VII

NON-DISCRIMINATION

Article 9. Each Contracting State shall accord to nationals of another Contracting State who desire access to engage in specialized employment in the nuclear field, and to enterprises of another Contracting State which desire access to participate in nuclear activities of a scientific or an industrial character, the same treatment accorded to its nationals and national enterprises. The Council may establish standards and procedures concerning the application of this Article.

Article 10. With respect to taxes, assessments and other internal burdens, nuclear materials and equipment originating in the territory of one Contracting State shall enjoy in the territory of another Contracting State treatment no less favorable than that which is applied to similar national products.

Article 11. (a) When nuclear materials and equipment are subject to taxes, excises, or other internal contributions of any class, which fall upon production, sale, distribution or consumption in one of the Contracting States, such State may impose a burden of equal amount on goods of the same nature which are imported from another Contracting State, in which case importation proceeding from non-Contracting States shall be subjected to a burden of at least an equal amount and under the same concepts.

(b) The establishment of internal taxes on consumption and use of nuclear materials and equipment shall be adjusted according to the following terms:

1. Such taxes may be established in an amount which is considered necessary when there exists internal production of the article in question, or when no production of such article exists in any of the Contracting States.

2. When no production of an article exists in one of the Contracting States but there is such production in any of the others, the former may not establish taxes on the consumption of such article, except pursuant to a previous favorable decision of the Council.

3. When one of the Contracting States has established an internal tax on consumption of an article which is not produced

in any of the Contracting States and subsequent production of the article thus burdened is commenced in any of the other Contracting States, the Council, upon request of the interested State, shall take cognizance of the case and shall render a decision as to whether or not the continuance of the tax is compatible with free commerce. The Contracting States undertake to eliminate, in accordance with their legal procedures, such taxes on consumption upon the mere notification to this effect from the Council.

4. When, for reasons of internal nature, the Contracting State which has abolished a tax considers that it is necessary to re-establish it, that State should previously request and obtain authorization of the Council, which may give it after studying the consequences of the tax on the free trade among the Contracting States.

CHAPTER VIII

SUBSIDIES ON EXPORTATION

Article 12. (a) None of the Contracting States shall grant, directly or indirectly, subsidies to the exportation of nuclear materials and equipment destined for the territory of the other States, nor establish or maintain systems the result of which may be the sale of a particular item of nuclear materials or equipment, for its exportation to another Contracting State, at a price lower than that established for the sale of such item in the national market, duly taking into account the differences in the conditions and terms of sale and system of taxation, as well as the other factors which influence the comparison of prices.

(b) There shall be considered as an indirect subsidy any practice of fixation or discrimination of prices, existing in one of the Contracting States, which are converted into the establishment of prices of sale of a particular item of nuclear materials or equipment in the other Contracting States at levels below those which result from normal movement of the market in the exporting country.

(c) However, exemptions from taxation of a general character which one of the Contracting States grants with the object of furthering production shall not be considered as subsidies to exportation.

(d) Neither shall a subsidy to exportation include the exemption of internal taxes of production which fall, in the exporting State, upon the products which are the object of exportation to the territory of another

State. Normally, the differences that result from the sale of foreign currencies on free market at a type of exchange higher than the official shall not be considered as a subsidy to exportation; but in case of doubt by one of the Contracting States the matter shall be submitted for arbitration as provided in Article 23.

Article 13. (a) Each one of the Contracting States shall avoid, by legal and administrative means, the exportation of nuclear materials and equipment of such State to the territory of the others at a price below their normal value, in such form that it causes or threatens to cause injury to the production of such items in the other countries, or that it delays the establishment of a national or zonal nuclear industry.

(b) It shall be considered that an item of nuclear materials or equipment has been exported at a price below its normal value, if the price of such item was less

1. than the comparable price, in normal conditions of commerce, of a similar item, destined for the consumption of the internal market of the exporting country;

2. than the comparable higher price, for the exportation to a third country, of a similar item, in normal conditions of commerce;
or

3. than the cost of production of this item in the country of origin, plus a reasonable increase for expenses of sale and profit.

(c) In each case there shall be taken into account the existing differences relating to the conditions and terms of sale and of taxation and other differences which affect the comparison of prices.

Article 14. If any one of the Contracting States considers that there exist practices of unfair commerce with respect to nuclear materials or equipment in aspects which are covered by Articles 12 and 13 or in any other aspect, it shall not hinder the exchange by unilateral decision, but may present the problem for arbitration as provided in Article 23.

Article 15. When one of the Contracting States has submitted a problem for arbitration as provided in Article 14, that State may demand security for the sum of the duties on the importation until such time as the arbitration tribunal has made a determination on the matter.

CHAPTER IX

HEALTH AND SAFETY MEASURES. FINANCIAL PROTECTION
AGAINST NUCLEAR RISKS

Article 16. (a) The Contracting States undertake to adopt appropriate laws and regulations for the protection of the health and safety of workers and of the general public in connection with the risk of nuclear materials and equipment, and to take appropriate measures to facilitate the provisions of financial protection against nuclear risks. Each Contracting State undertakes that, so far as possible, the measures which it adopts in these respects will be compatible with similar measures of the other Contracting States.

(b) The Council shall take appropriate measures to further the accomplishment of these purposes.

CHAPTER X

AUTHORIZATION OF PAYMENTS

Article 17. Each Contracting State undertakes to authorize, in the currency of the Contracting State in which the creditor or the beneficiary resides, payments relating to the exchange of goods, services and capital, to the extent to which the movement of goods, services and capital is liberalized as among the Contracting States in application of the present Treaty.

CHAPTER XI

ORGANS

Article 18. To establish policies for the nuclear integration covered by this Treaty, to coordinate such policies, and to apply and administer the present Treaty, there are created the following organs:

1. The Conference of the Latin American Nuclear Common Market.
2. The Council of the Latin American Nuclear Common Market.
3. The Secretariat.

Article 19. (a) The Conference shall be composed of duly accredited representatives of the Contracting States. Each Contracting State shall have one vote.

(b) The Conference can only take decisions with the presence of at least two thirds of the Contracting States. The decisions shall be adopted by a two-third vote of the Contracting States. However, in each Conference the delegations of the Contracting States will decide, by a two-third vote, what majority will be required for the approval of certain resolutions.

(c) The regulations of the Conference will establish the cases in which, by the nature of the matters to be considered, the decisions may be taken by the absolute majority of the Contracting States.

(d) The Conference shall meet once a year in regular session; extraordinary sessions shall be held at the request of the Contracting States. It shall examine the works of the Council and shall adopt the resolutions that it judges desirable. At appropriate intervals, the Conference shall approve the budget for a forthcoming period of years for the support of the organs created by Article 18, and shall establish the quota that each one of the Contracting States shall contribute to such budget, in accordance with the following formula:

1. (.)
2. (.)
3. (.)

(e) The Conference may obtain advice from and may collaborate with other Latin American, inter-American, or world organizations.

Article 20. (a) The Council shall be composed of duly accredited representatives, and alternates or advisers designated by each Contracting State.

(b) The Council shall meet at such times as may be necessary or on request of one of the Contracting States. Decisions of the Council shall be adopted by the vote of an absolute majority of the Contracting States, except in those cases that require a two-thirds vote as may be provided by the Statutes of the Council approved by the Conference.

(c) The Council shall prescribe the means that may be necessary in order to assure the accomplishment of the commitments established pursuant to this Treaty and to resolve the problems that arise with respect

to the application of its provisions. It may obtain advice and information from other Latin American, inter-American or world organizations.

(d) In those instances where, under the provisions of the present Treaty, the Council is authorized to take action on any particular matter, action of the Council shall be final and the Contracting States agree to abide by such action.

Article 21. (a) The Secretariat is directed by a Secretary General and composed of technical and administrative personnel. The Secretary General shall be elected by the Conference for a period of four years and may be reelected once for the same period.

(b) The Secretariat shall maintain its site and principal seat in the city of It shall establish the departments and sections that may be necessary to carry out its functions. The Secretary General shall appoint the staff of the Secretariat and shall supervise its operations.

(c) In the performance of their duties, the Secretary General and the personnel of the Secretariat shall not seek or receive instructions from any government or national or international entities, but they may consult with and obtain information from those governments and national or international entities and from other Latin American and international organizations. Also, they shall refrain from any action that may be incompatible with their position as international functionaries, responsible only to the Secretary General.

(d) The Contracting States pledge themselves to respect the exclusively international character of the responsibilities of the Secretary General and the personnel of the Secretariat, and not to seek to influence them in the discharge of their duties.

CHAPTER XII

SCOPE

Article 22. No provision of the present Treaty shall be interpreted as an impediment to the adoption and fulfillment of measures designed for the protection of public order and national security and the protection of the life and health of persons, animals and plants.

CHAPTER XIII

DISPUTES

Article 23. (a) In cases where the Council is unable to come to a conclusion on a matter which is within its purview under the terms of the

present Treaty, and in cases where disputes arise among the Contracting States concerning the interpretation or application of any of the provisions of the present Treaty on a matter which is not within the purview of the Council, the Contracting States agree to settle the matter peacefully, within the spirit of the present Treaty. If they are not able to reach an accord, they shall resolve the dispute by arbitration.

(b) Disputes concerning the origin of a product shall be settled as provided in Article 7. Any other dispute shall be settled as provided in this Article.

(c) To establish the arbitral tribunal for the settlement of disputes other than those referred to in Article 7, each one of the Contracting States shall submit to the Secretary General of the Organization of American States the names of three magistrates from their respective Supreme Courts of Justice. From the total list of candidates, the Secretary General of the Organization shall select, by drawing lots, five arbitrators who shall make up the tribunal, provided that each one of these must be of different nationality. The award of the arbitral tribunal shall be pronounced with the concurring votes of at least three members, and the matter judged shall be enforceable among all the Contracting States according to its terms as to any point which is resolved concerning the interpretation or application of the provisions of the present Treaty.

CHAPTER XIV

FURTHER ECONOMIC INTEGRATION

Article 24. The present Treaty shall be interpreted and administered in such a manner as to facilitate further and more extensive economic integration among the Latin American countries, both in the extension of the Latin American Nuclear Common Market and in other areas of cooperation.

CHAPTER XV

RELATIONS WITH OTHER INTERNATIONAL ORGANIZATIONS

Article 25. Subject to the approval of its Council, MECLAN may conclude such agreements of cooperation with the Agency for the Pro-

hibition of Nuclear Weapons in Latin America, the Inter-American Nuclear Energy Commission, the Latin American Free Trade Association, the Central American Common Market, the International Atomic Energy Agency, and any other international organizations as may be mutually beneficial.

CHAPTER XVI

FINAL CLAUSES

Article 26. The present Treaty shall not be signed with reservations, nor may these be received on the occasion of its ratification or adherence.

Article 27. (a) The present Treaty shall be ratified by the signatory States in accordance with their constitutional procedures.

(b) The instruments of ratification shall be deposited with the Government of, which shall communicate the date of deposit to the governments of the States which have signed the present Treaty and to those which have adhered to the same.

Article 28. (a) The present Treaty shall enter into force among the ratifying States when three of the signatory States have deposited their instruments of ratification, and, in respect of each State ratifying it thereafter, with the deposit of the instrument of ratification by that State.

(b) The Government of shall notify the government of each one of the signatory States of the date of the entry into force of the present Treaty. Upon the entrance into force of the Treaty, that government shall also proceed to send a certified copy of the same to the Secretary General of the United Nations, for the purpose of registration which is provided for by Article 102 of the Charter of the United Nations.

Article 29. After its entry into force, the present Treaty shall remain open to the adherence of the other Latin American States, which shall deposit, to that effect, the corresponding instruments of adherence with the Government of The Treaty shall enter into force for the adhering States with the deposit of their instruments of adherence.

Article 30. After the present Treaty has been in force for a period of years, the Contracting States may propose amendments to the Treaty for consideration by the Conference. If approved, such amendments shall be formalized in protocols which shall enter into force once

they have been ratified by all the Contracting States and the respective instruments of ratification have been deposited.

Article 31. (a) The provisions of the present Treaty shall not affect the rights and obligations of Contracting States resulting from conventions or treaties to which they are party at the time of entry into force of the present Treaty.

(b) Each Contracting State, however, shall use its best efforts to promote the harmonization of such conventions and treaties with the objectives of the present Treaty.

Article 32. The present Treaty shall remain in force indefinitely. After the Treaty has been in force with respect to any Contracting State for a period of years, the Treaty may be denounced by that State by giving advance notice of one year, at the end of which time the Treaty shall cease to have effect for the denouncing State, remaining in force, however, among the remaining Contracting States. The denunciation shall be transmitted to the Government of, which shall inform the other Contracting States thereof.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having presented their plenary powers, which have been found in good and due form, sign this Treaty, in the name of their respective Governments, in the city of, the day of