Regional and International Activities
Isidoro Zanotti

Follow this and additional works at: http://repository.law.miami.edu/umialr

Recommended Citation
Isidoro Zanotti, Regional and International Activities, 9 U. Miami Inter-Am. L. Rev. 161 (1977)
Available at: http://repository.law.miami.edu/umialr/vol9/iss1/7
REGIONAL AND INTERNATIONAL ACTIVITIES

ISIDORO ZANOTTI*
Deputy Director
Department of Legal Affairs
General Secretariat of the
Organization of American States

ORGANIZATION OF AMERICAN STATES

Inter-American Juridical Committee

The Inter-American Juridical Committee held a regular meeting in July-August 1976 at its headquarters in Rio de Janeiro. During this meeting the Committee dealt with two topics: extradition and private international law.

According to a 1975 recommendation by the OAS General Assembly (AG/RES. 183 (V-0/75)), the Committee began to review the draft convention on extradition that it had prepared in 1973. A working group of the Committee revised practically all the articles of the draft convention. In addition, the group prepared draft conventions for the Second Inter-American Specialized Conference on Private International Law to be held in Uruguay in 1977 (CIDIP-II) on the following topics: recognition and enforcement of foreign judicial decisions, proof of foreign law, precautionary measures in civil and commercial proceedings, and international maritime transportation. The draft conventions will also be submitted to the Juridical Committee at its next meeting in January-February, 1977.

Third Course on International Law

The Third Course on International Law was held in Rio de Janeiro with the cooperation of the OAS Department of Legal Affairs, the General

*The opinions expressed in this report are those of the author in his personal capacity.
Secretariat's Fellowship Program and the Getulio Vargas Foundation. The July-August 1976 course was organized by the Inter-American Juridical Committee.

Twenty-eight fellowships were awarded to persons from twenty one member states through the OAS Fellowship Program. Nineteen persons were selected for course participation by the Getulio Vargas Foundation. Included in the forty-seven participants were high government officials, diplomats, judges, law professors, distinguished practicing attorneys and other highly qualified individuals.

The course began on July 19, 1976, and consisted of four intensive weeks of full time study. Distinguished professors and members of the Inter-American Juridical Committee delivered lectures and conducted seminars for the course. Among those attending was Dr. Rafael Caldera, former president of Venezuela, who delivered a lecture on regional and sub-regional integration.

The topics at the lectures included: transnational corporations, transfer of technology and multinational enterprises, patents in the process of development, the United Nations Commission on Transnational Enterprises, joint Latin American enterprises, and peaceful settlement of controversies. Additional lecture topics included nationalization and expropriation of foreign property under international law, the Inter-American Treaty of Reciprocal Assistance and the protocol of amendment of the treaty, and restructuring the Inter-American system. Lectures on extradition included extradition in the Inter-American system, and extradition in other regional systems and world conventions containing provisions on extradition. Lectures were delivered providing an analysis of several of the agenda topics scheduled for the Second Inter-American Specialized Conference on Private International Law to be held in Uruguay in 1977. There was also a lecture on Carlos Calvo, the famous Latin American jurist from Argentina whose ideas exerted a profound influence on the formulation of Latin American legal principles.

The director of the course, Dr. Isidoro Zanotti, Deputy Director of the Department of Legal Affairs of the OAS General Secretariat, organized four working groups among the participants in order to discuss aspects of the following topics: transnational corporations, law of the sea, private international law, and restructuring of the Inter-American system. Each group appointed a coordinator and a rapporteur. The groups presented reports on the work accomplished which included conclusions and recommendations. The group reports were appended to the report on the
Mediation between El Salvador and Honduras

On October 6, 1976, the Foreign Ministers of El Salvador and Honduras signed a historic agreement in the OAS Hall of the Americas in Washington, D.C. The OAS took a leading role, through its Secretary General, Dr. Alejandro Orfila, in the formulation of a procedure for the settlement of a dispute between these two countries. High government officials and several Latin American ambassadors, including those accredited to the United States and to the OAS, attended the signing of the agreement which establishes a procedure for settling the long-standing border dispute between the two countries. The agreement concerns mediation procedures for all matters contained in seven resolutions adopted by the Consultation of Ministers of Foreign Affairs at their thirteenth meeting held on October 27, 1969, in Washington, D.C. The agreement, which contains fourteen articles, provides that the countries shall submit the aforementioned matters to mediation as follows. Within ten calendar days from the date on which the agreement enters into force, the parties shall conjointly prepare a list of four Spanish speaking jurists of recognized integrity and capacity. The representatives of each party shall meet in San José, Costa Rica to choose the mediator from among the persons named on the list. The mediator shall be notified immediately of his designation. Upon accepting the position, the mediator shall agree with the parties as to the date upon which his duties shall commence.

In addition, the parties and the mediator shall mutually decide upon the place for the mediation, without prejudice to the fact that the mediator may indicate other places in which the various activities of mediation should be conducted. The mediator's duty shall consist of providing simple and direct assistance to the parties in finding an acceptable solution for settling their disputes. He shall be at complete liberty to request any information he considers necessary. Further, the mediator may conduct investigations, hearings, inspections, and obtain whatever evidence he considers pertinent. Within thirty days after the mediator assumes his duties, the parties shall present in duplicate a joint report which is to contain the agreements reached in principle during direct negotiations conducted prior to mediation. Moreover, the parties shall inform the mediator of any agreements reached in any negotiations held during the mediation process.
The agreement further stipulates that the parties shall present to the mediator separate written statements containing their positions. The statements are to be presented no later than sixty calendar days from the time the mediator assumes his duties. Following these initial statements, each party shall be entitled to one reply and one rejoinder, which must be presented in written form within the time period set by the mediator with the agreement of the parties. The records, proceedings and recommendations resulting from the mediation shall be kept private until its conclusion. Except by written request and with the agreement of the parties, the mediator shall refrain at all times from making reports or issuing certifications concerning the actions, proceedings, and recommendations resulting from the mediation.

Ninety days after the agreement procedures have been completed, the mediator shall call the parties to joint meetings. At the meetings the mediator will present his recommendations and attempt to prepare a draft treaty on the matters submitted to mediation. If the parties reach agreement on the content and text of the draft treaty, they shall sign the corresponding instrument within thirty days following final agreement on the text. In the event of the parties’ disagreement on one or more of the matters submitted to mediation, the mediator shall recommend the solution or procedure he deems most appropriate for resolving the difference.

If mediation is unsuccessful, the parties will be free to resort to any other procedure for a peaceful solution established by international law. The parties shall retain their rights to pursue whatever legal action they deem appropriate for the defense of their interests. Mediation costs shall be divided equally between the parties. Finally, the agreement is to be ratified by the parties in accordance with their respective national legislation.

*Cooperation for Integral Development*

The functions and responsibilities of the Permanent Council of the Organization of American States are set forth in the OAS charter and in other Inter-American treaties and conventions. In addition, the Council performs duties assigned to it by the OAS General Assembly and by the Meeting of Consultation of Ministers of Foreign Affairs.

A recent and significant responsibility given to the Council by the General Assembly is that contained in resolution AG/RES.178 (V-0/75) adopted on May 19, 1975. The resolution directed the Council to revise and coordinate the texts of the proposed amendments to the charter of the OAS. The proposed amendments had been approved by a special
committee created by the Assembly to study the restructuring of the Inter-American system (CEESI). In addition, the Council is to select the economic principles and standards which should remain in the charter and those which should be transferred to other instruments. The Council will also study texts prepared by CEESI on the subjects of collective economic security and cooperation for development. In a subsequent resolution, AG/RES.225 (VI-076), adopted on June 17, 1976, the Assembly requested the Council to continue its work relating to the restructuring of the Inter-American system.

The Council has progressed in fulfilling these tasks. Early in November 1976, the Council approved draft conventions on cooperation for integral development and on collective economic security for development.

The preamble of the draft convention on cooperation for integral development declares that it is the right and duty of each of the American states to promote the integral development of its peoples. To that end, increasing interdependence imposes upon each state the common and shared responsibility of cooperation in proportion to its resources and capabilities. The welfare of the American states depends on their cooperation to organize regional economic relations on a basis which will enable the states to reach their development goals. Further, due recognition is to be given to the fact that outside circumstances may affect the stability and continuity of the development process.

Since it is primarily the responsibility of each state to achieve integral development, each state has the right to take actions and implement policies oriented toward that objective. However, each state must take into account its international obligations and the general welfare of the other states. Since international trade represents a high priority element for development, the establishment of conditions for trade expansion must be a basic objective of cooperation. Consonant with these objectives is a common aspiration that international social justice govern the relations between states.

Under Article I of the draft convention, the contracting parties agree to cooperate in a permanent and growing manner for the achievement of their integral development. At the same time, the parties are to fully respect the sovereign equality of the states. This includes nonintervention in the internal affairs of other states and acknowledgment of different political, economic, and social systems. There are no conditions in this agreement which would distort that cooperation or discriminate against the rights of the states.
In Article 3 the parties agree to respect the full and permanent sovereignty of the member states over their wealth, natural resources and economic activities. The possession, use, and disposal of those resources is to be in the interest of their integral development and the welfare of their people. The rights of nationalization and expropriation in accordance with domestic legal procedures and domestic judicial decisions are to be accorded respect, unless the provisions of a specific contractual obligation of an international nature are applicable.

In Article 4 the parties agree to maintain an ample and continuous dialogue, through the mechanisms of consultation and negotiation within the Inter-American system, on development problems that affect the region. This is in order to agree upon policies and measures of cooperation addressed to the solution of such problems.

The words "ample and continuous dialogue" appear to reflect the influence of policies initiated and carried out for some time, with different results in the Inter-American system. Previously, other words or expressions were used such as "consultation" or "to consult together." However, the last part of Article 4 refers to "mechanisms of consultation and negotiation within the Inter-American system" and Article 5 provides for "maximum use of mechanisms of consultation." This usage signifies a definite return to one of the very efficient procedures used in the Inter-American system; the procedure of a "mechanism" is more precise, effective and meaningful than "dialogue." The return to these procedures began during the deliberations of the fifth and sixth regular sessions of the OAS General Assembly held in May 1975 and June 1976, respectively.

In reference to trade, Article 8 of the draft convention stipulates that the contracting parties will promote the expansion of trade among themselves and with the rest of the world, through the adoption of adequate policies and measures. Therefore, particular attention must be directed to the following courses of action to be taken by the developing countries of the region:

(a) Attainment of favorable conditions for the expansion of real export earnings and an increase in participation in international trade;

(b) Attainment of favorable conditions of access for products of the region to world markets, particularly through the elimination of restrictive and discriminatory practices;
(c) The establishment of prices which will be stable, remunerative and fair for producers and equitable for consumers;

(d) The achievement of better conditions for trade in basic products through measures designed to promote market expansion, including international agreements and orderly marketing procedures;

(e) The improvement of international cooperation in the financial field and the adoption of other measures to alleviate the adverse effects of sharp fluctuations in export income for basic export products; and

(f) The diversification of exports and the broadening of opportunities for the exportation of manufactured and semi-manufactured products.

Article 13 expresses the idea that promotion of scientific and technological cooperation is to the benefit of the parties that are developing states and to the encouragement of the creation, selection, adaptation and transmission, on favorable terms, of technologies is compatible with the requirements of their development plans.

Legal Measures Governing Radiation Safety

The Department of Legal Affairs of the OAS General Secretariat recently published the second revised edition of the “Study of Legal Measures Governing Radiation Safety in the Peaceful Uses of Nuclear Energy.” (IANEC/Com.Idoc. t-2 rev.2, May 11, 1976). This document has been prepared for the use of the Special Legal Committee of the Inter-American Nuclear Energy Commission, an agency of the OAS. Mr. William Mitchell, a former general legal counsel of the United States Atomic Energy Commission, cooperated in the preparation of the study.

The study deals with the following subjects: the need for measures governing radiation protection and safety; standards for radiation safety and protection: the International Commission on Radiological Protection, standards of other international organizations, national standards; characteristics of a system of radiation protection; national radiation systems: Latin American countries, United States of America, laws of selected other countries; summary and conclusions.

The following is the text of the summary and conclusions of the study:
Basic Legislation. Such a regime should include: a competent authority, or authorities, which are empowered to establish and enforce the necessary controls; provision for the establishment of a code of general standards of permissible levels of exposure to radiation under various circumstances; a system for authorizing the design, construction and operation of nuclear facilities and the use, the transportation and the disposal of radioactive substances; and the establishment of a system of detailed regulations to prescribe the measures needed to ensure radiation safety and protection under various circumstances.

Where this does not already exist, the enactment of basic legislation will be necessary to designate or create the appropriate public authority or authorities; to provide a system of authorization for nuclear activities; and to prescribe the methods by which a general code of permissible exposure to radiation, and a system of more detailed regulations for accomplishing these purposes, will be established. However, the promulgation of the general code and the detailed regulations should be left for administrative action, since these must be flexible enough to make it possible for revisions to be easily accomplished as conditions change or as new knowledge is gained.

Competent Authority. The competent authority may be a government official, such as a minister; a number of government officials, with separate spheres of responsibility in designated areas; or a collective body, such as a commission or an institute. Each of these approaches has been taken in one country or another, but the method usually adopted (including the majority of the American states) has been the establishment of a commission or an institute.

Standards of Permissible Exposure. In the interests of harmonization, the standards of permissible exposure to radiation which are adopted should take into account the recommendations of the various international organizations which are expert in this field, such as the International Commission on Radiological Protection, the International Atomic Energy Agency, and similar bodies. These standards should be general in nature, and their specific application to various circumstances and types of activity should be left to more detailed regulations.

Authorization of Nuclear Activities and Facilities. A system of government authorizations (sometimes called licenses or permits) is necessary to provide, among other things, adequate assurance of radiation safety and
REGIONAL AND INTERNATIONAL ACTIVITIES

protection.\textsuperscript{1} Such a system will include control and supervision of the design, construction, and operation of nuclear facilities; of the possession, use and transportation of radioactive materials; and of the disposal of nuclear wastes.

In the case of plants for the operation of nuclear reactors, the structure of the system must be rather elaborate. The system should include a prior review of the suitability of the site, the design of the facility, the plans for construction, the proposed method of operation, and an evaluation of the risks that may be presented. Since it frequently happens that some of the details of the design have not been determined when construction is started, or that changes are made during the course of the work, this review is often divided into two stages—one at the commencement of construction and the other at its completion. At the latter stage, it is also necessary to test the facility and to review plans for its operation before start-up is permitted. At the first stage, and sometimes at both stages, an opportunity is often afforded for other interested agencies and members of the general public to present their views. Finally, there should also be provision for verifying the technical competence of those who will be handling the controls of the facility.

With respect to plants for the processing and refining of nuclear ores, for the fabrication of nuclear fuel elements, and for the chemical reprocessing of spent fuel elements, a less elaborate system is ordinarily considered sufficient.

Control of the possession, use, and transportation of fissionable materials should be rather stringent, in view of the nature of the materials and the risks involved. Legal measures governing other radioactive substances may be simpler in form, depending on the level of activity involved. In some instances the use of radioisotopes in various applications has been placed under the control, not of the nuclear energy authority, but of the authority which has general responsibility for science and technology or for public health.

Exemptions from the requirement of authorization may be permitted where the quantity of the radioactive materials or the nature of the facility is such that there is a very slight possibility of radiation injury or damage to persons or property.

\textsuperscript{1}The other purposes of a system of authorization, including assurance that the nuclear materials and facilities will be used only for peaceful purposes and provisions governing civil liability for nuclear damage, are outside the scope of this study.
**Inspection.** The public authority should be given the right to inspect the installation or activity from time to time to make sure that the conditions of the authorization and of the applicable regulations are being followed. Where there are deviations, the authority should have power to take appropriate corrective action, including suspension or revocation of the authorization and the imposition of penalties.

**Government Activities.** In the formulation of a regime of supervision and control, the question will be presented whether it should extend to both public and private nuclear activities, or whether government activities should be exempted. If the latter course is adopted, provision is often made for a parallel system of review and control within the structure of the government itself in order to ensure a comparable degree of safety and protection.²

**Transportation.** The transportation of nuclear fuel elements and other radioactive materials involves special risks which make it necessary to impose requirements on the shipper with respect to containment, packaging, and marking, and on the carrier with respect to handling and the measures to be taken in case of an accident. These requirements may be formulated and enforced either by the nuclear energy authority or by the authority which normally supervises transportation in the manner contemplated, i.e., by rail, truck, airplane, or ship. Since such transportation often crosses international borders, it is especially important that the measures taken in one country be harmonized, to the extent possible, with those in other countries.

**Regulations.** Finally, regulations should be issued and enforced to cover the construction and operation of nuclear facilities, the possession, use, transportation, and storage of radioactive materials, and the disposal of nuclear wastes. These regulations ordinarily are rather detailed in character and are divided into various categories, depending on the nature of the activity or installation involved. Normally they are formulated and enforced by the agency which has responsibility for supervision in the matter.

²For example, in France the requirement that an authorization be obtained applies to the construction and operation of all nuclear installations, both public and private, including plants for the production of electric power which are owned and operated by government entities. On the other hand, in Germany a license is not required for the possession, carriage or storage of nuclear fuel which is in government custody. In Japan and the United States, certain installations which are owned and operated by or for the account of the nuclear energy authorities are not required to obtain the statutory authorizations, but they are subject to a comparable system of internal review and control.
Improvement in Existing Measures. To the extent that a particular country has not yet established appropriate legal measures governing radiation safety and protection in the peaceful uses of nuclear energy, it is important that steps be taken for this purpose, taking into account the nature and extent of the nuclear activities which exist or are contemplated within its borders.

Summary and Conclusions. A special legal regime is necessary in connection with the peaceful uses of nuclear energy to ensure, among other things, that the health and safety of workers and of the general public are adequately protected. The traditional measures governing the operation of hazardous installations and the handling of dangerous goods do not adequately take into account the peculiar risks which arise from exposure to radiation, nor the special problems which are presented.

UNITED NATIONS

International Fund for Agricultural Development

The United Nations Conference of Plenipotentiaries on the Establishment of an International Fund for Agricultural Development was held in Rome in June 1976. The Conference adopted the Agreement Establishing the International Fund for Agricultural Development.

The Agreement states in its preamble that the continuing food problem of the world is afflicting a large number of people in the developing countries and is jeopardizing the most fundamental principles and values associated with the right to life and human dignity. It stresses the responsibility of the Food and Agriculture Organization of the United Nations (FAO), within the United Nations system, to assist in the efforts of developing countries to increase food and agricultural production.

As defined in Article 2 of the Agreement, the objectives and functions of the Fund are to mobilize additional resources to be made available on concessional term for agricultural development in developing Member States. In fulfilling this objective, the Fund shall provide financing primarily for projects and programs specifically designed to introduce, expand or improve food production systems and to strengthen related policies and institutions within the framework of national priorities and strategies. Due consideration must be given to the need to increase food production in the poorest food deficit countries, the potential for increasing food
production in other developing countries, and the importance of improving the nutritional level and living conditions of the poorest populations in developing countries.

The membership of the Fund shall be open to any State belonging to the United Nations or its specialized agencies, or to the International Atomic Energy Agency (Article 3).

As provided in Article 4, the resources of the Fund shall consist of: initial contributions, additional contributions, special contributions from nonmember states and other sources, and monies derived from operations of the Fund.

The several sections of Article 6 define the organization and management of the Fund, which shall have a governing council, an executive board, a president and such staff as shall be necessary for the Fund to carry out its functions.

The operations of the Fund are defined in Article 7. Resources of the Fund shall be used to achieve the objective specified in Article 2. Financing by the Fund shall be provided only to developing states which are members of the Fund or to intergovernmental organizations in which such members participate. In the case of a loan to an intergovernmental organization, the Fund may require a suitable governmental or other guarantee.

In allocating its resources the Fund shall be guided by the following priorities: i) the need to increase food production and to improve the nutritional level of the poorest populations in the poorest food deficit countries; and ii) the potential for increasing food production in other developing countries. Financing by the Fund shall take the form of loans and grants, which shall be provided on such terms as the Fund deems appropriate. Regard is to be given to the economic situation and prospects of each member and to the nature and requirements of the planned activities. The Executive Board shall determine the portion of the Fund's resources to be committed for financing operations in any financial year.

The president of the Fund shall submit projects and programs to the Executive Board for consideration and approval. The decisions of the Executive Board shall be made on the basis of the broad policies, criteria and regulations established by the Governing Council. For an appraisal of projects and programs presented to it for financing, the Fund shall, as a general rule, use the services of international institutions and where appropriate, may use the services of other competent agencies specialized in
this field. The loan agreement shall be concluded in each case by the Fund and the recipient, which shall be responsible for the execution of the project or program concerned. The Fund may extend a line of credit to a national development agency to provide and administer subloans for the financing of projects and programs within the terms of the loan agreement and the framework agreed to by the Fund.

Article 10 confers upon the Fund international legal personality as well as privileges and immunities. Article 11 deals with interpretation and arbitration. Any question of interpretation or application of the provisions of the Agreement arising between any member and the Fund or among members of the Fund shall be submitted to the Executive Board for decision. In certain instances, the question may be referred to the Governing Council. In the case of a dispute between the Fund and a state that has ceased to be a member or between the Fund and any member, upon the termination of the operations of the Fund the dispute shall be submitted to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by the Fund, another by the member or former member concerned, and the two parties shall appoint the third arbitrator.

INTERNATIONAL ATOMIC ENERGY AGENCY

Management of Radioactive Wastes from Nuclear Fuel Cycle

A symposium on the management of radioactive wastes from the nuclear fuel cycle was held in Vienna in March 1976. It was jointly organized by the International Atomic Energy Agency (IAEA) and the Nuclear Energy Agency (NEA) of the Organization for Economic Co-operation and Development (OECD). The proceedings of the symposium were published by the IAEA in September 1976.

In the foreword to the proceedings it is explained that seven international symposia covering various aspects of radioactive waste management have been held by the IAEA either alone or jointly with the Nuclear Energy Agency of OECD. These symposia were held between 1959 and 1972. “From these symposia, it is clear that suitable technology and processes have been conceived and have been and are being developed for managing the present day amounts of radioactive wastes and effluents from nuclear facilities. But with the increasing emphasis that is being placed on nuclear power, a continuing expansion in nuclear fuel cycle
facilities in many countries is inevitable. Important policy issues are involved in this expansion, especially with regard to the radioactive waste management requirements."

According to the explanations given in the foreword and in view of these circumstances, the IAEA and the NEA "felt it was timely to hold a symposium to review the current situation in the management of radioactive wastes generated by nuclear fuel cycle facilities, to identify those areas where important advances have been made, and to indicate where further technological development is needed. It was hoped that the exchange of information and conclusions gained from the symposium would guide the research and development efforts for national nuclear programs as well as foster international cooperation."

The symposium was attended by more than three hundred and fifty participants from thirty-two countries and five international organizations. The sixty-two papers submitted dealt with practically all aspects of managing fuel cycle wastes.

The final paragraph of the foreword states that: "The symposium underlined that considerable progress has indeed been made in the development of radioactive waste management technology and flow-schemes, to the extent that they are now workable and available for collecting, treating, packaging and storing safely all hazardous radioactive wastes evolving from the nuclear fuel cycle. There is in short no lack of appropriate methods, but much of the technology for putting these methods into effect remains in its development stage. It is hoped that these proceedings, which include the papers and the discussions, will assist and guide national and international efforts in those areas of radioactive waste management where the technology is yet to be taken through the demonstration phase."

Settlement of Investment Disputes

The International Centre for Settlement of Investment Disputes (ICSID), headquartered in Washington, D.C., issued its tenth annual report for the fiscal year ending June 30, 1976. The introduction to the report notes that the Centre began on October 14, 1966, with twenty contracting states. As of June 30, 1976, there were sixty-seven contracting states, the vast majority of which are developing countries in Africa, Asia, and the Caribbean region. The report further states that "the inclusion of ICSID arbitration clauses (and in some cases conciliation clauses) in agreements between host countries and foreign investors, has become a common feature of the foreign investment scene. . . . It was recognized
from the beginning that the success of the Centre should not be measured by the number of disputes submitted to it, but rather by the degree of willingness of governments and investors to accept conciliation and arbitration under the auspices of the Centre. Only five disputes had been brought before the Centre by June 30, 1976. In view of the large number of existing ICSID arrangements, the small number of arbitration cases appears to confirm the often expressed belief that the very existence of binding arbitration arrangements acts as a powerful incentive for the amicable settlement of such disputes as may arise. Of the five cases submitted to the Centre, three were presented by private companies and the Government of Jamaica.

The Centre was established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States. This Convention was opened for signature at Washington on March 18, 1965. Of the states which have deposited their instruments of ratification, the following are developed or highly industrialized countries: Belgium, Denmark, France, Germany, Italy, Japan, Netherlands, Norway, Sweden, United Kingdom of Great Britain and Northern Ireland, and the United States of America. Only four countries of the Western Hemisphere have become ipso facto members of the Centre: Guyana, Jamaica, Trinidad and Tobago, and the United States.

In this connection, it is noteworthy that there is a large body of legislation in Latin America concerning the regulation and control of private foreign investment. A comprehensive comparative study of this legislation was prepared recently by the Department of Legal Affairs of the OAS General Secretariat. The study shows that Latin American countries prefer to settle their disputes with private foreign investors through the procedures, policies and principles established in their own legislation.

The Convention establishing the Centre provides in Article 25 that the jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment between a contracting state and a natural person or a juridical person of another contracting state. The parties to the dispute shall consent in writing to submit to the jurisdiction of the Centre. Having so consented, no party may withdraw consent unilaterally. According to Article 26:

A Comparative Study of Latin American Legislation on the Regulation and Control of Private Foreign Investment was prepared by the Department of Legal Affairs, General Secretariat of the OAS, Washington, D.C. (Doc. CP/INF. 680/75, November 1975.)
Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. . . .

Organization for Economic Cooperation and Development (OECD)

The OECD approved a Declaration on International Investment and Multinational Enterprises on June 21, 1976. (15 I.L.M. 967 (1976) ) The Declaration contains the recommendations of the countries to observe the guidelines set forth in the annex to the Declaration. Member countries should, consistent with their needs to maintain public order, protect their essential security interests and fulfill commitments relating to international peace and security. Enterprises operating in the territories of member countries owned or controlled directly or indirectly by nationals of another member country, should be accorded treatment, under their laws and regulations consistent with international law, no less favorable than that accorded to domestic enterprises in like situations. Member countries should consider applying "national treatment" in respect of countries other than member countries.

The governments of the OECD member countries recognize the need to strengthen their cooperation in the field of international direct investment. They are prepared to consult one another on the said matters in conformity with the decisions of the Council relating to inter-governmental consultation procedures on the guidelines for multinational enterprises, on national treatment and on international investment incentives and disincentives.

The annex to the Declaration contains the guidelines for multinational enterprises. These guidelines are divided into the following major chapters: introduction, general policies, disclosure of information, competition, financing, taxation, employment and industrial relations and science and technology. The introduction states that the guidelines are recommendations jointly addressed by member countries to multinational enterprises operating in their territories. Every state has the right to prescribe the conditions under which multinational enterprises operate within its national jurisdiction, subject to international law and to the international agreements to which it has subscribed. The entities of multinational enterprises located in various countries are subject to the laws of the countries.

The document further states that a precise legal definition of multinational enterprises is not required for the purposes of the guidelines.
However, multinational enterprises generally comprise companies or other entities whose ownership is private, state or mixed. They are established in different countries and so linked that one or more of the entities may be able to exercise a significant influence over the activities of others, and particularly to share knowledge and resources with the others. The degree of autonomy of each entity in relation to the others varies widely from one multinational enterprise to another, depending on the nature of the links between such entities and the fields of activity in which they are engaged.

Under the chapter on general policies, the guidelines state that enterprises should be cognizant of the established general policy objectives of the member countries' aims and priorities regarding economic and social progress. This includes industrial and regional development, environmental protection, the creation of employment opportunities, the promotion of innovation, and the transfer of technology. Close cooperation with local community and business interests is favored. Enterprises should refrain from bribery and from other behavior which improperly benefits, directly or indirectly, any public servant or holder of public office. Unless legally permissible, these enterprises should avoid making contributions to candidates for public office or to political parties or other political organizations and should abstain from any improper involvement in local political activities.

Regarding science and technology, the guidelines state that enterprises should endeavor to ensure that their activities fit satisfactorily into the scientific and technological policies and plans of the countries in which they operate. In addition, they should contribute to the development of national scientific and technological capacities, including the establishment and improvement in host countries of their innovative capacity. Further the granting of licenses for the use of industrial property rights or other transfer of technology should be done on reasonable terms and conditions.

ORGANIZATION OF AFRICAN UNITY

International Zone Extending Beyond National Jurisdiction

The Council of Ministers of the Organization of African Unity (OAU) met at Port Louis, Mauritius from June 24 to July 3, 1976. The Council approved a resolution concerning the international zone extending beyond

In this resolution, the Council reaffirmed that the international zone extending beyond national jurisdiction and its resources are the common heritage of mankind. Further, the resources therein must be utilized in the interest of mankind as a whole, with special regard to the interests and needs of developing countries. The zone is one and indivisible, neither to be divided into sectors nor reserved for a country or group of countries. In particular, it is to be free from control by private or public enterprises belonging to one or several states.

The proposed international authority shall have the power to directly manage or administer the international zone and its resources, including the right to sign exploitation contracts or to organize mixed ventures with any natural or juridical person. Whatever the nature of the contract, the authority must strictly plan the activities on the seabed so that the products acquired therefrom will not be utilized to the detriment of the export earnings of developing countries in general and African minerals producers in particular.

Furthermore, the resolution states that in sharing the benefits resulting from the exploitation of the resources of the international zone, consideration should be given to the needs of developing countries, particularly land-locked countries and the least developed among the developing countries. The international zone should be used exclusively for peaceful purposes.