Regional and International Activities

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I. Organization of American States

The Inter-American Juridical Committee (the Juridical Committee), the principal juridical organ of the Organization of American States (OAS), held a meeting in August of 1985. The Juridical Committee approved opinions and resolutions regarding important inter-American legal relations.

A. Opinion of the Inter-American Juridical Committee on the American Treaty on Pacific Settlement

The Opinion of the Inter-American Juridical Committee on the American Treaty on Pacific Settlement (the Opinion) was ap-
proved on August 29, 1985.\textsuperscript{1} The Opinion begins:

Bearing in mind the special interest that the Organization of American States has in conducting studies of the major inter-American legal instruments with a view to their amendment, as stated in resolution AG/RES. 745 (XIV-0/84), adopted by the General Assembly of the OAS in Brasilia in November of 1984, and in response to the express request made of it by the Permanent Council of the Organization, the Juridical Committee undertook an examination of the American Treaty on Pacific Settlement of 1948 (Pact of Bogota), taking into account the reservations made by the signatory states as well as the reasons that some member states might have for not ratifying it, so as to determine whether amendments need to be made to that instrument to ensure it viability.

The Juridical Committee appointed Ambassador Galo Leoro as Rapporteur for the Opinion. Ambassador Leoro is a member of the Juridical Committee, a jurist from Ecuador, and one of the leading authorities in the Americas on issues concerning the peaceful settlement of international disputes. He was also the Chairman of the Juridical Committee during 1984 and 1985. During the Juridical Committee meeting, the Rapporteur presented a detailed analysis of the practical and procedural problems of the Pact of Bogotá and how the problems will affect the Pact of Bogotá's viability. He also presented a written analytical report to the Juridical Committee detailing the potential problems the parties might encounter with respect to the applicability of the Pact if the Parties had to resort to its procedures. The Juridical Committee accepted the Rapporteur's Report as their working paper.

The Opinion emphasizes that the development of the inter-American system occurred within a legal framework established by resolutions approved by the International Conferences of American States.

Many of the declarations from those conferences contain principles that point up a constant effort to surmount problems. The most significant reform made in the system was the signing of the Charter of the OAS in 1948, through which an organization that had developed over the course of several decades was contractually instituted. That contractual transformation was

the climax of an essential undertaking that began with the Inter-American Treaty of Reciprocal Assistance adopted in Rio de Janeiro in 1947, and culminated with the American Treaty on Pacific Settlement (Pact of Bogotá) and the other invaluable inter-American instruments that address social rights, human sights, economic relations, all on a substantive and structural scale that was without precedent.

The Opinion further states that the Pact of Bogotá and the Inter-American Treaty of Reciprocal Assistance (of 1947) are the instrumental means for carrying out the objectives set forth in the Charter with respect to maintenance of the peace. The first is the Organization’s response to the need to settle international disputes between its members peacefully; the second is a collective response to aggression and other attempts against the territorial integrity, sovereignty, and independence of the member states, under the terms and according to the characteristics that those instruments establish for each one of their respective spheres of action.

There has been an imbalance between the objectives of a peaceful settlement of disputes by the Organization and a collective response by the member states to aggression. This imbalance is indicated in the Opinion’s stating that the Inter-American Treaty of Reciprocal Assistance (the Rio Treaty) was ratified by a majority of the OAS member states but that the Pact of Bogotá was ratified by a minority. Further, although the Rio Treaty was amended by the Protocol of San Jose in 1975, the Pact of Bogotá has remained unchanged. The Opinion states:

[T]he most striking fact of all is that the Pact of Bogotá has never been invoked by its Parties to settle their disputes peacefully. [When] Honduras and Nicaragua resorted to its procedures in 1957, it was only because the Permanent Council, acting provisionally as Organ of Consultation, had recommended that measure and that the two member states took their dispute to the International Court of Justice to resolve the controversy over a 1906 award.

The Opinion points out that several instances where the Rio Treaty was invoked can be better explained if one considers that the Organization did not have an organ that, at the request of one of the Parties or on its own initiative could recommend to the contending states suitable
measures or means for finding a solution to their dispute. Thus, under certain circumstances the American states have had to invoke the Inter-American Treaty of Reciprocal Assistance, an instrument whose organ acts at the request of one of the Parties and, in certain cases, when convoked by the Chairman of the Permanent Council (Article 63 of the OAS Charter).

[A desire to achieve] some balance in the use of the two means for maintaining peace within the inter-American system, is what doubtless has prompted the member states to try to alter those aspects of the fundamental instruments that, experience has shown, do not function or have not functioned in the past. In the Committee's judgment, the situation noted in the case of the Pact of Bogotá holds true in the case of the OAS Charter as well, since the task assigned to the Permanent Council and to the Inter-American Committee on Peaceful Settlement, under Articles 82 to 90, is just as difficult since it cannot, at the request of only one of the parties or on its own initiative, lend its good offices to bring the parties together and suggest means for settling disputes between member states. In its opinion of August 21, 1984, the Committee suggested amendments to the Charter to correct that problem.

The Opinion also refers to article 26 of the OAS Charter. According to article 26, "A special treaty will establish adequate procedures for the pacific settlement of disputes and will determine the appropriate means for their application, so that no dispute between American states shall fail of definitive settlement within [a] reasonable period." Article 26 formed the basis for the Pact of Bogotá. The Pact of Bogotá was intended to be "a codification of those treaties on peaceful settlement existing within the inter-American system and listed in article LVIII" of the Pact of Bogotá. Article LVIII provides that "once the Treaty comes into effect, the earlier conventions shall cease to be in force with respect to the parties thereto." The Juridical Committee pointed out that the Pact of Bogotá "went beyond just codifying those conventions; an effort was made to coordinate it with the provisions of the United Nations Charter and significant restrictive standards were introduced vis-a-vis its application."

B. Proposed Changes in the Pact of Bogotá

The Pact of Bogotá contains sixty articles. The Juridical Committee proposed that several articles be re-drafted or amended and that some of the articles be eliminated.
The Opinion proposes several changes pertaining to the Judicial Procedure provided for state in chapter four of the Pact of Bogotá. No change was made in article XXXI of chapter four which provides:

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.

The Opinion recommends changes in article XXXII. According to the proposal, article XXXII would read as follows:

When the procedure of conciliation in accordance with this treaty does not lead to a solution, 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 accord to article 36, paragraph 1, of said statute.

The Opinion proposes that the following articles be eliminated from the Pact of Bogotá: XXXIII, XXXIV, XXXV, XXXVI, and XXXVII. The elimination of these articles was proposed because they encourage arbitration by default, an unworkable settlement method, and are redundant, duplicating the content of the Statute of the International Court of Justice.

The Opinion also proposes the elimination of articles XXXIX and XLV from the Procedure of Arbitration chapter. Article XXIX is considered unnecessary, and article XLV is thought to encourage arbitration by default.

The Opinion recommends that article LI be amended. The proposed amendment permits requests for advisory opinions from the Inter-American Juridical Committee and reads as follows:

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. They may also request [an advisory opinion] of the Inter-American Juridical Committee. In both cases, the petition shall be made through the Permanent Council of the Organization of American States.

C. Administration of Justice in the Inter-American Context

At the meeting held in August, 1985, the Juridical Committee approved a resolution recommending that the OAS Secretary General convocate an administration of justice seminar. The Juridical Committee suggested that judges, specialists in the field, and related organizations be solicited to participate in the seminar. The main objectives of the seminar will be to exchange information on current topics and problems in the administration of justice and to formulate plans for improving such administration. The Juridical Committee further recommended that the OAS Secretary General encourage private international law organizations, judges, and lawyers to participate in the seminar.

D. Rules for the OAS General Secretariat as Depository of Inter-American Treaties

At the August, 1985, meeting the Inter-American Juridical Committee also addressed AG/RES. 102 (III-0/73) (adopted by the OAS General Assembly in 1973). AG/RES. 102 (III-O/73) contains standards for reservations to inter-American multilateral treaties. The Juridical Committee decided to submit to the General Assembly draft standards which allows for the General Secretariat to act as a depository for inter-American treaties. The draft did not address the problem of reservations because further draft resolutions will cover such problems. The proposed draft standards are modeled after the Vienna Convention on the Law of Treaties of 1969. The draft depository standards provide:

I. In the performance of its functions as depository of inter-America treaties, the General Secretariat shall, pursuant to the provisions of Article 118.f of the OAS Charter, comply with the following standards, unless the treaty concerned provides otherwise:

1. Keep custody of the original text of the treaty and of the full powers;
2. Furnish certified copies of the treaty to all Member
States of the OAS, whether or not they are signatories of the treaty, and to non-member States that have signed or acceded to it or have expressed the intention to accede to it;
3. Receive any signatures to the treaty and keep custody of any instruments, notifications and communications relating to it;
4. Examine whether the signature, or any instrument, notification, or communication relating to the treaty is in due and proper form and, if need be, bring the matter to the attention of the State in question;
5. Inform the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;
6. Inform the States entitled to become parties to the treaty of the date on which the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;
7. Register the treaty with the Secretariat of the United Nations.

II. In the event of any difference appearing between a State and the depository as to the performance of the latter's functions, the depository shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.²

E. XII Course on International Law

The XII Course on International Law (the Course) was held in Rio de Janeiro from August 5 to August 30, 1985. Fellows from twenty American countries participated in the Course. The Course has continued without interruption from 1974 to the present with great success. The Course is organized by the Juridical Committee with the collaboration of the OAS General Secretariat. Dr. Isidoro Zanotti, a Brazilian jurist and former Deputy Director of the Department of Legal Affairs of the OAS General Secretariat, has closely and continuously collaborated from 1974 to 1985 in the or-

² Resolution approved by the Inter-American Juridical Committee on Standards for the General Secretariat as Depository of Inter-American Treaties. CP/doc. 1606/85 (Oct. 24, 1985).
ganization and preparation of the curriculum for the course.

The Course is conducted at a post-graduate level. It includes lectures and active discussions and a broad exchange of views takes place between lecturers and participants. In addition, groups are organized to study specific topics.

Law professors, diplomats, lawyers and judges from the American countries have participated in the Course. The Course is designed to update, provide in depth knowledge and information, and to study and discuss topics of special interest in contemporary public and private international law within the inter-American system. Moreover, the Course is extremely useful in the promotion and consolidation of friendly relations and in fostering exchange and cooperation among the participants.

Among other topics, the XII Course included discussions on the following: the law of the sea; jurisdictional immunity of states; the protection of human rights in the inter-American system; Inter-American Treaty of Reciprocal Assistance; International law and the constitutions of American countries; constitutional problems of integration; economic integration processes of Latin America; the refugee problem in the American continent; exhaustion of local remedies in the context of international law, with special reference to Latin American countries; diplomatic and territorial asylum; bilateral and multilateral aspects of international judicial assistance; and the conventions adopted by the Third Inter-American Specialized Conference on Private International Law. In addition, four work groups were organized to deal with the following topics: the draft inter-American convention on jurisdictional immunity of the states; the exclusive economic zone in the context of the law of the sea; the Inter-American Court of Human Rights; and legal education in Latin America.

II. MEETING OF THE INTER-AMERICAN ECONOMIC AND SOCIAL COUNCIL

The Inter-American Economic and Social Council (CIES), an organ of the OAS, held its twentieth annual meeting at the headquarters of the OAS General Secretariat in Washington, D.C., from September 23 through September 27, 1985.3

During the meeting, the CIES adopted several resolutions and

recommendations and primarily considered the following topics: coercive economic measures; Panama Canal tolls; commercial arbitration; regional development; the strengthening of small and medium-size business in Latin America and the Caribbean; the campaign against drug traffic; and other matters concerning inter-American economic and social relations.

The Secretary General of the OAS, Ambassador João Clemente Baena Soares, delivered an address at the opening session. Ambassador Baena Soares analyzed important and pressing economic problems facing the Latin American and Caribbean countries, including the serious external debt issue. He observed that

> the current crisis reflects the effects of the internal economic adjustment that had to be made by most of the member states in order to cope with problems stemming from their high levels of external indebtedness. The situation confronting us today points to low growth rates, following a period when they were negative; declining investments and consumption; difficulties in mobilizing internal and external savings for activities featuring a high degree of economic profitability; and growing unemployment, with the resulting adverse effect on the populations' living standards. . . . The negative impact of internal adjustment on social development and on participation in the economic process is impeding the democratic progress that was being made on the political front.

Ambassador Baena Soares stated that the details of a possible solution are [within] the purview of the technical area, but its substance is eminently political. . . . It is urgently necessary now to enter into the phase of concrete action, transactions, and agreements if we are to progress, however thorny the path may be. The untenable alternative is the social and economic instability of the countries of the region, and consequently, the political instability that threatens to jeopardize collective security and regional peace.

Ambassador Baena Soares pointed out that

> reciprocal understanding of national problems of each country is an indispensable step, but it must be predicated on an accurate assessment of feasibility limits. In the search for a new an-

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swer and without losing sight of the serious short-term questions posed by external debt servicing, it would appear expedient to explore the medium and long-term opportunities and to review socio-economic development strategies to achieve a steadier pace of growth recovery combined with social justice.

The Ambassador called attention to some factors and realities of the present-day world economy. He noted that the speed and depth of technological change affects development strategies. He stressed that "It appears to be essential to consider the possibilities of joint action that might facilitate the execution of national strategies. But a more propitious framework must be created for such effort."

Ambassador Baena Soares recalled that

[a]s the 1982 financial crisis of Latin America and the Caribbean became more evident, various proposals have been made for its solution. In 1985, we see that the region's indebtedness has increased and the costs of adjustment are excessively high. It is therefore timely to insist on the need to think about a new set of solutions. To offer an intrinsically OAS approach it would be essential to formulate a development proposal involving all the protagonists of external indebtedness and embodying a number of factors, including the financial ones.

Ambassador Baena Soares cited some of the pertinent elements:

The present system for dealing with the region's financial problem consists of case-by-case agreements. There is no common framework to facilitate development. In their resolve to meet their obligations to their creditors, the region's debtor countries can see that, without a development context, the result is recession, and copious quantities of resources that should be invested internally are transferred to creditors.

The Ambassador observed that

[t]he countries of Latin America and the Caribbean are aware of the need to make substantive internal economic adjustments that affect their fiscal, monetary, and public spending policies to a varying degree. This situation is all the more evident in light of the perceptibly rapid technological and commercial changes taking place on a worldwide scale.

The Ambassador indicated that he believed
that the time has come to reflect on the economic and financial models recommended to the debtor countries as a condition for continued support. If those models fail to produce the anticipated positive results; if instead of offering possible solutions they create larger obstacles, is it not appropriate to ask why the models are not changed? Or do we accept the premise that theoretical models are always right and people are always wrong?

Finally, Ambassador Baena Soares positively expressed that [t]his important hemispheric forum, which has developed so many innovative concepts and successfully applied them to the economic relations among member countries, now faces the responsibility of re-establishing — under new conditions and with a firm will and resolve — an inter-American cooperation for development that inspires confidence and fosters social justice.

III. MEETING OF THE INTER-AMERICAN COUNCIL FOR EDUCATION, SCIENCE, AND CULTURE

The Inter-American Council for Education, Science and Culture (CIECC) is one of the principal organs of the OAS. The CIECC held its sixteenth annual meeting from September 18 through September 20, 1985 in Washington, D.C. The CIECC considered several matters of interest to inter-American cooperation in the fields of education, science, and culture. It also adopted resolutions and recommendations concerning these matters.

The CIECC expressed its support for the General Secretariat's preparation of a highly technical report concerning the situation, strategy and alternative forms of education in the struggle against the improper use of drugs in the region. It recommended that the General Secretariat forward the report to the governments of the OAS member states for use in preparation of their drug education programs for the next biennium. The CIECC encouraged the Permanent Council to allocate the necessary financing to fund a specialized conference in 1986 on drug problems.

The CIECC adopted a resolution affirming that the education for peace will emphasize the education of the population. It recommended that the member state governments give extensive support and cooperation to the development of activities related to the education for peace. The CIECC also urged that the mass communi-

cation media intensify its efforts to promote peace.

The celebration of the 500th anniversary of the discovery of America has been on the agenda of both the CIECC and the OAS meetings. In its 1985 meeting, the CIECC encouraged those member states that have not yet formed a national committee for the celebration of the anniversary to do so. It also encouraged the existing national committees for the celebration of the anniversary to organize and execute a wide range of national projects in the areas of education, science, culture, and social development in the inter-American spirit of the celebration.

On the question of bilingual education, the CIECC recalled that the Regional Educational and Cultural Development Programs of the OAS have experimented with popular education and culture. It instructed the Secretariat to promote more activities with a goal toward the diversification of curricula including the characteristics and needs of different socio-geographic regions, without losing sight of the national unity in the countries. The CIECC also urged member countries to include bilingual educational programs and participation of native peoples in the development of their national communities because they are important components of their regionalization processes.

With respect to education for women by the year 2000, the CIECC recommended that the Secretariat consider the strategies developed by the Assembly of Delegates of the Inter-American Commission of Women when devising a program. The CIECC recognized the need to intensify the promotion of the integration of women into the national development processes.

Concerning the cultural heritage of the Americas a request was made by the CIECC to the General Secretariat to prepare: a list of restoration projects currently under way in the member states; a list of other historic properties and sites in the member states that are in need of restoration; a list indicating the funding sources existing in the member state for the restoration and preservation of historical sites; and a list identifying international sources of financing available for these projects.

In another resolution, the CIECC recalled that Admiral Christopher Columbus founded the city of La Isabela on the island of Hispaniola, the first urban center with a local government. The CIECC further recalled that in 1971 the Dominican Republic legally designated the site of La Isabela the "Ancestral Home of the
Americas.” Therefore, the CIECC decided to also designate the site of La Isabela in the Dominican Republic as the “Ancestral Home of the Americas.”

Finally, the CIECC also submitted to the OAS General Assembly the proposed program budget of the CIECC area for the 1986-87 biennium.

IV. BONN ECONOMIC SUMMIT

A. Bonn Economic Declaration Towards Sustained Growth and Higher Employment

The Bonn Economic Declaration towards Sustained Growth and Higher Employment was adopted by the Bonn Economic Summit on May 4, 1985. The participants in the Summit included the Heads of State of Canada, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom, and the United States, and the President of the Commission of the European Community.6

The Bonn Declaration contains a preamble and five chapters under the following titles:

I. Growth and Employment;
II. Relations with Developing Countries;
III. Multilateral Trading System and International Monetary System;
IV. Environmental Policies; and
V. Cooperation in Science and Technology.

The following is a summary of pertinent statements contained in the Bonn Declaration. The Bonn Declaration preamble states:

Conscious of the responsibility which we bear, together with other Governments, for the future of the world economy and the preservation of natural resources, we, the Heads of State or Government of seven major industrial countries and the President of the Commission of the European Community, meeting in Bonn from May 2, 1985 to May 4, 1985, have discussed the economic outlook and prospects for our countries and the world.

The preamble continues:

The world economic conditions are better than they have been for a considerable time. Nevertheless, our countries still face important challenges. Above all, we need to: strengthen the ability of our economies to respond to new developments; increase job opportunities; reduce social inequalities; correct persistent economic imbalances; halt protectionism; and improve the stability of the world monetary system.

The preamble stresses that the prosperity of developed and developing countries has become increasingly linked:

We will continue to work with the developing countries in a spirit of true partnership. Open multilateral trade is essential to global prosperity and we urge an early and substantial reduction of barriers to trade. Economic progress and the preservation of the natural environment are necessary and mutually supportive goals. Effective environmental protection is a central element in our national and international policies.

Chapter II of the Bonn Declaration, Relations with Developing Countries, suggests that sustained growth in world trade, lower interest rates, open markets, and continued, appropriate financing are essential to enable the developing countries to achieve sound growth and overcome their economic and financial difficulties.

We continue to encourage the constructive dialogue with the developing countries in the existing international institutions with a view to promoting their economic development and thereby their social and political stability. We are deeply concerned about the plight of African peoples who are suffering from famine and drought. We welcome the positive response from our citizens and from private organizations, as well as the substantial assistance provided by the governments of many countries.

The Bonn Declaration notes that new approaches and strengthened international cooperation are essential to anticipate and prevent damage to the environment.

We shall cooperate in order to solve pressing environmental problems such as acid deposition and air pollution from motor vehicles and all other significant sources. We shall also address other concerns such as climate change, the protection of the ozone layer, and the management of toxic chemicals and hazardous wastes. The protection of soils, fresh water and the sea, in particular of regional seas, must be strengthened. Improved
and internationally harmonized techniques of environmental measurement are essential. We shall focus our cooperation within existing international bodies, especially the OECD. We shall work with developing countries for the avoidance of environmental damage and disasters world-wide.

Chapter V, Cooperation in Science and Technology states:

We are convinced that international cooperation in research and technology in major projects should be enhanced to make maximum use of our scientific potential. We recognize that such projects require appropriately shared participation and responsibility as well as adequate rules concerning access to the results achieved, the transfer of technology, and the use of technologies involved.

The Bonn Declaration welcomes

the positive responses of the member states of the European Space Agency (ESA), Canada, and Japan to the invitation of the President of the United States to cooperate in the United States Manned Space Station Program on the basis of genuine partnership and a fair and appropriate exchange of information, experience, and technologies. Discussions on intergovernmental cooperation in development and utilization of permanently manned space stations will begin promptly. The Bonn Declaration further applauds the conclusions of the ESA Council which recognize the need for Europe to maintain and expand its autonomous capability in space activity, and the need to maintain the long-term European Space Plan and its objectives.

V. COUNCIL OF EUROPE

Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, (the Protocol) was signed at Strasbourg on November 22, 1984. The protocol’s objective is to expand the list of civil and political rights that were initially granted in the convention of 1950.

The following is a summary of some of the provisions in the Protocol. Under article 1 of the Protocol, an alien who is a lawful resident of a state will not be expelled from the state unless there is a legal reason for the expulsion. If expulsion is sought, the fol-

7. Id. at 435-37.
tion procedure must be provided: the alien may submit reasons why he should not be expelled; he has the right to have his case reviewed; and the right to be represented by counsel before the competent authority or before persons designated by the authority. Article I allows expulsion before the exercise of these rights only when the expulsion is in the interest of public order or national security.

Article 2 of the Protocol provides that every person who is convicted of a criminal offense by a tribunal will have the right to have the conviction or sentence reviewed by a higher tribunal. Where the offense is of a minor nature, or the case was initially heard before the highest tribunal, or the conviction followed an appeal for acquittal which was denied, then there will be no further right to review.

Article 3 of the Protocol provides that when a person is convicted of a criminal offense and punished for the crime, but the conviction is subsequently reversed or the person is pardoned because of newly discovered facts conclusively proving that there was a miscarriage of justice, then the wrongly convicted person will be compensated according to the law or the practice of the state concerned. No compensation is required if the non-disclosure of the unknown fact was wholly or partly attributable to the convicted person.

Article 4 of the Protocol provides that once a person is acquitted or convicted of an offense in accord with the law and penal procedure of a state, that person may not be tried or punished again for the same offense. This rule, however, does not prevent the reopening of the case according to the law and penal procedure of the concerned state if there is newly discovered evidence or if there was a fundamental defect in the initial proceedings which could have affected the outcome of the case.

Article 5 of the Protocol provides that each spouse has equal rights and responsibilities toward their children and such rights and responsibilities continue in the event of a divorce. The state, however, may take any necessary measures to protect the well-being of the children.

Under articles 8 and 9, the Protocol will be open for signature by all of the member states of the Council of Europe who signed the Convention of 1950. The Protocol is subject to ratification, acceptance, or approval by the member states. The Protocol will be-
come effective two months following the ratification, acceptance or approval of the protocol, and after the seven member states of the Council of Europe consent to be bound by the Protocol.

VI. BILATERAL TREATIES

A. Treaty on Mutual Legal Assistance in Criminal Matters

On March 18, 1985, the Treaty on Mutual Legal Assistance in Criminal Matters (the Treaty) was signed by the United States and Canada in Quebec City, Canada. Article II establishes that the parties shall provide mutual legal assistance in all matters relating to the investigation, prosecution, and suppression of offenses. Mutual legal assistance includes examining objects and sites, exchanging information and objects, locating or identifying persons, serving documents, taking evidence of persons, providing documents and records, transferring persons in custody, and the execution of requests for searches and seizures. Article II stipulates that assistance will be provided even if the conduct under investigation or the prosecution in the requesting state does not constitute an offense in the requested state. The Treaty is solely intended to provide mutual legal assistance between the parties. No provision of the Treaty will be interpreted to grant a right to a private party to obtain, suppress, or exclude any evidence or to impede the execution of a request.

Under article V, the requested State may deny assistance if the request is not made according to the Treaty’s procedural requirements, or if the Central Authority determines that the execution of the request is contrary to the public interest of the requested state. Under article VI, the Central Authority of the requesting state must make all requests directly to the Central Authority of the requested state. The requests must be in writing if compulsory process is required in the requested state or otherwise required by the requested state. In urgent circumstances, requests may be made orally, but must immediately be confirmed in writing.

Article VIII of the Treaty provides that the requested state

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8. Article 1 provides that, for the purposes of the Treaty, “Central Authority” means: a) for Canada, the Minister of Justice or officials designated by him; b) for the United States of America, the Attorney General or officials designated by him. Article 1 contains also other definitions of words or expressions used in the Treaty.

must assume all ordinary expenses of executing a request within its boundaries except fees of experts, translation and transcription expenses, and travel expenses of persons travelling to the requested state to attend the execution of a request. The requesting state will assume all ordinary expenses required to present evidence obtained by the requested state including travel and incidental expenses of witnesses, and the fees of experts.

Article XII deals with the taking of evidence in the requested state. When a person is requested to testify and produce documents, records, or other articles in the requested state he may be compelled by a subpoena or an order to appear, testify, and produce the documents, records, and other articles, in accord with the requirements of the law of the requested state. Article XIII of the Treaty provides that the requested state must provide copies of publicly available documents and records from government departments and agencies. The requested state may provide copies of such documents and records that are not publicly available if the same documents and records would normally be available to the requested state’s own law enforcement and judicial authorities. The Treaty also contains rules for certifying and authenticating documents, improving assistance, and the final ratification, entry into force and termination of the Treaty clauses.

B. Supplementary Treaty on Extradition

On June 25, 1985, the governments of the United States and the United Kingdom concluded the Supplementary Treaty on Extradition (the Supplementary Treaty).10 The Supplementary Treaty will become an integral part of the Extradition Treaty of 1972 and is designed to make it a more effective international tool.

Article 1 of the Supplementary Treaty provides that, for the purposes of the Extradition Treaty of 1972, none of the following offenses will be regarded as an offense of a political character: Offenses within the scope of the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including diplomatic agents, and the 1979 Convention Against the Taking of Hostages.

10. Id. at 1104-1109.
Other offenses not considered political in character include murder, kidnapping, abduction, false imprisonment or unlawful detention, taking hostages, offenses relating to explosives and firearms or ammunition, damage to property with the intent to endanger life or with reckless disregard as to whether the life of another person would thereby be endangered, and an attempt to commit any of the offenses specified in article 1.

According to article 4, the Supplementary Treaty will apply to any offense committed before or after the Supplementary Treaty becomes effective. The Supplementary Treaty, however, will not apply to an act committed prior to its effective date if the act is not illegal according to the laws of both of the contracting parties at the time the act was committed.

C. Peaceful Uses of Nuclear Energy

The Agreement for Cooperation Concerning Peaceful Uses of Nuclear Energy was signed by the People’s Republic of China and the United States in Washington D.C., on July 23, 1985.11 Under article 2 of this Agreement, the parties will cooperate in the use of nuclear energy for peaceful purposes. Each party will implement the Agreement in accord with their respective treaties, national laws, regulations, and licensing requirements concerning the use of nuclear energy for peaceful purposes. The parties further recognize the principle of international law, which provides that a party may not invoke the provisions of its internal law as a justification for its failure to perform the treaty. The Agreement provides that transfers of information, technology, material, facilities and components may be undertaken directly between the parties or through authorized persons. However, any transfer of sensitive nuclear technology, facilities, or major critical components will, subject to the principles of the agreement, require additional provisions to the agreement.

Article 3 of the Agreement permits the transfer of information and technology concerning the use of nuclear energy for peaceful purposes if the transfer is permitted by article 2. The transfers may be accomplished through various means, including reports, data banks, computer programs, conferences, visits, or the assignment of individuals to facilities. The transfer of information is al-

11. Id. at 1394-1407.
lowed in numerous fields including but not limited to research, development, experimentation, design, construction, operation, maintenance, use and retirement of reactors, the use of nuclear material in physical and biological research, medicine, agriculture and industry, nuclear fuel cycle research, health, safety, environment, and research and development related to the foregoing; codes, regulations and standards for the nuclear energy industry; and any other fields to which the parties agree.

Article 4 provides that material, facilities, and components may be transferred pursuant to the Agreement if their use is consistent with the Agreement. Article 4 permits transfer of low enriched uranium for fuel in reactors and reactor experiments, for conversion or fabrication, or any other purpose for which the parties agree. The parties will agree on the quantity of special nuclear material that is necessary for the loading of reactors used in reactor experiments, the efficient and continuous operation of the reactors or the conduct of the reactor experiments, and the accomplishment of any other purposes upon which the parties agree. Article 4 states that small quantities of special nuclear material may be transferred for use as samples, standards, detectors, targets, radiation sources, and for any other agreed upon purposes. Article 5, paragraph 3 precludes the use of any materials, facilities, or components transferred pursuant to the Agreement for research or development of any nuclear explosive device, or for any military purposes. During the negotiations of the Agreement, China and the United States agreed that the interpretation and implementation of article 5, paragraph 3, would not involve any nuclear activities and related research and development carried out by either party as a nuclear weapon state, through the use of material, facilities, components, and technology not subject to the Agreement.

D. Memorandum of Understanding on Cooperation in the Peaceful uses of Nuclear Energy

On May 29, 1984, the Memorandum of Understanding on Cooperation in the Peaceful Uses of Nuclear Energy (the Memorandum) was signed by Brazil and the People's Republic of China in Beijing, China.12 The Memorandum explains that the delegations of the governments of Brazil and China agree that there will be cooperation between the two countries in the field of nuclear en-

12. Id. at 1392.
nergy and its peaceful use. Brazil and China further agreed to respect the sovereignty of the other for the benefit of both countries. The Memorandum stresses the equality of the two countries and the need to refrain from interfering in the internal affairs of the other. Both delegations agreed that the areas of cooperation may include basic research on the peaceful uses of nuclear energy, technology concerning research projects, building and operation of nuclear stations and research reactors, technology for uranium prospecting and processing, manufacturing of combustible elements, regulation and research for nuclear safety, production and application of radioisotopes, and other areas of mutual interest.

The Memorandum states that the forms of cooperation may include training and exchange of scientific and technical personnel, holding of academic symposia seminars, advisory and technical services, exchange of scientific and technical documentation and information, and any other forms of cooperation that the parties consider convenient. The Memorandum also states that both delegations will pursue talks on other matters, including the future conclusion of an agreement for cooperation concerning the peaceful uses of nuclear energy.