INTERNATIONAL COURT OF JUSTICE

QUESTION OF THE DELIMITATION OF THE CONTINENTAL SHELF BETWEEN NICARAGUA AND COLOMBIA BEYOND 200 NAUTICAL MILES FROM THE NICARAGUAN COAST

(NICARAGUA v. COLOMBIA)

PRELIMINARY OBJECTIONS OF THE REPUBLIC OF COLOMBIA

VOLUME II

ANNEXES & FIGURES

AUGUST 2014

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Annex 1

DIPLOMATIC NOTE N^{O} GACIJ 79357 FROM THE MINISTER OF FOREIGN AFFAIRS OF COLOMBIA TO THE SECRETARY-GENERAL OF THE ORGANIZATION OF AMERICAN STATES, 27 NOVEMBER 2012

(Archives of the Colombian Foreign Ministry)

REPUBLIC OF COLOMBIA

Ministry of Foreign Affairs

Bogotá D.C.
27 November 2012

No. GACIJ 79357

Excellency:

I have the honor to address Your Excellency, in accordance with Article LVI of the American Treaty on Pacific Settlement, on the occasion of giving notice to the General Secretariat of the Organization of American States, as successor of the Pan American Union, that the Republic of Colombia denounces as of today the "American Treaty on Pacific Settlement", signed on 30 April 1948 and the instrument of ratification of which was deposited by Colombia on 6 November 1968.

The denunciation of the American Treaty on Pacific Settlement takes effect as of today with regard to procedures that are initiated after the present notice, in conformity with second paragraph of Article LVI, which provides that *"The denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification"*.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

[Signed]
MARÍA ÁNGELA HOLGUÍN CUÉLLAR
Minister of Foreign Affairs

His Excellency
JOSÉ MIGUEL INSULZA
Secretary General of the Organization of American States
Washington D.C.

Annex 2

NOTE N^{O} OEA/2.2/109/12 FROM THE OAS DEPARTMENT OF INTERNATIONAL LAW, SECRETARIAT FOR LEGAL AFFAIRS TO THE HIGH CONTRACTING PARTIES TO THE AMERICAN TREATY ON PACIFIC SETTLEMENT (PACT OF BOGOTÁ) AND TO THE OTHER PERMANENT MISSIONS TO THE ORGANIZATION OF AMERICAN STATES, 28 NOVEMBER 2012

(Archives of the Colombian Foreign Ministry)

17th St. & Constitution Avenue N.W.
Washington, D.C. 20006
United States of America

Organization of American States

P. 202.458.3000
www.oas.org

OEA/2.2/109/12

The Department of International Law of the Secretariat for Legal Affairs of the Organization of American States (OAS) presents its compliments to the High Contracting Parties to the American Treaty on Pacific Settlement (Pact of Bogotá) and to the other permanent missions to the OAS and has the honor to advise them that, on November 27, 2012, it received from the Republic of Colombia Note GACIJ No. 79357, attached hereto, through which it denounces said Treaty adopted on April 30, 1948 at the Ninth International Conference of American States.

The Department of International Law of the Secretariat for Legal Affairs of the Organization of American States (OAS) avails itself of this opportunity to convey to the High Contracting Parties to the American Treaty on Pacific Settlement (Pact of Bogotá) and the other permanent missions to the OAS the assurances of its highest consideration.

November 28, 2012

CC: Secretary General

Annex 3

DIPLOMATIC NOTE FROM THE MINISTER OF FOREIGN AFFAIRS OF EL SALVADOR TO THE SECRETARY-GENERAL OF THE ORGANIZATION OF AMERICAN STATES, 24 NOVEMBER 1973

(Available at: http://www.oas.org/juridico/english/sigs/a-42.html#el salvador (last visited: 6 August 2014))

San Salvador, 24 November 1973

His Excellency
GALO PLAZA
Secretary General of the Organization of American States
Washington, D.C.

Excellency,

I hereby wish to notify the General Secretariat which you head, the successor to the Pan American Union, that the Republic of El Salvador is denouncing the American Treaty on Pacific Settlement, or "Pact of Bogotá," adopted at the Ninth International Conference of American States, held in Bogotá, Colombia, from March 30 to May 2, 1948. I would ask you to kindly transmit a copy of this note to the other High Contracting Parties.

(…)

3. Although El Salvador has decided to denounce the Pact of Bogotá, this does not mean that it is rejecting all forms of peaceful settlement of international disputes, as it is aware of the need for these forms and recognizes that there are other pertinent provisions within the inter-American system, in particular in the Charter of the Organization of American States and in the Inter- American Treaty of Reciprocal Assistance, as well as in the Charter of the United Nations, that prohibit the use of force except in cases of legitimate defense, guard against aggression, and make resources available to states to settle disputes through specific peaceful procedures.

(…)

Lastly, my government wishes to place on record that if El Salvador is now denouncing the Pact of Bogotá for the reasons expressed –a denunciation that will begin to take effect as of today, it reaffirms at the same time its firm resolve to continue participating in the collective efforts currently under way to restructure some aspects of the system in order to accommodate

it to the fundamental changes that have occurred in relations among the states of the Americas.

I would ask you once again to arrange to have this denunciation circulated to the other High Contracting Parties.

Accept, Excellency, the renewed assurances of my highest consideration.

[*Signed*]
MAURICIO A. BORGONOVO POHL
Minister of Foreign Affairs of El Salvador

Annex 4

COMPARATIVE CHART OF DRAFTS PRESENTED BY AMERICAN STATES TO THE FIRST COMMISSION AT THE EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, LIMA, PERÚ, DECEMBER 1938

(Improvement and Coordination of Inter-American Peace Instruments, Resolution XV of the Eight International Conference of American States, V.II, Juridical Division, Pan American Union, Washington, D.C, November, 1943, Archives JX1980.3 1938 .A257 v.6 no.6.)

Draft Treaties submitted by States for: Chapter 1 (Organization of Peace), Topic 1 (Improvement and Coordination of Inter-American Peace Instruments)	**Denunciation Clauses**
I- Drafts on Consultation	
Delegation of Argentina	
Draft Recommendations on Meetings of the Ministers of Foreign Affairs	There is no denunciation clause
Delegation of Chile	
Draft Convention on the Inter-American Consultative System.	There is no denunciation clause
Delegation of Honduras	
Draft Convention to Strengthen Inter-American Solidarity	Article 5 – The present Convention shall remain in effect indefinitely, but may be denounced by means of one year's notice. After the expiration of this period, the Convention shall cease in its effects as regards the party which denounces it. The denunciation shall be addressed to the Government of the Republic of Peru, which shall notify the other Contracting States.
II- Drafts on Good Offices and Mediation	
Delegation of Mexico	
Draft of Additional Protocol on Good Offices and Mediation	There is no denunciation clause
III- Drafts on Investigation and Conciliation	
Delegation of Venezuela	
Draft of Multilateral Convention on the Procedure of Conciliation	Art. 31. – The present Convention shall remain in effect indefinitely, but may be denounced by means of one year's notice given to the Pan American Union, which shall transmit it to the other signatory Governments. After the expiration of this period, the Convention shall cease in its effects as regards the Party which denounced it, but shall remain in effect for the remaining

	High Contracting Parties.
Draft of Bilateral Convention on the Procedure of Conciliation	Art. 29 – This Convention shall remain in effect indefinitely after the exchange of ratifications. It shall cease to have any effect one year after one of the Contracting Parties notifies the other in writing of its intention to terminate it.
Delegation of Ecuador	
Project Revising the Inter-American Treaties of Investigation and Conciliation	Article XII The present Treaty shall remain in effect indefinitely, but may be denounced by means of one year's notice given to the Pan American Union, which shall transmit it to the other signatory Governments. After the expiration of this period, the Treaty shall cease in its effects as regards the Party which denounces it, but shall remain in effect for the remaining High Contracting Parties.
IV- Projects on Arbitration	
Delegation of Venezuela	
Projects of Arbitral Procedure	There is no denunciation clause
Delegation of Uruguay	
Draft Convention for the Arbitration and Judicial Settlement of International Disputes	There is no denunciation clause
Committee of Experts on Arbitration	
Draft of an Additional Protocol to the General Treaty of Inter-American Arbitration	There is no denunciation clause
V- Drafts on Coordination of the Procedures of Pacific Settlement within a Single Instrument	
Delegation of Mexico	
Peace Code, Second Version	Article 105 In the event of denunciation of this Treaty by one of the Contracting Parties, the members of the

	Commissions of Conciliation, of the Arbitral Tribunals which may be functioning, or of the American Court of Justice, who are representatives of the denouncing State, shall continue in office for the duration of the term for which they have been appointed.
Committee of Experts	
Text of Peace Code	Article 123 This Convention may be denounced by any of the Contracting Parties by means of notice given one year in advance to the Pan American Union.
Delegation of United States	
Project on the Consolidation of American Peace Agreements	Article XXII[1] The present treaty shall remain in effect indefinitely, but may be denounced by means of one year's notice given to the Pan American Union, which shall transmit it to the other signatory governments. After the expiration of this period the treaty shall cease in its effects as regards the party which denounces it, but shall remain in effect for the remaining high contracting parties. *Denunciation shall not affect any pending proceedings instituted before notice of the denunciation is given.*

[1] The text of Article XXII may be found at Annex 6, *infra*, as the relevant page is missing from the original used and stated as the source for the rest of this chart.

Annex 5

DELEGATION OF THE UNITED STATES OF AMERICA TO THE FIRST COMMISSION AT THE EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, LIMA, PERÚ, *DRAFT ON CONSOLIDATION OF AMERICAN PEACE AGREEMENTS, TOPIC 1. PERFECTING AND COORDINATION OF INTER-AMERICAN PEACE INSTRUMENTS*, 15 NOVEMBER 1938

(United States National Archives, College Park, MD, State/Foreign Relations Cluster, RG 43 Records of International Conferences, Commissions and Expositions: International conference records US Delegation to the Eighth International Conference of American States, Drafts of Instructions, Declarations and Resolutions 1938, Entry 252, Lima, Perú, 15 November 1938, pp. 1-13)

Topic No. 1. Perfecting and coordination of inter-American peace instruments.

Draft

on

Consolidation of American Peace Agreements

Taking into consideration

1. The Treaty to Avoid and Prevent Conflicts between the American States, signed at Santiago, May 3, 1923 (known as the Gondra Treaty);

2. The Treaty for the Renunciation of War, signed at Paris, August 28, 1928 (known as the Kellogg-Briand Pact, or Pact of Paris);

3. The General Convention of Inter-American Conciliation, signed at Washington, January 5, 1929, together with the Additional Protocol thereto signed at Montevideo, December 26, 1933;

4. The General Treaty of Inter-American Arbitration, signed at Washington, January 5, 1929;

5. The Treaty of Non-Aggression and Conciliation, signed at Rio de Janeiro, October 10, 1933 (known as the Saavedra Lamas Treaty);

6. The Convention on the Rights and Duties of States, signed at Montevideo, December 26, 1933, and the Additional Protocol thereto, signed at Buenos Aires, December 23, 1936;

7. The Treaty for the Prevention of Controversies, signed at Buenos Aires, December 23, 1936, and

8. The Treaty on Good Offices and Mediation, signed at Buenos Aires, December 23, 1936.

The Governments represented at the Eighth Pan American Conference believing that a coordination in one instrument, as between themselves, of the paramount provisions of the various agreements above mentioned designed for the pacific solution and prevention of difficulties, would be conducive to a more effective application of the machinery of peace provided for in those instruments, have appointed plenipotentiaries as follows:

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions:

CHAPTER I

CHAPTER 1

Prevention of Controversies

ARTICLE I

With a view to obviating the arising of controversies among them, the High Contracting Parties agree without affecting obligations previously entered into by them by virtue of international agreements, to the following course of action:

Article 4, Treaty for the Prevention of Controversies, signed at Buenos Aires, December 23, 1936.

They bind themselves to establish permament bilateral mixed commissions composed of representatives of the signatory governments which shall in fact be constituted, at the request of any of them, and such party shall give notice of such request to the other signatory governments.

Article 1, Treaty for the Prevention of Controversies.

Each Government shall appoint its own representative to the said commission, the meetings of which are to be held, alternatively, in the capital city of one of the other Governments represented in each of them. The first meeting shall be held at the seat of the Government which convokes it.

The duty of the aforementioned commissions shall be to study, with the primary object of eliminating them, as far as possible, the causes of future difficulties or controversies; and to propose additional or detailed lawful measures which it might be convenient to take in order to promote, as far as possible, the due and regular application of treaties in force between the respective parties, and also to promote the development of increasingly good relations in all ways between the two countries dealt with in each case.

Article 2, Treaty for the Prevention of Controversies.

After each meeting of any of the said preventive Commissions a minute shall be drawn and signed by its members setting out the considerations and decisions thereof and such minute shall be transmitted to the governments represented in the commissions.

Article 3, Treaty for the Prevention of Controversies.

CHAPTER 2

CHAPTER 2

Renunciation of War--Pacific Settlement of Controversies--Commissions of Investigation--Conciliation

ARTICLE II

Recognizing that the primary interest of States is the conservation of peace, the High Contracting Parties solemnly declare that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another. Accordingly they agree that the settlement or solution of all disputes or conflicts between them of whatever nature or of whatever origin shall be by pacific means.

Article 10, Convention on the Rights and Duties of States, signed at Montevideo, December 26, 1933.

Treaty for the Renunciation of War, signed at Paris, August 27, 1928, known as the Kellogg-Briand Pact.

The High Contracting Parties further agree that such disputes or conflicts which have arisen or which may arise between them and with regard to which an agreement to adjust the controversies or to arbitrate the questions involved shall not have been reached through diplomatic channels or otherwise shall be submitted for investigation and report to a Commission to be established in the manner provided by Article IV hereof, which Commission shall also exercise conciliatory functions as provided by this Treaty. Pending the expiration of the longest period hereafter specified for action under the provisions of this Treaty the High Contracting Parties undertake not to begin mobilization or concentration of troops on the frontier of the other Party or Parties nor to engage in any hostile actions or preparation for hostilities.

Article 1, Gondra Treaty, signed at Santiago, May 3, 1923.

Article 2, Gondra Treaty, and Article 2, Convention on Inter-American Conciliation, signed at Washington, January 5, 1929.

Article 1, Gondra Treaty, and Article 12, Conciliation Convention.

The provisions of this article shall not abrogate, limit or otherwise affect the obligations contained in treaties of arbitration in force between two or more of the High Contracting Parties nor the obligations arising out of them.

Paragraph 2, Article 1, Gondra Treaty.

ARTICLE III

For the purposes of this Treaty three commissions to be designated as Permanent Diplomatic Commissions of Investigation and Conciliation shall be established with their seats at Washington (United States of America), at Montevideo (Uruguay), and at Bogotá (Colombia), respectively. They shall be composed of the three American heads of missions longest

Article 3, Gondra Treaty.

accredited

credited in said capitals. However, in the event that with respect to a given dispute or conflict the Commission would include the diplomatic representative of a party to the dispute or conflict, the diplomatic representative next in length of service at the capital in question shall serve in his stead in dealing with that particular dispute or conflict. At the call of the senior diplomatic representative the members of the Commissions shall organize, appointing their respective chairmen.

These Permanent Commissions shall be bound to exercise conciliatory functions either on their own motion when it appears there is a prospect of a disturbance of peaceful relations, or at the request of a party to the controversy, or of two or more of the High Contracting Parties, until the pertinent Commission of Investigation and Conciliation hereafter provided for shall be organized. The last-mentioned Commission shall determine whether a dispute or conflict exists which does not promise solution through diplomatic channels and which endangers peace between the parties, and thus the peace of the American continent.

Article 3, Conciliation Convention.

ARTICLE IV

A party to a conflict or a dispute referred to in Article II, in order to initiate the procedure for investigation and conciliation established by this Treaty, may address itself to that one of the Permanent Commissions which it considers could more efficaciously bring about a rapid organization of a Commission of Investigation and Conciliation in accordance with the provisions of Article VI hereof, designating its member thereof. At the same time this party will communicate to the other party or parties to the controversy its decision to ask for the organization of a Commission of Investigation and Conciliation.

Paragraph 2, Article 3, Gondra Treaty.

Article 4, Gondra Treaty.

ARTICLE V

The dispute or conflict referred to in Article II shall be submitted to the Commission of Investigation and Conciliation, which shall take cognizance of the dispute or conflict, and the High Contracting Parties hereto shall yield promptly to the exercise by that Commission of the functions entrusted to it by this Treaty. The Commission shall ordinarily be composed of five members, all nationals of American States designated in the manner provided by Article VI hereof.

Article 2, Gondra Treaty.

Paragraph 2, Article 3, Gondra Treaty.

ARTICLE VI

ARTICLE VI

Each country signatory to this Treaty shall name to the Pan American Union, at the time of the deposit of its ratification of the present Treaty, two of its nationals, selected from among the most eminent by reason of their high character and fitness. The persons so named by all the ratifying powers shall constitute a permanent panel. In the event that a conflict or dispute shall arise between two or more signatories, it shall be referred to a Commission of Investigation and Conciliation mentioned in Articles IV and V, to be constituted as follows: Each party to the dispute or conflict shall designate a member, and the remaining three members shall be selected by the pertinent Permanent Commission referred to in Article III, from the panel above mentioned, no one of whom shall be a national of a party to the dispute or conflict, or a national of a Government represented on the Permanent Commission. The Chairman of the Commission of Investigation and Conciliation shall be selected by the Permanent Commission from the said three members.

Article 1, Additional Protocol to Conciliation Convention, signed at Montevideo, December 26, 1933.

Article 1, Treaty on Good Offices and Mediation, signed at Buenos Aires, December 23 1936.

(Differs from Article 4, Gondra Treaty, under which each party to the controversy appoints two members of the Commission and there are complicated provisions for the designation of the fifth member.)

Any vacancy on the Commission of Investigation and Conciliation shall be filled in the same manner that the original appointment was made.

Article 2, Additional Protocol.

Whenever there are more than two Governments directly interested in the controversy and the interest of two or more of them is identical, the Government or Governments on each side of the controversy shall have the right to increase the number of their Commissioners as far as it may be necessary so that it shall include a national of each country directly interested and so that both sides in the dispute may have equal representation on the Commission.

Paragraph 2, Article 4, Gondra Treaty.

Once the Commission has been thus selected it shall notify the respective Governments parties to the dispute of the date of its inauguration and it may then determine upon the place or places in which it will function, taking into account the greater facilities for investigation. Such organization shall occur in the capital city which the Permanent Commission may designate.

Paragraph 3, Article 4, Gondra Treaty.

Paragraph 3, Article 4, Gondra Treaty.

The Commission of Investigation and Conciliation

Paragraph 4, Article 4, Gondra Treaty.

conciliation shall establish its own rules of procedure, which shall provide in all cases for hearing both sides, and its decisions and final report shall be agreed to by the majority of its members. All decisions of the Commission shall be reached in the presence of all its members. — Articles 8 and 9, Saavedra Lamas Treaty; Paragraph 5, Article 4, Gondra Treaty

Prior to the beginning of the work of investigation, or simultaneously therewith, and at any time during the period of such investigation which in the opinion of the Commission may be considered to be favorable, the Commission shall have authority to endeavor to conciliate the parties to the dispute or conflict, and such parties shall be obligated to submit to the conciliation procedure. — Article 4, Conciliation Convention.

The function of the Commission as an organ of conciliation is to procure the conciliation of the differences subject to its examination by endeavoring to effect a settlement between the parties. — Article 6, Conciliation Convention.

Such conciliatory functions shall not extend beyond the period of six months referred to in Article X hereof. — Article 6, Gondra Treaty.

Each party shall bear its own expenses and a proportionate share of the general expenses of the Commission, including honoraria to the members of the Commission, the amount of which shall be determined by the parties to the controversy. — Paragraph 6, Article 4, Gondra Treaty.

ARTICLE VII

As exceptions to the obligation to submit to the conciliation procedure last above outlined and as the only such exceptions are those set forth in this article as follows: — Article 5, Saavedra Lamas Treaty.

(a) Differences for the solution of which treaties, conventions, pacts, or pacific agreements of any kind whatever may have been concluded, which in no case shall be considered as annulled by this agreement, but supplemented thereby in so far as they tend to assure peace;

(b) Questions or matters finally settled by previous treaties;

(c) Disputes which the parties prefer to solve by direct settlement or submit by common agreement to an arbitral or judicial solution;

(d) Questions which international law leaves to the exclusive competence of each state, under its constitutional system, for which reason the parties may object to their being submitted to the conciliation procedure before the national or local jurisdiction has decided definitively; except in the case of manifest denial or delay of justice, in which case the conciliation procedure shall be initiated within a year at the latest.

The

The High Contracting Parties may communicate, at any time and by depositing in the Pan American Union, an instrument stating that they have abandoned wholly or in part the limitations established by them in the conciliation procedure.

The effect of the limitations formulated by one of the contracting parties shall be that the other parties shall not consider themselves obligated in regard to that party save in the measure of the exceptions established.

ARTICLE VIII

The parties to the controversy shall furnish the antecedents and data necessary for the investigation and may be represented by delegates and assisted by advisers or experts and present evidence of all kinds. — Article 5, Gondra Treaty. Article 9, Saavedra Lamas Treaty.

When the Commission finds itself to be within an occasion foreseen in Article VIII of this Treaty it shall undertake a conscientious and impartial examination of the questions which are the subject of the controversy. Its decisions and recommendations shall be by a majority vote except when the parties to the dispute or conflict agree otherwise. — Article 8, Conciliation Convention. Article 7, Conciliation Convention.

The Commission shall render its report within ~~one year~~ ninety days from the date of its inauguration. If it has been impossible to finish the investigation or draft the report within the time specified the parties to the controversy or dispute may by agreement extend the time for an additional period of ~~six months~~ ninety days. — Article 5, Gondra Treaty.

If conciliation has been effected, the terms of the settlement shall be set forth in the report. Otherwise, the report shall propose to the parties the basis for a settlement of the conflict or dispute. Certified copies of the report shall be sent to each party to the conflict or dispute. — Article 6, Conciliation Convention.

ARTICLE IX

The findings of the Commission shall be considered as a report upon the dispute, which was the subject of the investigation, but shall not have the value or force of a judicial decision or arbitral award. — Article 6, Gondra Treaty.

ARTICLE X

Once the report is in possession of the Governments parties to the dispute, and if conciliation shall not have been effected, the Commission shall fix a time, not exceeding six months, for the parties to pass upon the proposed bases of settlement, and, if necessary, for renewed negotiations in order to bring about a settlement of the difficulty in view of the findings in said report. At the expiration of that period, the Commission — Article 7, Gondra Treaty.

shall

shall set forth in a Final Act, the decision of the parties. If the parties are unable to reach a friendly arrangement, they shall have recourse to mediation or arbitration. Moreover, in the eventuality of such failure to arrange the difficulty the peace of the American continent shall be deemed to be jeopardized, and the consultation of the Parties to this Treaty provided for in the Convention for the Maintenance, Preservation and Reestablishment of Peace, signed at Buenos Aires shall be undertaken.

ARTICLE XI

Once the procedure of investigation and conciliation is under way it shall be interrupted only by a direct settlement between the parties or by their agreement to accept absolutely the decision ex aequo et bono of an American Chief of State or to submit the controversy to arbitration or to an international court.

Article 13, Conciliation Convention.

CHAPTER 3

Good Offices and Mediation

ARTICLE XII

Notwithstanding the foregoing provisions as to investigation and conciliation, the High Contracting Parties have authority in the event of a conflict or dispute between two or more of them to interpose by way of tendering their good offices or their mediation, jointly or severally, on their own motion or at the request of one or more of the parties to the controversy but the High Contracting Parties agree not to make use of those means of pacific settlement from the moment when the pertinent commission shall begin to function with respect to a dispute or conflict, until the Final Act referred to in Article X of this Treaty is signed.

Article 5, Conciliation Convention. Treaty on Good Offices and Mediation signed at Buenos Aires, December 23, 1936.

CHAPTER 4

Arbitration

ARTICLE XIII

Without prejudice to the right of any of the High Contracting Parties before resorting to arbitration to have recourse to procedures of investigation and conciliation established in the present Treaty or in any other treaty or convention in force between them, the High Contracting Parties bind themselves to submit to arbitration all differences of an international character which have arisen or may arise between them by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy and which are juridical in their nature by reason of being

susceptible

Article 1, Treaty on Inter-American Arbitration, signed at Washington, January 5, 1929.

susceptible of decision by the application of the principles of law.

There shall be considered as included among the questions of juridical character:

(a) The interpretation of a treaty;

(b) Any question of international law;

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

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

ARTICLE XIV

There are excepted from the stipulations of this agreement to arbitrate the following controversies: Article 2, Arbitration Treaty.

(a) Those which are exclusively within the domestic jurisdiction of any of the parties to the dispute and are not controlled by international law; and

(b) Those which affect the interest or refer to the action of a State not a Party to this Treaty.

ARTICLE XV

The arbitrator or tribunal who shall decide the controversy shall be designated by agreement of the parties. Article 3, Arbitration Treaty.

In

In the absence of an agreement upon the abritrator or tribunal the following procedure shall be adopted:

Each party shall by agreement nominate two arbitrators of whom only one may be a national of said party or selected from the persons whom said party has designated as members of the Permanent Court of Arbitration at The Hague. The other member may be of any other American nationality. These arbitrators in turn shall select a fifth arbitrator who shall be the President of the tribunal.

Should the arbitrators be unable to reach an agreement among themselves for the selection of a fifth American arbitrator, or in lieu thereof, of another who is not an American, each party shall designate a non-American member of the Permanent Court of Arbitration at The Hague, and the two persons so designated shall select the fifth arbitrator, who may be of any nationality other than that of a party to the dispute.

The parties to the dispute shall formulate by common accord, in each case, a special agreement which shall clearly define the particular subject-matter of the controversy, the seat of the court, the rules which will be observed in the proceedings, and the other conditions to which the parties may agree.

Article 4, Arbitration Treaty.

If an accord has not been reached with regard to the agreement within three months

reckoned from the date of the installation of the court, the agreement shall be formulated by the court.

The agreements between parties mentioned in this article shall not come into force unless and until they shall have been ratified by each of the parties thereto in accordance with the respective constitutional procedures.

(To meet reservation of U. S. Senate attached to advice and consent to ratification.)

ARTICLE XVI

In case of death, resignation or incapacity of one or more of the arbitrators the vacancy shall be filled in the same manner as the original appointment.

Article 5, Arbitration Treaty.

ARTICLE XVII

When there are more than two States directly interested in the same controversy, and the interests of two or more of them are similar, the State or States which are on the same side of the question may increase the number of arbitrators on the court, provided that in all cases the parties on each side of the controversy shall appoint an equal number of arbitrators. There shall also be a presiding arbitrator selected in the same manner as that provided in Article XV hereof, the parties on each side of the controversy being regarded as a single party for the purpose of making the designation therein described.

Article 6, Arbitration Treaty.

ARTICLE XVIII

The award, duly pronounced and notified to the parties, settles the dispute definitively and without appeal.

Differences which arise with regard to its interpretation or execution shall be submitted to the decision of the court which rendered the award.

Article 7, Arbitration Treaty.

ARTICLE XIX

ARTICLE XIX

Any reservations made by one of the High Contracting Parties to the last preceding seven articles relating to arbitration shall have the effect that the other Contracting Parties are not bound with respect to the Party making the reservations except to the same extent as that expressed therein.

Article 8, Arbitration Treaty.

CHAPTER 5

General Provisions

ARTICLE XX

The present Treaty shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures. The original instruments shall be deposited in the Ministry of Foreign Affairs of the Republic of Peru, which shall transmit authentic certified copies to the Governments for the aforementioned purpose of ratification. The instruments of ratification shall be deposited in the archives of the Pan American Union in Washington, which shall notify the signatory governments of said deposit. Such notification shall be considered as an exchange of ratifications. The Treaty shall come into effect when ratifications have been deposited by not less than eleven Signatory States.

The Treaty shall remain in force indefinitely, but it may be denounced by any of the High Contracting Parties, such denunciation to be effective one year after the date upon which notification thereof has been given. Notice of denunciation shall be communicated to the Pan American Union, which shall transmit copies thereof to the other Signatory States. After the expiration of this period the Treaty shall cease to have effect as respects the Party which denounces it, but shall remain in effect for the other High Contracting Parties. Denunciation shall not be regarded as valid if the Party making such denunciation shall then be actually in a state of war, or shall be engaged in hostilities, without fulfilling the provisions established by this Treaty.

ARTICLE XXI

Any American State not a signatory of this Treaty may adhere thereto by transmitting the official instrument setting forth such adherence to the Pan American Union which will notify each of the High Contracting Parties.

ARTICLE XXII

ARTICLE XXII

Upon the coming into effect of this Treaty as between any two of the Parties, the following treaties, conventions and protocols shall cease to be in effect as between such Parties:

1. The Treaty to Avoid and Prevent Conflicts between the American States, signed at Santiago, May 3, 1923 (known as the Gondra Treaty);

2. The General Convention of Inter-American Conciliation, signed at Washington, January 5, 1929, together with the Additional Protocol thereto signed at Montevideo, December 26, 1933;

3. The General Treaty of Inter-American Arbitration, signed at Washington, January 5, 1929;

4. The Treaty of Non-Aggression and Conciliation, signed at Rio de Janeiro, October 10, 1933 (known as the Saavedra Lamas Treaty), except as to the provisions of Articles II, III and XIII;

5. The Treaty for the Prevention of Controversies, signed at Buenos Aires, December 23, 1936, and

6. The Treaty on Good Offices and Mediation, signed at Buenos Aires, December 23, 1936.

In witness whereof, the Plenipotentiaries above mentioned have signed this Treaty in English, Spanish, Portuguese, and French, and have affixed thereto their respective seals, in the City of Lima, Capital of the Republic of Peru, this day of

Annex 6

DELEGATION OF THE UNITED STATES OF AMERICA TO THE EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, *PROJECTS PRESENTED BY THE UNITED STATES, TOPIC 1, TREATY OF CONSOLIDATION OF AMERICAN PEACE AGREEMENTS,* 16 DECEMBER 1938

("Report of the Delegation of the United States of America to the Eighth International Conference of American States, Lima, Peru, December 9-27, 1938", United States Government Printing Office, Washington, 1941, pp. 193-203*)*

Appendix 123

PROJECTS PRESENTED BY THE UNITED STATES

Topic 1

TREATY OF CONSOLIDATION OF AMERICAN PEACE AGREEMENTS

Taking into consideration

1. The Treaty to Avoid and Prevent Conflicts between the American States, signed at Santiago, May 3, 1923 (known as the Gondra Treaty);

2. The Treaty for the Renunciation of War, signed at Paris, August 28, 1928 (known as the Kellogg-Briand Pact, or Pact of Paris);

3. The General Convention of Inter-American Conciliation, signed at Washington, January 5, 1929, together with the Additional Protocol thereto signed at Montevideo, December 26, 1933;

4. The General Treaty of Inter-American Arbitration, signed at Washington, January 5, 1929;

5. The Treaty of Non-Aggression and Conciliation, signed at Rio de Janeiro, October 10, 1933 (known as the Saavedra Lamas Treaty);

6. The Convention on the Rights and Duties of States, signed at Montevideo, December 26, 1933, and the Additional Protocol thereto, signed at Buenos Aires, December 23, 1936;

7. The Treaty for the Prevention of Controversies, signed at Buenos Aires, December 23, 1936, and

8. The Treaty on Good Offices and Mediation, signed at Buenos Aires, December 23, 1936.

The governments represented at the Eighth International Conference of American States believing that a coordination in one instrument, as between themselves, of the paramount provisions of

the various agreements above mentioned designed for the pacific solution and prevention of difficulties, would be conducive to a more effective application of the machinery of peace provided for in those instruments, have appointed plenipotentiaries as follows:

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions:

CHAPTER 1

Prevention of Controversies

ARTICLE I

With a view to obviating the arising of controversies among them, the high contracting parties agree, without affecting obligations previously entered into by them by virtue of international agreements, to the following course of action:

Article 4, Treaty for the Prevention of Controversies, signed at Buenos Aires, December 23, 1936.

They bind themselves to establish permanent bilateral mixed commissions composed of representatives of the signatory governments which shall in fact be constituted, at the request of any of them, and such party shall give notice of such request to the other signatory governments.

Each government shall appoint its own representative to the said commission, the meetings of which are to be held, alternatively, in the capital city of one of the other governments represented in each of them. The first meeting shall be held at the seat of the government which convokes it.

Article 1, Treaty for the Prevention of Controversies, signed at Buenos Aires, 1936.

The duty of the aforementioned commissions shall be to study, with the primary object of eliminating them, so far as possible, the causes of future difficulties or controversies; and to propose additional or detailed lawful measures which it might be convenient to take in order to promote, so far as possible, the due and regular application of treaties in force between the respective parties, and also to promote the development of increasingly good relations in all ways between the two countries dealt with in each case.

Article 2, Treaty for the Prevention of Controversies.

After each meeting of any of the said preventive commissions a minute shall be drawn and signed by its members setting out the considerations and decisions thereof and such minute shall be transmitted to the governments represented in the commissions.

Article 3, Treaty for the Prevention of Controversies.

ARTICLE II

Recognizing that the primary interest of states is the conservation of peace, the high contracting parties solemnly declare that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another. Accordingly they agree that the settlement or solution of all disputes or conflicts between them of whatever nature or of whatever origin shall never be sought except by pacific means.

Article 10, Convention on the Rights and Duties of States, signed at Montevideo, December 26, 1933.

Treaty for the Renunciation of War, signed at Paris, August 27, 1928, known as the Kellogg-Briand Pact.

The high contracting parties further agree that such disputes or conflicts which have arisen or which may arise between them and with regard to which an agreement to adjust the controversies or to arbitrate the questions involved shall not have been reached through diplomatic channels or otherwise shall be submitted for investigation and report to a commission to be established in the manner provided by article IV hereof, which commission shall also exercise conciliatory functions as provided by this treaty. Pending the expiration of the longest period hereafter specified for action under the provisions of this treaty the high contracting parties undertake not to begin mobilization or concentration of troops on the frontier of the other party or parties nor to engage in any hostile actions or preparation for hostilities.

Article 1, Gondra Treaty, signed at Santiago, May 3, 1923.

Article 2, Gondra Treaty, and article 2, Convention on Inter-American Conciliation, signed at Washington, January 5, 1929.

Article 1, Gondra Treaty, and article 12, Conciliation Convention.

The provisions of this article shall not abrogate, limit, or otherwise affect the obligations contained in treaties of arbitration in force between two or more of the high contracting parties nor the obligations arising out of them.

Paragraph 2, article 1, Gondra Treaty.

ARTICLE III

Article 3, Gondra Treaty.

For the purposes of this treaty three commissions to be designated as permanent diplomatic commissions of investigation and conciliation shall be established with their seats at Washington (United States of America), at Montevideo (Uruguay), and at Bogotá (Colombia), respectively. They shall be composed of the three American heads of missions longest accredited in said capitals. *However, in the event that with respect to a given dispute or conflict the commission would include the diplomatic rep-*

resentative of a party to the dispute or conflict, the diplomatic representative next in length of service at the capital in question shall serve in his stead in dealing with that particular dispute or conflict. At the call of the senior diplomatic representative the members of the commissions shall organize, appointing their respective chairmen.

These permanent commissions shall be bound to exercise conciliatory functions either on their own motion when it appears there is a prospect of a disturbance of peaceful relations, or at the request of a party to the controversy, *or of two or more of the high contracting parties*, until the pertinent commission of investigation and conciliation hereafter provided for shall be organized. *The last-mentioned Commission shall determine whether a dispute or conflict exists which does not promise solution through diplomatic channels and which endangers peace between the parties, and thus the peace of the American Continent.*

Article 3, Conciliation Convention.

ARTICLE IV

A party to a conflict or a dispute referred to in article II, in order to initiate the procedure for investigation and conciliation established by this treaty, may address itself to that one of the permanent commissions which it considers could more efficaciously bring about a rapid organization of a commission of investigation and conciliation in accordance with the provisions of article VI of this treaty, designating at the same time its member of the commission. At the same time this party will communicate to the other party or parties to the controversy its decision to ask for the organization of a commission of investigation and conciliation.

Paragraph 2, article 3, Gondra Treaty.

Article 4, Gondra Treaty.

ARTICLE V

The dispute or conflict referred to in article II shall be submitted to the commission of investigation and conciliation, which shall take cognizance of the dispute or conflict, and the high contracting parties hereto shall yield promptly to the exercise by that commission of the functions entrusted to it by this treaty. The commission shall ordinarily be composed of five members, all nationals of American states designated in the manner provided by article VI hereof.

Article 2, Gondra Treaty.

Paragraph 1, article 4, Gondra Treaty.

ARTICLE VI

Each country signatory to this treaty shall name to the Pan American Union, at the time of the deposit of its ratification of the present treaty, two of its nationals, selected from among the most eminent by reason of their high character and fitness. *The persons so named by all the ratifying countries shall constitute a permanent panel.* In the event that a conflict or dispute shall arise between two or more signatories, it shall be referred to a commission of investigation and conciliation mentioned in articles IV and V, to be constituted as follows: Each party to the dispute or conflict shall designate a member, and the remaining three members shall be selected by the pertinent permanent commission referred to in article III, from the panel above mentioned, no one of whom shall be a national of a party to the dispute or conflict, or a national of a government represented on the permanent commission. The chairman of the commission of investigation and conciliation shall be selected by the permanent commission from the said three members.

Article 1, Additional Protocol to Conciliation Convention, signed at Montevideo, December 26, 1933.

Article 1, Treaty on Good Offices and Mediation, signed at Buenos Aires, December 23, 1936.

(Differs from article 4, Gondra Treaty, under which each party to the controversy appoints two members of the commission and there are complicated provisions for the designation of the fifth member.)

Any vacancy on the commission of investigation and conciliation shall be filled in the same manner in which the original appointment was made.

Article 2, Additional Protocol.

Whe ever there are more than two governments directly interested in the controversy and the interest of two or more of them is similar, the government or governments on each side of the controversy shall have the right to increase the number of their commissioners as far as it may be necessary so that it shall include a national of each country directly interested and so that both sides in the dispute may have equal representation on the commission.

Paragraph 2, article 4, Gondra Treaty.

Once the commission has been thus selected it shall notify the respective governments parties to the dispute of the date of its inauguration and it may then determine upon the place or places in which it will function, taking into account the greater facilities for investigation. Such organization shall occur in the capital city which the permanent commission may designate.

Paragraph 3, article 4, Gondra Treaty.

Paragraph 3, article 4, Gondra Treaty.

The commission of investigation and conciliation shall establish its own rules of procedure, which shall provide in all cases for hearing both sides, and its decisions and final report shall be agreed to by the majority of its members. All decisions of the commission shall be reached in the presence of all its members.

Paragraph 4, article 4, Gondra Treaty.

Articles 8 and 9, Saavedra Lamas Treaty.

Paragraph 5, article 4, Gondra Treaty.

Prior to the beginning of the work of investigation, or simultaneously therewith, and at any time during the period of such investigation which in the opinion of the commission may be considered to be favorable, the commission shall have authority to endeavor to conciliate the parties to the dispute or conflict, and such parties shall be obligated to submit to the conciliation procedure. Article 4, Conciliation Convention.

The function of the commission as an organ of conciliation is to procure the conciliation of the differences subject to its examination by endeavoring to effect a settlement between the parties. Article 6, Conciliation Convention.

Such conciliatory functions shall not extend beyond the period of six months referred to in article IX hereof. Article 7, Gondra Treaty. Article IV (3), Conciliation Convention. Paragraph 6, article 4, Gondra Treaty.

Each party shall bear its own expenses and a proportionate share of the general expenses of the commission, including *honoraria* to the members of the commission, the amount of which shall be determined by the parties to the controversy.

ARTICLE VII

The parties to the controversy shall furnish the antecedents and data necessary for the investigation and may be represented by delegates and assisted by advisers or experts and present evidence of all kinds. Article 5, Gondra Treaty. Article 9, Saavedra Lamas Treaty.

When the commisison finds itself to be within an occasion foreseen in article II of this treaty it shall undertake a conscientious and impartial examination of the questions which are the subject of the controversy. Its decisions and recommendations shall be by a majority vote except when the parties to the dispute or conflict agree otherwise. Article 8, Conciliation Convention. Article 7, Conciliation Convention.

The commission shall render its report within ninety days from the date of its inauguration. If it has been impossible to finish the investigation or draft the report within the time specified the parties to the controversy or dispute may by agreement extend the time for an additional period of ninety days. If conciliation has been effected, the terms of the settlement shall be set forth in the report. Otherwise, the report shall propose to the parties the basis for a settlement of the conflict or dispute. Certified copies of the report shall be sent to each party to the conflict or dispute. Article 5, Gondra Treaty. Article 6, Conciliation Convention.

ARTICLE VIII

The findings of the commission shall be considered as a report upon the dispute, which was the subject of the investigation, but shall not have the value or force of a judicial decision or arbitral award.

Article 6, Gondra Treaty.

ARTICLE IX

Once the report is in possession of the governments parties to the dispute, and if conciliation shall not have been effected, the commission shall fix a time, not exceeding six months, for the parties to pass upon the proposed bases of settlement, and, if necessary, for renewed negotiations in order to bring about a settlement of the difficulty in view of the findings in said report. At the expiration of that period, the commission shall set forth in a final act, the decision of the parties. If the parties are unable to reach a friendly arrangement, they shall have recourse to mediation or arbitration. Moreover, in the eventuality of such failure to arrange the difficulty the peace of the American Continent shall be deemed to be jeopardized, and *the consultation provided for in the Convention for the Maintenance, Preservation and Reestablishment of Peace, signed at Buenos Aires, shall be undertaken.*

Article 7, Gondra Treaty.

ARTICLE X

Once the procedure of investigation and conciliation is under way it shall be interrupted only by a direct settlement between the parties or by their agreement to accept absolutely the decision *ex aequo et bono* of an American chief of state or to submit the controversy to arbitration or to an international court.

Article 13, Conciliation Convention.

CHAPTER 3

Good Offices and Mediation

ARTICLE XI

Notwithstanding the foregoing provisions as to investigation and conciliation, the high contracting parties *have authority* in the event of a conflict or dispute between two or more of them to interpose by way of tendering their good offices or their mediation, jointly or severally, on their own motion or at the request of one or more of the parties to the controversy but the high contracting parties agree not to make use of those

Article 5, Conciliation Convention. Treaty on Good Offices and Mediation, signed at Buenos Aires, December 23, 1936.

means of pacific settlement from the moment when the pertinent commission shall begin to function with respect to a dispute or conflict, until the final act referred to in article IX of this treaty is signed.

CHAPTER 4

Arbitration

ARTICLE XII

Article 1, Treaty on Inter-American Arbitration, signed at Washington, January 5, 1929.

Without prejudice to the right of any of the high contracting parties before resorting to arbitration to have recourse to procedures of investigation and conciliation established in the present treaty or in any other treaty or convention in force between them, the high contracting parties bind themselves to submit to arbitration all differences of an international character which have arisen or may arise between them by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy and which are juridical in their nature by reason of being susceptible of decision by the application of the principles of law.

There shall be considered as included among the questions of a juridical character:

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

ARTICLE XIII

Article 2, Arbitration Treaty.

There are excepted from the stipulations of this agreement to arbitrate the following controversies:

(*a*) Those which are within the domestic jurisdiction of any of the parties to the dispute and are not controlled by international law; and
(*b*) Those which affect the interest or refer to the action of a state not a party to this treaty.

ARTICLE XIV

Article 3, Arbitration Treaty.

The arbitrator or tribunal who shall decide the controversy shall be designated by agreement of the parties.

In the absence of an agreement upon the arbitrator or tribunal the following procedure shall be adopted:

Each party shall by agreement nominate two arbitrators of whom only one may be a national of said party or selected from the persons whom said party has designated as members of the Permanent Court of Arbitration at The Hague. The other member may be of any other American nationality. These arbitrators in turn shall select a fifth arbitrator who shall be the president of the tribunal.

Should the arbitrators be unable to reach an agreement among themselves for the selection of a fifth American arbitrator, or in lieu thereof, of another who is not an American, each party shall designate a non-American member of the Permanent Court of Arbitration at The Hague, and the two persons so designated shall select the fifth arbitrator, who may be of any nationality other than that of a party to the dispute.

The parties to the dispute shall formulate by common accord, in each case, a special agreement which shall clearly define the particular subject-matter of the controversy, the seat of the court, the rules which will be observed in the proceedings, and the other conditions to which the parties may agree. Article 4, Arbitration Treaty.

If an accord has not been reached with regard to the agreement within three months reckoned from the date of the installation of the court, the agreement shall be formulated by the court.

ARTICLE XV

In case of death, resignation, or incapacity of one or more of the arbitrators the vacancy shall be filled in the same manner as the original appointment. Article 5, Arbitration Treaty.

ARTICLE XVI

When there are more than two states directly interested in the same controversy, and the interests of two or more of them are similar, the state or states which are on the same side of the question may increase the number of arbitrators on the court, provided that in all cases the parties on each side of the controversy shall appoint an equal number of arbitrators. There shall also be a presiding arbitrator selected in the same manner as that provided in article XIV hereof, the parties on each side of the controversy being regarded as a single party for the purpose of making the designation therein described. Article 6, Arbitration Treaty.

ARTICLE XVII

The award, duly pronounced and notified to the parties, settles the dispute definitively and without appeal. Article 7, Arbitration Treaty.

Differences which arise with regard to its interpretation or execution shall be submitted to the decision of the court which rendered the award.

ARTICLE XVIII

Any reservations made by one of the high contracting parties to the last preceding seven articles relating to arbitration shall have the effect that the other contracting parties are not bound with respect to the party making the reservations except to the same extent as that expressed therein. Article 8, Arbitration Treaty.

CHAPTER 5

General Provisions

ARTICLE XIX

Upon the coming into effect of this treaty as between any two of the parties, the following treaties, conventions, and protocols shall cease to be in effect as between such parties, except in respect to any proceeding initiated or taken pursuant to any of them:

1. The Treaty to Avoid and Prevent Conflicts between the American States, signed at Santiago, May 3, 1923 (known as the Gondra Treaty);
2. The General Convention of Inter-American Conciliation, signed at Washington, January 5, 1929, together with the Additional Protocol thereto signed at Montevideo, December 26, 1933;
3. The General Treaty of Inter-American Arbitration, signed at Washington, January 5, 1929;
4. The Treaty of Non-Aggression and Conciliation, signed at Rio de Janeiro, October 10, 1933 (known as the Saavedra Lamas Treaty), except as to the provisions of articles II, III, and XIII;
5. The Treaty for the Prevention of Controversies, signed at Buenos Aires, December 23, 1936, and
6. The Treaty on Good Offices and Mediation, signed at Buenos Aires, December 23, 1936.

ARTICLE XX

The present treaty shall be ratified by the high contracting parties in conformity with their respective constitutional procedures. The original instrument shall be deposited in the Ministry of Foreign Affairs of the Republic of Peru, which shall transmit authentic certified copies to the governments for the aforementioned purpose of ratification. The instruments of ratification shall be deposited in the archives of the Pan American Union in Washington, which shall notify the signatory governments of said deposit. Such notification shall be considered as an exchange of ratifications.

ARTICLE XXI

The present treaty will come into effect between the high contracting parties in the order in which they deposit their ratifications.

ARTICLE XXII

The present treaty shall remain in effect indefinitely, but may be denounced by means of one year's notice given to the Pan American Union, which shall transmit it to the other signatory governments. After the expiration of this period the treaty shall cease in its effects as regards the party which denounces it, but shall remain in effect for the remaining high contracting parties. *Denunciation shall not affect any pending proceedings instituted before notice of denunciation is given.*

ARTICLE XXIII

The present treaty shall be open to the adherence and accession of American states which may not have signed. The corresponding instruments shall be deposited in the archives of the Pan American Union, which shall communicate them to the other high contracting parties.

In witness whereof, the above-mentioned Plenipotentiaries sign the present treaty, and hereunto affix their respective seals, at the city of Lima, Capital of the Republic of Peru, on the day of the month of

Annex 7

SEVENTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, MONTEVIDEO, 3-26 DECEMBER 1933, RESOLUTION XXXV, *CODE OF PEACE*, APPROVED 23 DECEMBER 1933

(Carnegie Endowment for International Peace, Division of International Law, Washington, The International Conferences of American States, First Supplement, 1933-1940, JX1980.3 .Z5 .C22 Suppl.1, pp. 50-65)

XXXV

PEACE CODE [3]

The Seventh International Conference of American States,

In view of the importance of the project of a Peace Code presented by the Mexican Delegation; and

[1] *Final Act*, p. 16. [2] *Ibid.*

[3] *Final Act*, pp. 16–22. This code was submitted in amended form to the Conference for the Maintenance of Peace, which committed it to the Committee of Experts for the Codification of International Law to be reported upon at the Eighth Conference (Resolution XXVIII of the Conference for the Maintenance of Peace, *infra*, p. 161). For the action taken by the Eighth Conference, see its Resolution XV, *infra*, p. 244.

Bearing in mind the advantages which would be offered by the concentration and arrangement in a single instrument of all the provisions scattered throughout different treaties and other pertinent principles for the prevention and peaceful settlement of international conflicts,

RESOLVES:

That the following project of a Peace Code be submitted through the channel of the Pan American Union to the consideration of the governments belonging thereto.

(Approved December 23, 1933).

PEACE CODE

MEANS FOR PREVENTING AND SETTLING INTERNATIONAL CONFLICTS [1]

CHAPTER I

GENERAL PRINCIPLES

ARTICLE 1.—The High Contracting Parties solemnly declare that they condemn wars of aggression in their mutual relations, and that the settlement of conflicts or disagreements of any sort which may arise among them shall be effected in no other way than by the pacific means sanctioned by international law.

ARTICLE 2.—For the purposes of the foregoing article, the state which has first executed one of the following acts shall be recognized as the aggressor, whatever may be the end it pursues:

a) Declaring war on another state;
b) Commencing an invasion with continental, maritime or aerial forces —even without a declaration of war—against the territory, ships or airplanes of another country;
c) Commencing the blockade of the coast or of any port of another country;
d) Aiding elements which, having formed within its territory, attack that of another country, or rejecting requests by the attacked country to take all measures calculated to deprive such elements of support or defence.

No consideration of a political, military or economic nature can justify the aggression to which this article refers.

[1] The Spanish text does not contain the synopsis.

ARTICLE 3.—The High Contracting Parties expressly agree not to resort to armed force for the collection of contractual debts.

ARTICLE 4.—The High Contracting Parties declare that territorial questions must not be solved by violence, and that they will not recognize any territorial settlement that is not obtained by pacific means and without coercion of any sort, nor will they recognize the validity of the occupation or acquisition of territories accomplished by force of arms.

ARTICLE 5.—In case of non-fulfillment, by any of the parties in conflict, of the obligations contained in the foregoing articles, the contracting states undertake to exert all their efforts for the maintenance of peace. For this purpose, they will adopt, in their quality of neutrals, a common, united attitude; they will put into play the political, juridical or economic means authorized by international law; they will bring the influence of public opinion to bear; but they will in no case resort to intervention, either diplomatic or armed, save for the attitude which might be incumbent upon them by virtue of other collective treaties to which these states are signatories.

CHAPTER II

BASES OF THE SYSTEM

ARTICLE 6.—The High Signatory Parties are bound, in case a conflict arises among them, to appeal to the Permanent Commission of Conciliation, to arbitration or to the Inter-American Court of Justice to which articles 12 and following refer.

ARTICLE 7.—In all matters submitted to it, the Court will decide its own competency. In case it considers itself incompetent because the matter is not susceptible of a juridical solution, it must be submitted by those concerned to the Permanent Commission of Conciliation or to arbitration.

ARTICLE 8.—When the parties concerned appeal neither to conciliation nor arbitration nor to the Court of Justice, the Commission of Conciliation shall be called upon to act on the matter.

ARTICLE 9.—Once the Commission of Conciliation has presented its decision, the parties concerned, if not agreed to follow it, may appeal to arbitration or to the Court, with the limitations referred to in Article 7.

ARTICLE 10.—If one or more of the parties concerned is not willing to follow the decision of the Commission of Conciliation or to submit the matter to arbitration or to a judicial settlement, the sanctions referred to in Article 5 shall be applied to the recalcitrant party or parties.

ARTICLE 11.—If the states in litigation have begun hostilities, they bind themselves to suspend them and to take no measure which might aggravate the situation, in so far as they choose conciliation, arbitration or judicial procedure to which to submit the conflict, as well as during the whole term of the trial.

CHAPTER III

Conciliation and Creation of a Permanent Commission

Article 12.—An American International Commission of Conciliation is created, the composition and functions of which shall be those set forth herewith:

a) Six months before the meeting of the American International Conference, each one of the Governments of the American Republics shall designate five persons of its own nationality, enjoying the highest moral esteem and known to possess the highest culture. The names of these five persons shall be communicated to the Pan-American Union in order that they may be transmitted to the conference to meet next.

b) The Conference, in its last session, shall elect, by a two-thirds majority, the persons who shall constitute the Commission of Conciliation from the list of those presented by the Governments. The member[s] shall be 21, each state having a right to one.

The Conference shall also designate, by absolute majority, a president and two vice-presidents, first and second, from among the 21 members elected.

c) The President, the first Vice-President and three members who have attained the largest number of votes shall constitute the Permanent Delegation of the Commission.

d) If one of the countries concerned in a case of conciliation should be that of the nationality or domicile of the President, or of one of the other members, he shall be replaced by the Vice-President or by another member following him in the number of votes of designation.

e) Each one of the parties concerned may reject as many as five members, who shall be replaced by those following them in the number of votes obtained.

f) Each one of the countries concerned in cases of conciliation shall appoint authorized agents for all necessary information and to act as cooperators and intermediaries between the Permanent Delegation or the American International Commission of Conciliation and the Governments. Without prejudice hereto, the Delegation and the Commission may deal directly with the Governments.

Article 13.—The Commission of Conciliation created by the present convention may hear all controversies of whatever nature which through any cause have arisen or should arise between the Contracting States and which it has not been possible to settle through diplomatic channels.

Article 14.—The conciliation procedure shall be opened at the request of one of the Parties or by the initiative of the Permanent Delegation itself, when it considers that a difference between two or more States may disturb the harmony to an extent dangerous for mutual co-operation and international peace. To the end that the proper decision may be adopted by its

own initiative in the presence of a difference between two or more States, the Permanent Delegation shall consider the matter at the request of any one of its members. In cases of extreme urgency, the President may initiate the conciliation procedure pending the meeting of the Delegation.

ARTICLE 15.—It is the mission of the Commission to procure a conciliatory adjustment of the differences submitted to its consideration. After an impartial study of the questions which are the cause of the conflict, it shall set down in a report the results of its labors and shall propose to the Parties bases of settlement by means of a just and equitable solution. The report of the Commission shall in no case have the character of a judgment or arbitral decision, either with regard to the exposition or interpretation of the facts or with respect to the considerations or conclusions of law.

ARTICLE 16.—The Commission of Conciliation must present its report within the term of six weeks, counting from its first meeting, unless the Parties decide by common agreement to shorten or prorogate this term.

The conciliation procedure, once initiated, can only be interrupted by a direct settlement between the Parties or by their subsequent decision to submit the conflict by common agreement to arbitration or to international justice.

ARTICLE 17.—The Permanent Commission of Conciliation shall meet, save for a contrary agreement between the Parties, at the place designated by its President.

ARTICLE 18.—The Parties shall have themselves represented before the Permanent Commission of Conciliation by means of agents; they may furthermore be advised by counselors and experts appointed by them (i.e. the Parties) for that purpose and ask for the hearing of all kinds of persons whose testimony may appear to them useful.

The Commission, on its part, shall have the power to ask for oral explanations from the agents, counselors and experts of the two Parties, as well as for the communication by the respective Government of the statement of any person whose testimony may be considered necessary.

ARTICLE 19.—The Commission of Conciliation shall establish by itself the rules for its procedure, which latter must be contentious in all cases.

The Parties in controversy may furnish, and the Commission may require of them, all necessary data and information. The Parties may have themselves represented by delegates and assisted by counselors or experts, and may also present any kind of testimony.

ARTICLE 20.—During the conciliation procedure, the members of the Commission shall draw salaries the amount of which shall be established by common agreement by the Parties in controversy. Each one of the Parties shall provide for its own expenses and shall contribute in equal parts to the common expenditures and salaries.

ARTICLE 21.—The work and deliberations of the Commission of Conciliа-

tion shall not be given out for publication except by its decision, with the consent of the Parties, save for cases where the latter do not accept the proposals of the Commission, whereupon the Commission may freely order the publication thereof.

In the absence of any stipulation to the contrary, the decisions of the Commission shall be adopted by a majority of votes, but the Commission may not decide on the basic points of a matter without the presence of all its members.

ARTICLE 22.—The report and recommendations of the Commission, insofar as it acts as an organ of conciliation, shall not have the character of a judgment or arbitral decision and shall not be binding on the Parties either as regards the exposition or interpretation of the facts, or in respect to questions of law.

ARTICLE 23.—Within the shortest time possible after the termination of its labors, the Commission shall transmit to the Parties an authentic copy of the report and of the bases of settlement which it proposes.

The Commission, in transmitting the report and recommendations to the Parties shall fix for them a term, which shall not exceed six months, within which they must pronounce themselves on the bases of settlement above mentioned.

ARTICLE 24.—Upon expiration of the term fixed by the Commission for the Parties to pronounce themselves, the Commission shall record in a final minute the decision of the Parties and, if a conciliation has been effected, the terms of the settlement.

CHAPTER IV

ARBITRATION

ARTICLE 25.—The signatory States bind themselves to submit to arbitration all differences of an international character which have arisen or should arise between them and which it has not been possible to adjust through diplomatic channels.

ARTICLE 26.—Excepted from the stipulations of this Treaty, if so desired by any one of the Parties, are the following controversies:

a) Those included in the domestic jurisdiction of any one of the Parties in litigation and not governed by international law;

b) Those affecting the interests, or relating to the action, of a State which is not a party to this treaty.

ARTICLE 27.—The arbitrator or tribunal which is to pass sentence on the controversy shall be designated by agreement of the Parties.

Failing an agreement, the procedure shall be as follows: each Party shall appoint two arbitrators, one of which may be of its nationality. Such arbitrators may be chosen from among the members of the Governing Board of

the Pan-American Union. These arbitrators shall elect a fifth, who shall preside over the Tribunal. In case of disagreement on this fifth arbitrator, the Governing Board of the Pan-American Union shall designate him by a two-thirds majority of its members.

ARTICLE 28.—When there are more than two States directly involved in one and the same controversy, and the interests of two or more of them are similar, the State or States which are on the same side of the question and who are in the minority may increase the number of arbitrators in the Tribunal in such a way that in any case the Parties on each side of the controversy shall appoint an equal number of arbitrators. The presiding arbitrator shall then be chosen in the same way as established by the foregoing article, with the understanding that, in making this designation, the Parties on one and the same side of the controversy shall be [1] consider themselves as a single Party.

ARTICLE 29.—In case of decease, resignation or incapacity of one or more of the arbitrators, the vacancy shall be filled in the same way as the original designation.

ARTICLE 30.—The Parties in litigation shall formulate by common agreement in each case a special commitment which shall clearly define the specific subject of the controversy, the seat of the tribunal, the rules to be observed in the procedure and the other conditions upon which such Parties agree among themselves.

If no agreement has been reached on the commitment within three months, counting from the date of the installation of the tribunal, or if there should be any doubt about interpretation, the tribunal shall apply the procedure indicated in articles 31 [1] to 42.

ARTICLE 31.—In the absence of designation by the Parties, the tribunal shall fix the place of its seat in any one of the countries belonging to the Pan-American Union.

ARTICLE 32.—In the absence of an agreement between the Parties, the Tr[i]bunal shall decide the language to be used.

ARTICLE 33.—The Parties have the right to designate for the Tribunal special agents with the mission of serving as intermediaries between them and the Tribunal.

The Parties are furthermore authorized to entrust the defence of their rights and interests before the Tribunal to counselors (*consejeros*) or advocates (*abogados*) appointed by them for that purpose.

The Members of the Governing Board of the Pan-American Union may not exercise the functions of agents, counselors or advocates except in favor of the State which has appointed them members of the said Governing Board.

ARTICLE 34.—The arbitration procedure comprises as a general rule two distinct phases: the written pleadings and the debates.

[1] For *shall be* read *shall*.

The written pleadings (*instrucción escrita*) consist in the communication, by the respective agents to the members of the Tribunal and to the opposite Party, of all the documentary evidence (*constancias*), the memorandums (*memoriales*), and, if the case requires, replies; the Parties shall attach to such memorandums the documents and proofs invoked in the case. This communication shall be made directly to the Tribunal.

The debates consist in the oral exposition of the arguments of the Parties before the Tribunal.

ARTICLE 35.—A certified copy of all the papers presented by one of the Parties must be transmitted to the other Par[t]y.

ARTICLE 36.—Barring special circumstances, the Tribunal shall not meet to hear oral pleadings until the written pleadings have been concluded.

ARTICLE 37.—The debates shall be directed by the President.

Such debates shall not be public except by virtue of a decision of the Tribunal and with the previous consent of the Parties.

These debates shall be recorded in minutes edited by secretaries appointed by the President. These minutes shall be signed by the President and one of the secretaries, and they only have an authentic character.

ARTICLE 38.—Upon conclusion of the pleadings, the Tribunal has the right to deny debate on any kind of new evidence or documents which one of the Parties may attempt to present to it without the consent of the other.

The Tribunal is at liberty to take into consideration new evidence or documents to which the agents of the Parties call its attention.

In this case, the Tribunal has the right to demand the presentation of said pieces of evidence or documents, contingent on the obligation of notifying the opposite Party.

ARTICLE 39.—The Tribunal may furthermore require from the agents of the Parties the presentation of any kind of evidence and ask for all necessary explanations. In the case of a negative answer, the Tribunal shall so record it.

ARTICLE 40.—The agents and counselors of the Parties are authorized to present orally to the Tribunal all the arguments which they consider useful for the defense of their cause.

ARTICLE 41.—Said agents and counselors have the right to raise objections and points. The decisions of the Tribunal on these points shall be final and cannot give rise to any further d[i]scussion.

ARTICLE 42.—The members of the Tribunal are entitled to put questions to the agents and counselors of the Parties and ask them for explanations on doubtful points.

Neither the questions put nor the remarks made by members of the Tribunal in the course of the debates can be regarded as an expression of the opinions of the Tribunal in general or by its members in particular.

ARTICLE 43.—The Tribunal is authorized to declare its competence in

interpreting the "*compromiso*" (commitment) as well as the other Treaties which may be invoked on the subject, and in applying the principles of law and comity.

ARTICLE 44.—The Tribunal is entitled to issue rules of procedure for the conduct of the case; to decide forms, order and time in which each party must draw up its conclusions, and to arrange all the formalities required for dealing with the evidence.

ARTICLE 45.—The Parties undertake to supply the Tribunal, as fully as they consider possible, with all the means necessary for the decision of the case.

ARTICLE 46.—For all the notices which the Tribunal has to serve in the territory of a third State of the Pan-American Union, the Tribunal shall apply directly to the Government of that State. The same rule applies in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed as far as the means at the disposal of the State applied to allow under its internal legislation. Such State can refuse only if it considers that the requests are of a nature calculated to impair or threaten its sovereignty or its safety.

The Tribunal will likewise be empowered to resort always to the mediation of the State on whose territory it has established its seat.

ARTICLE 47.—When the agents and counselors of the parties have presented all the explanations and proofs in support of their case, the President shall declare the debates closed.

ARTICLE 48.—The deliberations of the Tribunal shall be private and shall remain secret. All decisions shall be made by a majority of the members of the Tribunal.

ARTICLE 49.—The award must give the reasons on which it is based; it shall mention the names of the arbitrators and shall be signed by the President and Registrar, or by the secretary acting as Registrar.

ARTICLE 50.—The award or decision shall be read in public sitting, the agents and counselors of the Parties being present or duly summoned to attend.

ARTICLE 51.—The award, duly pronounced and notified to the Parties, settles the controversy definitively and without appeal.

Any dispute arising on its interpretation or execution shall be submitted to the judgment of the same Tribunal which pronounced it.

ARTICLE 52.—The Parties may ask before the same Tribunal for the revision of the award only in cases of the discovery of some previous fact the nature of which might have exerted a decisive influence upon the decision and which was unknown to the Tribunal and to the Party which demanded the revision at the time the debates were closed.

Proceedings for revision can only be instituted by a decision of the Tribunal, expressly recording the existence of the fact in question, recognizing

in it the character established in the preceding paragraph and by means of an express declaration that the demand for revision is admissible.

The period within which the demand for revision must be made shall be fifteen days from the date of the award.

ARTICLE 53.—The award is not binding except on the Parties in dispute.

ARTICLE 54.—Each of the litigating States shall pay its own expenses and an equal share of the expenses of the Tribunal.

CHAPTER V

AMERICAN COURT OF INTERNATIONAL JUSTICE [1]

ARTICLE 55.—The American Court of Justice shall be composed of one member from each one of the Contracting Parties, appointed by them.

The members are to be chosen from among persons of high moral character possessing the conditions required in their respective countries for appointment to the highest judicial posts or who are jurisconsults of recognized competence in international law.

ARTICLE 56.—On a date to be fixed by the Governing Board of the Pan-American Union, each Contracting Party shall be asked to designate a member to form the Court. The names of the persons thus designated shall be transmitted to the Director General of the Pan-American Union, who shall send a list of them to each Republic.

The Pan-American Union shall request from the President of the Association of Lawyers of Canada (Canadian Bar Association) the names of two Canadian jurisconsults combining the conditions laid down in Article 1 and willing to accept the charge of member of the Tribunal. The names of the persons proposed shall be drawn from by lot by the Director General of the Union, in a session of the Governing Board, the one extracted from the ballot box being designated for the Tribunal.

ARTICLE 57.—In a session of the Governing Board, the names of the members shall be placed in a ballot box and the Director General shall extract them one by one. The first half shall constitute the Tribunal of the First Instance; the second, the Tribunal of Appeal.

With regard to the United States and Canada, the first name extracted shall be for the first instance and the last shall be reserved for the Tribunal of Appeal.

ARTICLE 58.—In case of a vacancy in either division, the new member shall be chosen in conformity with the provisions of Article 56, to fill the post for the remainder of his predecessor's term.

ARTICLE 59.—The members of the Tribunal are appointed for a term of

[1] See Resolution IV of the Conference for the Maintenance of Peace, *infra*, p. 144, and XXV of the Eighth Conference, *infra*, p. 253.

five years and shall serve until their successors are designated. They may be re-elected.

ARTICLE 60.—The exercise of any function pertaining to the political, national or international direction of the American Republics by a member of the Tribunal during his incumbency is declared incompatible with his judicial duties.

Any doubt regarding this point shall be settled by resolution of the Tribunal, of which the party concerned shall not form a part.

ARTICLE 61.—No member of the Tribunal may act as agent, lawyer (*letrado*) or advocate (*abogado*) during performance of his functions, in any case of an international character.

No member shall take part in the decision of any case in which he has previously participated as agent, lawyer or advocate, on behalf of one of the contending Parties, or as a member of a National or International Tribunal, or of a Commission of Investigation or in any other capacity.

Any doubt on this point shall be settled by resolution of the Tribunal.

ARTICLE 62.—The members of the Tribunal, while devoted to matters pertaining thereto, shall enjoy diplomatic privileges and immunities.

ARTICLE 63.—Any member of the Tribunal, before taking charge of his functions, shall make a solemn declaration, in public audience, of his intention to fulfill them impartially and duly.

ARTICLE 64.—The Tribunal shall elect its President and Vice-President to serve for one year. They may be re-elected.

The Tribunal shall elect a Secretary General.

ARTICLE 65.—The Tribunal shall be established in the city of .....

ARTICLE 66.—The sessions shall commence ..... and continue during the whole time deemed necessary to dispose of the cases pending.

ARTICLE 67.—If for any special reason a member of the Tribunal should consider that he ought not take part in the decision of a case, he shall so inform the President.

If the President should consider that, for some special reason, one of the members of the Tribunal ought not take part in a case, he shall be notified thereof.

If in any case the member of the Tribunal and the President should be in disagreement, the matter shall be settled by the Tribunal.

ARTICLE 68.—Each Section of the Tribunal shall meet in full, save when otherwise expressly provided.

The quorum in each section shall be two-thirds of its members.

ARTICLE 69.—The members of the Tribunal shall receive, during the time of their attendance at the same, a compensation to be fixed by the Governing Board of the Pan-American Union. Such compensation shall include travelling expenses to and from the Tribunal and a daily honorarium for the period of their official functions.

The salary of the Secretary General shall be fixed by the Governing Board.

ARTICLE 70.—The expenses of the Tribunal shall be defrayed by the Contracting Republics according to the proper proportion.

ARTICLE 71.—The Tribunal shall have jurisdiction to hear and settle disputes between the American Republics.

However, before assuming jurisdiction, the Tribunal shall decide whether it has been impossible to settle the matter by diplomatic means and likewise whether no agreement exists to choose some other jurisdiction; in view thereof, it shall take up the hearing of the question.

ARTICLE 72.—The Tribunal shall have obligatory jurisdiction in the following cases:

a) The interpretation of a treaty.
b) The existence of any fact which, if confirmed, would constitute a violation of an international obligation.
c) The nature and extent of the reparation to be given for the violation of an international obligation.
d) The interpretation of a decision handed down by the Tribunal.

The Tribunal shall also hear all disputes of any sort which admit of a judicial settlement.

Any controversy over the category of any case in accordance with the foregoing classification shall be settled by the Tribunal.

ARTICLE 73.—The Tribunal, within the limits of its jurisdiction, shall apply in the following order

a) The International, Particular or General Conventions which establish rules expressly recognized by the Parties in dispute;
b) The international custom, proved by general practice;
c) The general principles of law, recognized by the civilized nations solely as a means for finding the customary rule.

ARTICLE 74.—The Tribunal must give a consultative opinion on any question or discussion of an international nature which is referred to it for that purpose by the Governing Board of the Pan-American Union or any signer of the present Convention.

When the Tribunal is to give an opinion on a question of an international nature not relating to a difference that has already arisen, it shall designate a special commission of three to five members.

When it is to give an opinion on a question which constitutes the subject of an existing disagreement, it shall do so under the same conditions as if the case had been submitted to it for its decision.

ARTICLE 75.—The languages of the Tribunal shall be the official languages of the Contracting Republics.

If the Parties do not determine the language or languages to be used, the Tribunal shall determine them at the request of the one or the other.

ARTICLE 76.—The cases shall be presented to the Tribunal by notification

of the special convention or by a written application addressed to the Secretary General. In either case, the matter in dispute and the contending Parties have to be indicated.

Immediately thereupon, the Secretary General shall communicate the application to all those concerned.

ARTICLE 77.—The Tribunal shall be empowered to indicate, if it considers that the circumstances require it, any provisional measures to be taken in order to protect the respective rights of each one of [t]he Parties.

Pending the final decision, notice of the measures suggested shall be given at once to the Parties and to the Governing Board of the Pan-American Union.

ARTICLE 78.—The Parties shall be represented by agents.

They shall have the aid of lawyers or advocates before the Tribunal.

ARTICLE 79.—The procedure shall consist of two parts: written and oral.

ARTICLE 80.—The written procedure shall consist of the communication to the judges and parties, of cases, counter-cases and, if necessary, replies; and also of the communication of all papers and documents in support thereof.

These communications shall be made through the Secretary General, in the order and within the time fixed by the Tribunal.

To each Party shall be transmitted a certified copy of every document presented by the other Party.

ARTICLE 81.—The oral procedure shall consist in the hearing of the witnesses, experts, agents and advocates by the Tribunal.

ARTICLE 82.—For all notifications to persons who are not agents and advocates, the Tribunal shall address itself to the Government of the American Republic on whose territory the notification is to be made.

The same provision shall apply whenever steps are to be taken to obtain proofs.

ARTICLE 83.—The hearings shall be public, except when the Tribunal decides otherwise or the Parties demand that they shall not be.

ARTICLE 84.—Minutes shall be kept of each session and signed by the President and the Secretary General.

ARTICLE 85.—The Tribunal shall adopt provisions for the holding of the trial, decide the manner and period in which each Party has to present its arguments and take all measures relative to the evidence.

ARTICLE 86.—The Tribunal may demand, even before the hearing begins, that the agents present any document or furnish any explanation. Note shall be taken of any refusal to do so.

ARTICLE 87.—The Tribunal may at any time entrust to any individual, institution, office, commission or other organism which it elects, the work of carrying out an investigation or giving an expert opinion.

ARTICLE 88.—During the hearing, the judges may put any questions considered necessary by them to the witnesses, agents, experts or advocates.

The agents and advocates shall have the right to ask through the President any questions which the Tribunal deems useful.

ARTICLE 89.—After the Tribunal has received the evidence within the time specified for that purpose, it may refuse to accept other oral or written evidence that one of the Parties desires to present, unless the other gives its consent.

ARTICLE 90.—Should one of the Parties not appear before the Tribunal or fail to defend its case, the other Party may demand of the Tribunal that it decide the claim in its favor.

The Tribunal, before doing so, shall ascertain not only that it has competence in accordance with Articles 71, 72 and 74, but also that the claim is supported by material evidence and fundaments of fact and law.

ARTICLE 91.—When the agents and lawyers have finished their case, the President shall declare the procedure closed.

The Tribunal shall withdraw to study the decision.

The deliberations of the Tribunal shall be carried on in private and shall be secret.

ARTICLE 92.—All questions shall be decided by a majority of votes of the members present at the hearing.

In case of a tie, the President shall cast the deciding vote.

ARTICLE 93.—The award shall express the reasons on which it is based and shall contain the names of the judges who have taken part in the decision.

ARTICLE 94.—In case the Tribunal's award is by majority, the dissenting members shall have the right to express their reasons, if they so desire.

ARTICLE 95.—The award or decision shall be signed by the President and the Secretary General. It shall be read in public audience, after notification of the agents.

ARTICLE 96.—The award shall be final, unless petition for its revision is made within three months. In case of doubt as to the meaning and scope of the award, the Tribunal shall interpret it at the request of any of the Parties.

ARTICLE 97.—Within the period of ..... appeal may be made from the award of the Tribunal of the First Instance, founded on the non-application, or error in the application or interpretation, of a principle of law.

The writ of appeal shall be represented within the period of ..... and the Tribunal of Appeal shall decide thereupon at a date to be fixed by the President of this section after consulting the Parties.

The appellant shall present his arguments in writing to the Secretary General of the Tribunal at a date to be fixed by the President, and the opposite Party shall also reply in writing at a date to be fixed in the same manner.

Within a time to be fixed by the President, after consulting with the Parties, an early date shall be fixed for the hearing. Questions of law shall be discussed in conformity with the procedure established by the Regulation of the Tribunal.

Each of the Parties shall have the right to give his opponent an oral reply, after which the Tribunal shall declare the procedure closed.

The award shall be read in public audience, the agents of the Parties having previously been notified to attend.

Members of the Tribunal dissenting with the award may express in writing the grounds for their dissent.

ARTICLE 98.—The award of the Tribunal of Appeal shall be final.

In case of doubt as to the meaning or scope thereof, the Tribunal shall interpret it at the request of any of the Parties.

ARTICLE 99.—The application for the revision of an award can only be made when founded on the discovery of some fact subsequent to the award and of such a nature that it would have been a decisive factor and that, when the award was handed down, such fact was unknown to the Tribunal and also to the Party asking for revision, provided, furthermore, that the ignorance thereof is not due to the negligence of the latter.

The revision procedure shall be initiated by a resolution of the Tribunal, expressly stating the existence of the new fact, recognizing that its character justifies revision and declaring that the admission of the application is in order.

The Tribunal may demand submission to the award before admitting the revision procedure.

The application for revision must be made within three months at the latest after the discovery of the new fact.

ARTICLE 100.—If a Republic considers that it has some interest of a legal character which might be affected by the award, it may present an application to the Tribunal to be permitted to participate as a Party.

It shall belong to the Tribunal to decide upon this application.

ARTICLE 101.—Whenever the interpretation of a convention to which another signatory State is a party is concerned, the Secretary General shall immediately notify the latter thereof.

Every State thus notified has the right to participate in the proceedings, but if it uses this right, the interpretation given in the award shall be equally binding upon all.

ARTICLE 102.—Unless the Tribunal decides otherwise, each Party shall pay its own expenses.

TEMPORARY ARTICLES

ARTICLE 103.—Notwithstanding the provisions contained in Article 12, the members of the Permanent Commission of Conciliation may be elected for the first time by the Governing Board of the Pan-American Union, by a majority of votes.

ARTICLE 104.—In case of denunciation of this Treaty by one of the Contracting Parties or of its actual withdrawal, the members of the Permanent

Commission of Conciliation or of the American Court of Justice representing that state shall continue their functions through the term for which they have been appointed.

Annex 8

INTER-AMERICAN CONFERENCE FOR THE MAINTENANCE OF PEACE, BUENOS AIRES, 1-23 DECEMBER 1936, RESOLUTION XXVIII, *CODE OF PEACE*, APPROVED 21 DECEMBER 1936

(Carnegie Endowment for International Peace, Division of International Law, Washington, The International Conferences of American States, First Supplement, 1933-1940, JX1980.3 .Z5 .C22 Suppl.1, p. 161)

XXVIII

CODE OF PEACE[1]

WHEREAS:

In this Conference, it has been impossible to make an exhaustive study of the coordination of all the instruments of American peace, which study has been referred to the Committee of Experts, charged with the codification of international law, in order that the result of their efforts on this subject may be presented to the next International Conference of American States in Lima;

It has not been possible to consider the Mexican project on the Code of Peace, in the totality of its content and in its connected form as an organic whole, although various chapters have been studied separately by the different Commissions occupied with Conciliation, Arbitration and International Judicial Arrangement; and

This project was recommended to the consideration of the American Governments by the Conference of Montevideo in 1933, and was also favourably received by the last Inter-American Scientific Congress which met in Mexico,

The Inter-American Conference for the Maintenance of Peace

RESOLVES:

That the Mexican project on the Code of Peace be referred to the Committee of Experts which is preparing the Codification of International Law, in order that it may be included among the works which shall be taken into account when presenting a project on the coordination of American Peace Instruments at the next Conference in Lima.

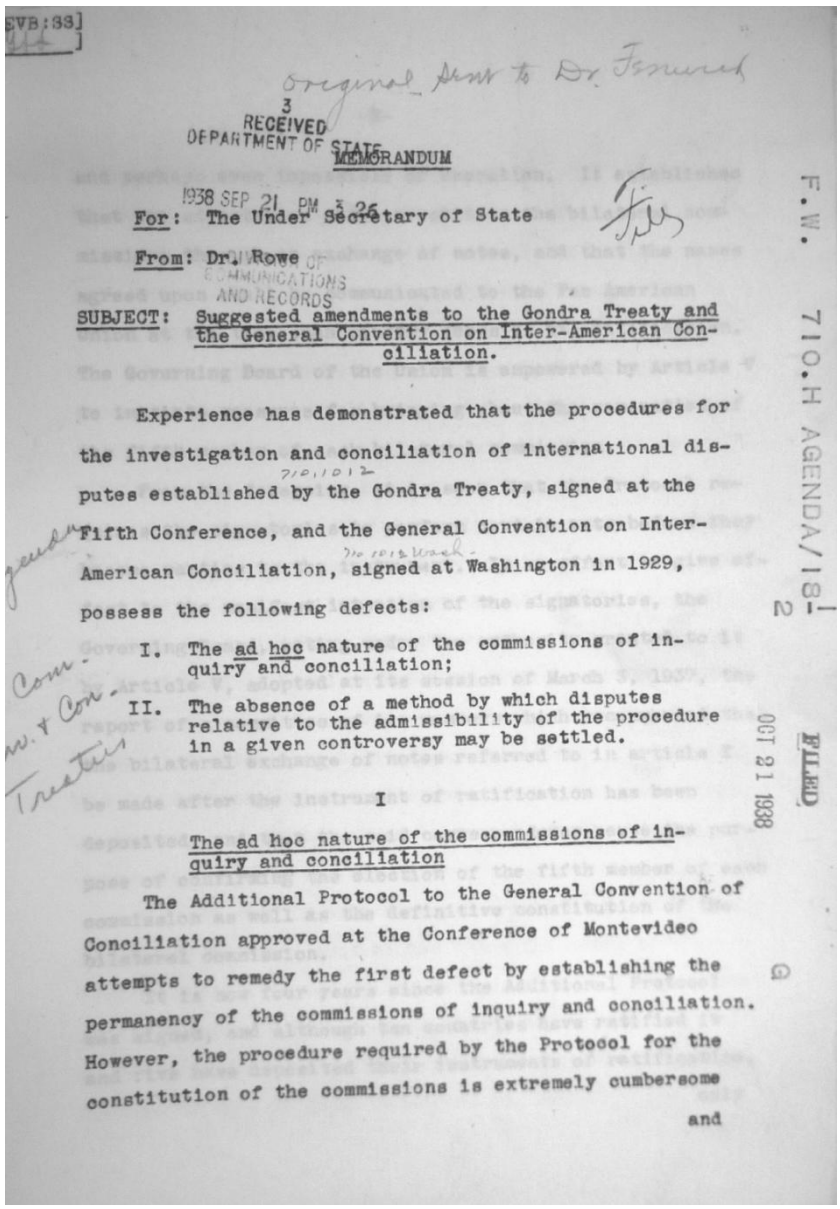
(Approved December 21, 1936).

[1] *Final Act, ibid.* For the Mexican project of the Code of Peace as presented to the Seventh Conference, see *supra*, p. 50. It was resubmitted to this Conference in a somewhat revised form. For subsequent action in its regard, see Resolution XV of the Eighth Conference, *infra*, p. 244.

Annex 9

MEMORANDUM FROM THE GENERAL DIRECTOR OF THE PAN-AMERICAN UNION, TO THE UNITED STATES UNDER SECRETARY OF STATE, 28 DECEMBER 1937

(United States National Archives, College Park, MD, RG 59 General Records of Department of State, Central Decimal File, 1930-1939, from 710.H/539 to 710H Agenda/130 261, pp. 1, 6)



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DEPARTMENT OF STATE

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DIVISION OF COMMUNICATIONS AND RECORDS

MEMORANDUM

For: The Under Secretary of State

From: Dr. J. Rowe

SUBJECT: Suggested amendments to the Gondra Treaty and the General Convention on Inter-American Conciliation.

Experience has demonstrated that the procedures for the investigation and conciliation of international disputes established by the Gondra Treaty, signed at the Fifth Conference, and the General Convention on Inter-American Conciliation, signed at Washington in 1929, possess the following defects:

I. The ad hoc nature of the commissions of inquiry and conciliation;

II. The absence of a method by which disputes relative to the admissibility of the procedure in a given controversy may be settled.

I

The ad hoc nature of the commissions of inquiry and conciliation

The Additional Protocol to the General Convention of Conciliation approved at the Conference of Montevideo attempts to remedy the first defect by establishing the permanency of the commissions of inquiry and conciliation. However, the procedure required by the Protocol for the constitution of the commissions is extremely cumbersome and

F.W. 710.H AGENDA/181

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to decide regarding the admissibility of the procedure as a preliminary point.

- - - -

My thought in presenting these observations to you is to raise the question of the desirability of a reexamination of the Pan American peace treaties, for the purpose of ascertaining the measures that may be taken to strengthen these instruments where experience has shown them to be weak. The Eighth Conference, to be held at Lima next year, will offer the opportunity for the adoption of the necessary diplomatic instruments.

As you know, the Buenos Aires Conference requested the Committee of Experts on the Codification of International Law to study this problem and submit its recommendations to the Lima Conference. At the meeting held at Washington last April, the Committee of Experts designated Dr. Afranio de Mello Franco to report on this subject. Unfortunately, poor health has prevented Dr. Mello Franco from doing anything on this topic, and while it may be that he will be able to complete his report and projects in time, I believe it to be highly desirable for this Government to consider the possibility of taking the initiative at the forthcoming Conference at Lima in recommending additions to the existing treaties of peace with the view of increasing their usefulness.

A

Annex 10

DELEGATION OF THE UNITED STATES OF AMERICA TO THE EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, LIMA, 9-27 DECEMBER 1938, *REPORT OF THE MEETINGS OF SUB-COMMITTEE 1 OF COMMITTEE I, CONSOLIDATION OF AMERICAN PEACE INSTRUMENTS AND AGREEMENTS,* 19 DECEMBER 1938

(United States National Archives, College Park, MD, State/Foreign Relations Cluster, RG 43 Records of International Conferences, Commissions and Expositions: International conference records, US Delegation to the Eighth International Conference of American States. Copies of Conference Documents 1938. Entry 253. p. 5)

(…)

[Excerpt transcribed from p. 5]

(…)

Dr. Hackworth explained at some length that the draft presented by the United States consists merely of a codification of the pertinent provisions of the eight peace instruments referred to in the preamble; that all new matter had been underlined and it could be seen at a glance that very little matter of this character had been introduced; …

(…)

Annex 11

EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, LIMA, 9-27 DECEMBER 1938, *RESOLUTION XV, PERFECTION AND COORDINATION OF INTER-AMERICAN PEACE INSTRUMENTS*, APPROVED 21 DECEMBER 1938

(Pan American Union, "Report on the Documents Presented to the Eighth International Conference of American States Relative to the Improvement and Coordination of Inter-American Peace Instruments", *Improvement and Coordination of Inter-American Peace Instruments,* Vol. I, Part One, Washington, D.C., 1938, Appendix A, pp. 1-2)

A P P E N D I X "A"

RESOLUTION (XV)

ON

PERFECTION AND COORDINATION OF INTER-AMERICAN PEACE INSTRUMENTS

Approved at the Eighth International Conference of American States

WHEREAS:

The juridical measures to prevent war in America are scattered in numerous treaties, conventions, pacts, and declarations which it is necessary to coordinate into an organized and harmonious unified instrument;

The Mexican project of a Peace Code represents an appreciable effort to meet the need for such coordination, for which reason the Montevideo Conference recommended it for the consideration of the American Governments. It was also taken up by the American Scientific Congress at Mexico City and was referred by the Conference for the Maintenance of Peace to the Committee of Experts, who approved the idea of codification and introduced important modifications into the project before reporting on it to this Conference;

The American Governments, in spite of the recommendation of the Montevideo Conference, have not expressed their opinions and proposals with regard to the subject matter of the Code, opinions and proposals which are indispensable for a successful and efficient organization of measures to prevent war in America;

In the desire to improve American peace machinery, interesting projects containing excellent suggestions and points of view have been presented to this Conference, and there have been considered at the same time the technical rules and the dictates of experience. Among these projects should be mentioned that on the Consolidation of American Peace Agreements presented by the Delegation of the United States, by which there would be built up a process of pacific solution of differences between American States through the consolidation in a single instrument of the regulations contained in the eight treaties now in force.

Once the opinion of the governments has been determined

regarding the revised project of the Peace Code and with respect to the other projects mentioned, this matter must pass to an organization of a technical character, in order that this organization may undertake the work of coordination, taking into account the points of view of each State, the principles of American Law and the harmonizing of each of these with the legal systems of a universal character or tendency,

The Eighth International Conference of American States

RESOLVES:

1. That the Mexican project of a Peace Code, together with the ante-project of the Committee of Experts, the project of the United States of America on the Consolidation of American Peace Agreements and the other projects and reports presented to this Conference concerning measures to prevent war, be referred to the Pan American Union in order that the latter institution may classify and transmit them to each one of the American Governments, requesting their opinions and proposals which may serve as a basis for the codification of those instruments.

2. That the American Governments, within a reasonable length of time, transmit their replies to the Pan American Union and that the latter send them without delay, together with all the material referred to in the previous paragraph, to the International Conference of American Jurists which will undertake the definitive work of the Peace Code.

3. That the International Conference of American Jurists render a detailed report at the time of the meeting of the next International Conference of American States regarding the status of their labors in this matter.

Annex 12

INTER-AMERICAN JURIDICAL COMMITTEE, TEXT OF DOCUMENT A: *DRAFT TREATY FOR THE COORDINATION OF INTER-AMERICAN PEACE AGREEMENTS*, MINUTES OF THE INTER-AMERICAN JURIDICAL COMMITTEE, 1944

*(*Inter-American Juridical Committee*, Recommendations and Reports, Official Documents 1942-1944,* Imprensa Nacional, Rio de Janeiro, Brasil, 1945, pp. 53-68)

COORDINATION OF INTER-AMERICAN PEACE AGREEMENTS

The need of coordinating the numerous treaties, conventions and other agreements adopted by the American States during recent years was recognized by the Eighth International Conference of American States held at Lima in 1938. In a resolution (No. XV), entitled "Perfection and Coordination of Inter-American Peace Instruments", the Conference called attention to the fact that the juridical measures to prevent war were scattered in numerous treaties and other agreements, and that it was necessary to coordinate them into a single instrument. The Conference then referred to the Pan American Union the various projects that had been submitted with the request that they be classified and transmitted to the American Governments. The replies of the American Governments were to be transmitted to the Pan American Union, and from the Union to the International Conference of American Jurists, which would then undertake the definitive work of coordination.

Acting on the basis of the resolution of the Lima Conference the Governing Board of the Pan American Union approved, on May 6, 1943, a report of its Committee on the Codification of International Law calling upon the Juridical Committee to prepare a project of a coordinated peace agreement which could be made available to the Conference of Jurists when it convened.

For convenience, the two treaties drafted by the Juridical Committee are referred to as Documents A and B. The accompanying report is referred to as Document C. The italics in these documents indicate modifications in or additions to the original texts of the treaties.

TEXT OF DOCUMENT A (*)

DRAFT TREATY FOR THE COORDINATION OF INTER-AMERICAN PEACE AGREEMENTS

Part I. GENERAL OBLIGATION TO SETTLE DISPUTES BY PEACEFUL PROCEDURES

Article I

The High Contracting Parties solemnly declare that they condemn recourse to war for the settlement of inter- Kellogg-Briand Pact (as accepted in Convention to

(*) The Draft Treat for the Coordination of Inter-American Peace Agreements, the Draft of an Alternative Treaty relating to

Coordinate Existing Treaties), 1928.

Anti-War Treaty, 1933, Article X.

national controversies and renounce it as an instrument of national policy in their relations with one another; and they further declare that the settlement of disputes or controversies of any kind that may arise among them shall be effected only by the pacific means which have the sanction of international law.

Part. II. THE PREVENTION OF CONTROVERSIES

Article II

Treaty on the Prevention of Controversies, 1936, Article I.

The High Contracting Parties, with the object of adopting a preventive system for the consideration of possible causes of future controversies and their settlement by pacific means, and convinced that whatever assures and facilitates compliance with the treaties in force constitutes an effective guarantee of international peace, and without prejudice to obligations previously entered into by virtue of international agreements, agree to establish Permanent Bilateral Mixed Commissions which shall be composed of representatives of the signatory governments, and which shall in fact be constituted at the request of any of them, notice being given by it of such request to the other signatory Governments.

Each government shall appoint its own representative to the said commission, the meetings of which are to be held, alternatively, in the capital city of one and the other Governments represented in each of them. The first meeting shall be held at the seat of the Government which convokes it.

Article III

Ibid., Article 2.

The duty of the aforementioned Commissions shall be to study, with the primary object of eliminating them, as far as possible, the causes of future difficulties or controversies; and to propose additional or detailed lawful measures which it might be convenient to take in order to promote, as far as possible, the due and regular application of treaties in force between the respective parties, and also to promote the development of increasingly good relations in all ways between the two countries dealt with in each case.

Peaceful Procedures, and the Report to accompany the two treaties were forwarded to the Pan American Union on June 12, 1944. The Pan American Union acknowledged their receipt on July 6, 1944.

Article IV

After each meeting of any of the said preventive Commissions a minute shall be drawn and signed by its members setting out the considerations and decisions thereof and such minute shall be transmitted to the governments represented in the Commissions.

Ibid., Article 3.

Part III. PROCEDURE OF MEDIATION

Article V

When a controversy arises between them that cannot be settled by the usual diplomatic means, the High Contracting Parties may have recourse to the good offices or mediation of an eminent citizen of any of the other American countries, preferably chosen from a general list made up in accordance with the following article.

Inter-American Treaty on Good Offices and Mediation, 1936 Article I.

Article VI

To prepare the aforementioned list, each Government, as soon as the present treaty is ratified, shall name two citizens selected from among the most eminent by reason of their high character and juridical learning.

The designations shall immediately be communicated to the Pan American Union, which shall prepare the list and shall forward copies thereof to the Contracting Parties.

Ibid., Article II.

Article VII

According to the hypothesis set forth in Article V, the countries in controversy shall, by common agreement, select one of the persons named on this list for the purposes of mediation hereinafter set forth.

The person selected shall name the place where, under his chairmanship, one duly authorized representative of each of the parties shall meet in order to seek a peaceful and equitable solution of the difference.

If the parties are unable to agree concerning the selection of the person lending his good offices or mediation, each one shall choose one of those named on the list. The two citizens chosen in this way shall select, from among the names listed, a third person who shall undertake the functions referred to, endeavoring, in so far as possible, to make a choice that shall be acceptable to both parties.

Ibid., Article III.

Article VIII

Ibid., Article IV.

The mediator shall determine a period of time, not to exceed six nor be less than three months for the Parties to arrive at some peaceful settlement. Should this period expire before the Parties have reached some solution, the controversy shall be submitted to the procedure of *investigation and conciliation* or to the *procedure of arbitration* provided for in subsequent articles of this treaty.

Article IX

General Convention of Inter-American Conciliation, 1929 Article 5.

In addition to the *special* procedure of mediation above provided for, the High Contracting Parties may, upon their own motion, or at the request of one or more of the Parties to the controversy, tender their good offices or their mediation jointly or severally. But the High Contracting Parties agree not to make use of those means of pacific settlement during such time as the Parties in controversy may themselves be having recourse to one or another of the special procedures provided for in this treaty.

Part IV. PROCEDURE OF INVESTIGATION AND CONCILIATION

Article X

Gondra Treaty, 1923 Article I.

General Convention of Inter-American Conciliation. Articles 1, 2.

The High Contracting Parties agree that all controversies which for any cause whatever may arise or may have arisen between two or more of them and which it has not been possible to settle by diplomatic negotiation, or to submit to mediation or to arbitration in accordance with existing treaties, shall be submitted for investigation and report to a Commission to be established in the manner provided for in Article XIV. Coincident with its functions of investigation the Commission shall exercise the functions of a Commission of conciliation, as set forth in subsequent articles of this treaty.

In accordance with the general obligation set forth in Article I of this treaty, the High Contracting Parties undertake, in case of disputes, not to begin mobilization or concentration of troops on the frontier of the other Party, nor to engage in any hostile acts or preparations for hostilities.

Article XI

Anti-War Treaty, Article V.

The High Contracting Parties and the States which may in the future adhere to this treaty may not formulate, at the time of signature, ratification, or adherence, other limitations to the conciliation procedure than those which are indicated below:

a) Differences for the solution of which treaties, conventions, pacts, or pacific agreements of any kind whatever may have been concluded, which in no case shall be considered as annulled by this agreement, but supplemented thereby insofar as they tend to assure peace; as well as questions or matters settled by previous treaties;

b) Disputes which the Parties prefer to solve by direct settlement or to submit by common agreement to an arbitral or judicial solution;

c) Questions which international law leaves to the exclusive competence of each State, under its constitutional system, for which reason the Parties may object to their being submitted to the conciliation procedure before the national or local jurisdiction has decided definitively; except in the case of manifest denial or delay of justice, in which case the conciliation procedure shall be initiated within a year at the latest;

d) Matters which affect constitutional precepts of the Parties to the controversy. In case of doubt each Party shall obtain the reasoned opinion of its respective tribunal or supreme court of justice, if the latter should be invested with such powers.

The High Contracting Parties may communicate at any time *to the Pan American Union* an instrument stating that they have abandoned wholly or in part the limitations established by them in the conciliation procedure.

The effect of the limitations formulated by one of the contracting Parties shall be that the other Parties shall not consider themselves obligated in regard to that Party save in the measure of the exceptions established.

Article XII

Gondra Treaty, Article III.

Two Commissions, to be designated as "Permanent Diplomatic Commissions of Investigation and Conciliа-

General Convention, Article 3.

Additional Protocol to the General Convention, 1933 Article 3.

tion", shall be established with their seats at Washington (United States of America) and at Montevideo (Uruguay). They shall be composed of the three American diplomatic agents longest accredited in said capitals, and at the call of the Foreign Offices of those States they shall organize, appointing their respective chairmen. Their functions shall be limited to receiving from the interested Parties the request for a convocation of the Commission of Investigation and Conciliation, and to notifying the other Party thereof immediately; or to promote the rapid organization of the Commission if it has not been previously constituted in accord with the following articles.

The Party initiating the procedure established by this Treaty may address itself, in doing so, to the Permanent Diplomatic Commission which it considers most efficacious for a rapid convocation or organization of the Commission of Investigation and Conciliation.

Once the request for convocation or organization has been received and the Permanent Diplomatic Commission has made the respective notifications, the question or controversy existing between the Parties and as to which no agreement has been reached will *ipso facto* be suspended.

Article XIII

General Convention, Article 3.

These Permanent Diplomatic Commissions shall be under the obligation of exercising conciliatory functions, either on their own motion when it appears that there is a prospect of disturbance of peaceful relations, or at the request of a Party to the dispute, until the Commission of Investigation and Conciliation referred to in Article X is organized.

Article XIV

Gondra Treaty, Article IV.

General Convention, Article 2.

Anti-War Treaty, Article VI.

Additional Protocol, Articles 1, 2.

The Commission of Investigation and Conciliation shall be composed of five members, all nationals of American States, appointed in the following manner:

Each of the High Contracting Parties shall, at the time of the deposit of its ratification of the present Treaty, forward to the Pan American Union the names of the two persons whom they are authorized to designate as members of the various bilateral commissions. Of these two persons appointed by a State to each commission, only one may be a national of its country or a person who has permanent residence in its country or who is in its service. Any of the Contracting Parties may replace the members which have

been designated, whether they be nationals or foreigners; but at the same time the substitute shall be named. In case the substitution is not made the replacement shall not be effective.

The fifth member shall be chosen by common accord by the four appointed members, but he shall not be a citizen of a nation already represented on the particular commission. Any of the Governments may refuse to accept the fifth member so chosen, for reasons which it may reserve to itself; and in such event a substitute shall be appointed, with the mutual consent of the Parties, within thirty days following the notification of this refusal. In the event of the failure of agreement upon a fifth member, the designation shall be made by the President of an American Republic not interested in the dispute, who shall be selected by lot by the commissioners already appointed, from a list of not more than six American Presidents to be formed as follows: each Government party to the controversy, or, if there are more than two Governments directly interested in the dispute, the Government or Governments on each side of the controversy shall designate three Presidents of American States which maintain the same friendly relations with all the Parties to the dispute.

Gondra Treaty, Article IV.

Following the deposit by each State of its ratification of this Treaty and the designation of the persons who are to constitute members of the several bilateral commissions, it shall be left to the Governing Board of the Pan American Union to initiate measures for bringing about the nomination of the fifth member of each commission in accordance with the provisions of the preceding paragraph. (*)

Additional Protocol, Article 5.

(*) The provisions of the Gondra Treaty with respect to the organization of the conciliation commissions were left untouched by the General Convention of Inter-American Conciliation of 1929. The Anti-War Treaty of 1933 introduced changes in respect to the manner of selecting the three non-national members of the several commissions and provided for the preferential designation by the Parties of their supreme courts of justice to perform the duties of the conciliation commissions. The *ad hoc* character of the commissions was left unchanged. The Additional Protocol of December 23, 1933, abandoned the system of conciliation commissions created *ad hoc* and substituted a system of permanent bilateral commissions, created in anticipation of possible future disputes. The provisions of the Additional Protocol, being the latest in date of the several agreements, are given precedence in the Coordinated Draft.

Gondra Treaty, Article IV (as modified by the Additional Protocol).

Whenever there are more than two Governments directly interested in the controversy, and the interests of two or more of them are identical the Commission of Investigation and Conciliation in such case shall consist of the members appointed by the particular governments on opposite sides of the controversy to the several commissions existing between them or to be created between them if not already constituted, together with a chairman who shall be selected by agreement between the appointed members, or, failing such agreement, by the procedure provided in this article for the designation of fifth members of single commissions by the President of an American Republic. In the event that the non-national member of a particular commission should be a national of one of the parties in controversy, the Government appointing the said member shall appoint a substitute of another nationality.

Article XV

Gondra Treaty, Article IV

General Convention, Articles 7, 8.

Once the Commission has been thus organized in the capital city, seat of the Permanent Commission which issued the order of convocation, it shall notify the respective Governments of the date of its inauguration, and it may then determine upon the place or places in which it will function, taking into account the greater facilities for investigation.

The Commission of Investigation and Conciliation shall itself establish its rules of procedure. There are recommended to be included in these rules the following provisions:

Gondra Treaty, Appendix.

1. The Signatory Governments grant to all the Commissions which may be constituted the power to summon witnesses, to administer oaths and to receive evidence and testimony.

2. During the investigation the Parties shall be heard and may have the right to be represented by one or more agents and counsel.

3. All members of the Commission shall take oath duly and faithfully to discharge their duties before the highest judicial authority of the place where it may meet.

4. The investigation shall be conducted so that both Parties shall be heard. Consequently, the Commission shall notify each Party of the state-

ments of facts submitted by the other, and shall fix periods of time in which to receive evidence.

Once the Parties are notified, the Commission shall proceed to the investigation, even though they fail to appear.

5. As soon as the Commission of Investigation and Conciliation is organized, it shall at the request of any of the Parties to the dispute, have the right to fix the status in which the Parties must remain, in order that the situation may not be aggravated and matters may remain in *statu quo* pending the rendering of the report by the Commission.

In the absence of stipulation to the contrary, the decisions and the final report of the Commission shall be agreed to by the majority of its members; but the Commission may not pronounce judgment on the substance of the case except in the presence of all its members. Gondra Treaty, Article IV. Anti-War Treaty, Article IX.

The labors and deliberations of the Commission shall not be made public except by a decision of its own to that effect, with the assent of the Parties. Anti-War Treaty, Article IX.

Each Party shall bear its own expenses and a proportionate share of the general expenses of the Commission. Gondra Treaty, Article IV.

Article XVI

The Commission shall be at liberty to begin its work with an effort to conciliate the differences submitted to its examination with a view to arriving at a settlement between the Parties. General Convention, Article 4 (1).

Failing in its preliminary effort at conciliation, the Commission shall then proceed to an investigation of the dispute. To this end the Parties to the controversy shall furnish, within a period of three months, the antecedents and data necessary for the investigation. Gondra Treaty, Article V.

The Commission shall be at liberty to conciliate the Parties at any time which, in the opinion of the Commission, shall be considered to be favorable during the course of the investigation and within the period of time fixed therefor in Article XIX. The function of the Commission as an organ of conciliation is to procure the conciliation of the differences subject to its examination by endeavoring to effect a settlement between the Parties. General Convention, Articles 4 (2), 6.

Article XVII

Gondra Treaty, Article V.
General Convention, Article 4.

The Commission shall render its report upon the case within one year from the date of its inauguration. If, however, it should prove impossible to finish the investigation or to draft the report even within the period of one year, it may be extended for an additional six months or longer, provided the Parties to the controversy so agree and notify the Commission in due time.

Article XVIII

Gondra Treaty, Article VI.

The findings of the Commission shall be considered as reports upon the circumstances of the disputes which were the subject of the investigation; and they shall not have the value or force of judicial decisions or arbitral awards.

Article XIX

Gondra Treaty, Article VII.

Once the report containing the findings of the Commission upon the facts of the controversy is in possession of the Governments parties to the dispute, six months time will be available for renewed negotiations in order to bring about a settlement of the controversy in view of the findings of the said report.

General Convention, Articles 6, 10.

During this period of six months the Commission shall endeavor to procure the conciliation of the differences subject to its examination by endeavoring to effect a settlement between the Parties. At the close of the period of six months it shall set forth in a second report the bases of settlement which it proposes for the equitable solution of the controversy.

Ibid., Article 9.

This report, in like manner as the report upon the circumstances of the dispute, shall not have the character of a decision or of an arbitral award and shall not be binding upon the Parties either as regards the exposition or interpretation of the facts or as regards the questions of law.

Ibid., Article 10.

The Commission in transmitting its second report to the Parties shall fix a period of time, which shall not exceed six months, within which the Parties shall pass upon the bases of settlement above referred to.

Ibid., Article 11.

Once the period of time fixed by the Commission for the Parties to make their decisions has expired, the

Commission shall set forth in a final act the decision of the Parties, and if the conciliation has been effected, the terms of the settlement.

Article XX

Once the procedure of investigation and conciliation is under way it shall be interrupted only by a direct settlement between the Parties or by their agreement to accept absolutely the decision *ex aequo et bono* of an American Chief of State or to submit the controversy to arbitration or to an international court.

Ibid., Article 13.

Part V. PROCEDURE OF ARBITRATION

Article XXI

The High Contracting Parties bind themselves to submit to arbitration all differences of an international character which have arisen or may arise between them by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy and which are juridical in their nature by reason of being susceptible of decision by the application of the principles of law.

General Treaty of Inter-American Arbitration, 1929 Article I.

There shall be considered as included among the questions of juridical character:

a) The interpretation of a treaty;

b) Any question of international law;

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

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

The provisions of this Article shall not preclude any of the Parties, before resorting to arbitration, from having recourse to the procedure of investigation and conciliation established in this treaty.

Article XXII

There are excepted from the stipulations of this treaty the following controversies:

a) Those which are within the domestic jurisdiction of any of the Parties to the dispute and are not controlled by international law; and

Ibid., Article 2.

b) Those which affect the interest or refer to the action of a State not a Party to this Treaty.

Protocol of Progressive Arbitration, 1929. Article I.

Any Party to this treaty may at any time deposit with the Pan American Union an appropriate instrument evidencing that it has abandoned in whole or in part the exceptions from arbitration stipulated in this article or in a reservation or reservations attached by it to this treaty.

Article XXIII

General Treaty, Article 3.

The arbitrator or tribunal who shall decide the controversy shall be designated by agreement of the Parties.

In the absence of an agreement the following procedure shall be adopted:

Each Party shall nominate two arbitrators, of whom only one may be a national of said Party or selected from the persons whom said Party has designated as members of the Permanent Court of Arbitration at The Hague. The other member may be of any other American nationality. These arbitrators shall in turn select a fifth arbitrator who shall be the president of the court.

Should the arbitrators be unable to reach an agreement among themselves for the selection of a fifth American arbitrator, or in lieu thereof, of another who is not an American, each Party shall designate a non-American member of the Permanent Court of Arbitration at The Hague, and the two persons so designated shall select the fifth arbitrator, who may be of any nationality other than that of a Party to the dispute.

Article XXIV

Ibid., Article 4.

The Parties to the dispute shall formulate by common accord in each case a special agreement which shall clearly define the particular subject-matter of the controversy, the seat of the court, the rules which will be observed in the proceedings, and the other conditions to which the Parties may agree.

If an accord has not been reached with regard to the agreement within three months reckoned from the date of the installation of the court, the agreement shall be formulated by the court.

Article XXV

In case of death, resignation or incapacity of one or more of the arbitrators the vacancy shall be filled in the same manner as the original appointment.

Ibid., Article 5.

Article XXVI

When there are more than two States directly interested in the same controversy, and the interests of two or more of them are similar, the State or States which are on the same side of the question may increase the number of arbitrators on the court, provided that in all cases the Parties on each side of the controversy shall appoint an equal number of arbitrators. There shall also be a presiding arbitrator selected in the same manner as that provided in the last paragraph of Article XXIII, the Parties on each side of the controversy being regarded as a single Party for the purpose of making the designation therein described.

Ibid., Article 6.

Article XXVII

The award, duly pronounced and notified to the Parties, settles the dispute definitively and without appeal.

Differences which arise with regard to its interpretation or execution shall be submitted to the decision of the court which rendered the award.

Ibid., Article 7.

Article XXVIII

The reservations made by one of the High Contracting Parties shall have the effect that the other Contracting Parties are not bound with respect to the Party making the reservations except to the same extent as that expressed therein.

Ibid., Article 8.

Part VI. PROCEDURE OF CONSULTATION

Article XXIX

The High Contracting Parties, recognizing their common interest in the maintenance of peace upon the American continent, agree that, in the event of a controversy between two or more of them and of the failure of the Parties to the controversy to put into effect the procedures which they have agreed to accept, resulting in

Convention to Coordinate, Extend and Assure the Fulfillment of Existing Treaties, 1936. Article 2.

Continental Solidarity in the Observance of Treaties, 1942.

a threat to the peace, they will, in accordance with the terms of the Convention for the Maintenance, Preservation and Reestablishment of Peace, signed on December 23, 1936, resort to the procedure of consultation therein provided for, taking counsel together with full recognition of their juridical equality as sovereign and independent states and of their general right to individual liberty of action, with the object of assisting, through the tender of good offices and mediation, the fulfillment by the Parties in controversy of their obligations of pacific settlement.

In accordance with the provisions of Article I of this treaty the High Contracting Parties agree that while the procedure of consultation referred to in the preceding paragraph is in progress they will not have recourse to hostilities or take any military action whatever.

Article XXX

Convention to Coordinate Existing Treaties, Article 5.

The High Contracting Parties agree that in the event that the methods of peaceful settlement provided by the present treaty should in any particular case fail to result in a pacific settlement of differences between two or more of them and hostilities should break out they will adopt in their character as neutrals a common and solidary attitude in order to discourage or prevent the spread or prolongation of hostilities.

Ibid., Article 6.

To this end they will consult immediately with one another to determine whether such hostilities shall be regarded as constituting a state of war and what measures must be taken to give effect to their common and solidary attitude as neutrals, subject in all cases to the obligations incumbent upon those American States that are members of the League of Nations.

Part VII. FINAL PROVISIONS

Article XXXI

The present treaty shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures. The original instrument shall be deposited with the Pan American Union, which shall transmit authentic certified copies to the Governments for the aforementioned purpose of ratification. The instruments of ratification shall be deposited in the archives of

the Pan American Union in Washington, which shall notify the signatory governments of such deposit. Such notification shall be considered as an exchange of ratifications.

Article XXXII

This treaty shall come into effect between the High Contracting Parties in the order in which they deposit their ratifications, and with respect to each State after the expiration of thirty days from the date of the deposit of its ratification.

Any American State not a signatory of this treaty may adhere to it by transmitting the official instrument setting forth such adherence to the Pan American Union, which shall notify the other High Contracting Parties in the manner heretofore mentioned.

The present treaty shall remain in effect indefinitely, but it may be denounced by means of notice given to the Pan American Union one year in advance, at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other signatories. Notice of denunciation shall be transmitted by the Pan American Union to the other signatory governments. Denunciation shall not affect any pending proceedings instituted before notice of denunciation is given.

Article XXXIII

Upon the coming into effect of this Treaty as between any two of the Parties, the following treaties, conventions and protocols shall cease to be in effect between such Parties in respect to any provisions contained therein which may be in conflict with the provisions of this Treaty, except in the case of any proceedings initiated or taken pursuant to any of the said treaties, conventions, or protocols:

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

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

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

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

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

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

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

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

Rio de Janeiro, March 6, 1944.

s) *Francisco Campos.*
s) *Charles G. Fenwick.*
s) *L. A. Podestá Costa.*
s) *C. E. Stolk.*
s) *Antonio Gómez Robledo.*

Annex 13

INTER-AMERICAN JURIDICAL COMMITTEE, *TEXT OF DOCUMENT B: DRAFT OF AN ALTERNATIVE TREATY RELATING TO PEACEFUL PROCEDURES*, AND *TEXT OF DOCUMENT C: REPORT TO ACCOMPANY THE DRAFT TREATY FOR THE COORDINATION OF INTER-AMERICAN PEACE AGREEMENTS AND DRAFT OF AN ALTERNATIVE TREATY*, MINUTES OF THE INTER-AMERICAN JURIDICAL COMMITTEE, 1944

(Inter-American Juridical Committee*, Recommendations and Reports, Official Documents 1942-1944,* Imprensa Nacional, Rio de Janeiro, Brasil, 1945, pp. 69-79, 81-83)

TEXT OF DOCUMENT B

DRAFT OF AN ALTERNATIVE TREATY RELATING TO PEACEFUL PROCEDURES

Part I. GENERAL OBLIGATION TO SETTLE DISPUTES BY PEACEFUL PROCEDURES

Article I

The High Contracting Parties solemnly declare that they condemn recourse to war for the settlement of international controversies and renounce it as an instrument of national policy in their relations with one another; and they further declare that the settlement of disputes or controversies of any kind that may arise among them shall be effected only by the pacific means which have the sanction of international law.

Part II. PROCEDURE OF MEDIATION

Article II

In the event that a controversy should arise between two or more of them that cannot be settled by the usual diplomatic means, the High Contracting Parties may have recourse to the good offices or mediation of *one or more* eminent citizens of any of the other American countries, to be *chosen* by mutual agreement between the Parties, *preferably from the Permanent Panel of American Jurists constituted in accordance with Article VIII of this Treaty.*

Article III

If, in response to a proposal of mediation by one Party, the Parties should fail to agree *within a period of three months upon the selection of one or more mediators, the procedure of mediation referred to in Article II shall be regarded as inapplicable and the dispute shall then be submitted to arbitration, if applicable, or to investigation and conciliation, in accordance with the terms of the present Treaty.*

If the Parties agree upon the selection of a mediator, he shall immediately proceed to perform his functions as mediator. To this end he shall name the place where, under his chairmanship, one duly autho-

rized representative of each of the Parties shall meet in order to seek a peaceful and equitable solution of the controversy. *In case there are two or more mediators they shall proceed in the same manner.*

Article IV

The mediator or mediators shall determine a period of time, not to exceed six nor be less than three months, for the Parties to arrive at some peaceful settlement. Should this period expire before the Parties have reached some solution, the controversy shall be submitted *to the procedure of arbitration or to the procedure of investigation and conciliation* provided for in subsequent articles of this Treaty.

Article V

The special procedure of mediation above provided for shall not be held to preclude any of the High Contracting Parties, being strangers to the controversy, from tendering their good offices or their mediation, either individually or conjointly with others, and either upon their own motion or at the request of any of the parties to the controversy. But the High Contracting Parties agree not to offer their good offices or their mediation during such time as the parties in controversy may themselves be having recourse to one or another of the special procedures provided for in this Treaty.

Part III. PROCEDURE OF ARBITRATION

Article VI

The High Contracting Parties bind themselves to submit to arbitration all differences of an international character which have arisen or may arise between them by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy, or by mediation in accordance with the provisions of Articles II-IV of this Treaty, and which are juridical in their nature by reason of being susceptible of decision by the application of principles of law.

There shall be considered as included among questions of a juridical character:

a) The interpretation of a treaty;

b) Any question of international law; it being understood that matters which by international law are within the domestic jurisdiction of the individual State are not to be regarded as a subject of obligatory arbitration under the terms of this Treaty;

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

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

Article VII

Should the Parties disagree as to the juridical character of the controversy, they may submit that question to arbitration first. Should the Parties be in agreement that the controversy is not a juridical one, they may nevertheless submit it to arbitration on the basis of ex aequo et bono.

As an alternative to submission of the controversy to arbitration under the terms of this Article, the Parties may, by mutual agreement, submit the dispute to a court of international justice in accordance with the terms of a treaty to which they may both be parties, or to the procedure of investigation and conciliation set forth in the present Treaty.

The procedure of arbitration herein provided for may be proposed by either of the two parties in controversy. In the event that the other party fails to respond, or in the event that either is unwilling to submit to arbitration a difference of opinion with respect to the juridical character of the controversy, with the result that the procedure of arbitration has not been set in motion within a period of six months from the time when arbitration has been proposed, the controversy shall be submitted to the procedure of investigation and conciliation set forth in Part IV of this Treaty.

In the event that a particular controversy affects the interests or refers to the action of a third State which is not a Party to this Treaty *and the said State is unwilling to take part in the procedure of arbitration above provided for, the controversy between the two States Parties to this Treaty shall be submitted to the procedure of investigation and conciliation set forth in Part IV of this Treaty.*

Article VIII

Each of the High Contracting Parties shall, at the time of the deposit of its ratification of the present Treaty, designate to the Pan American Union the names of four persons, all nationals of one or another of the American States, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrator or of member of a commission of investigation and conciliation.

Two or more States may agree upon the selection in common of one or more members.

The same person may be selected by different States.

The persons so selected by all of the ratifying States shall constitute a permanent panel, to be known as the Permanent Panel of American Jurists, and their names shall be communicated by the Pan American Union to all of the States Signatories of this Treaty.

Any alteration in the list of persons shall be brought by the Pan American Union to the knowledge of the Contracting Parties.

The members of the panel shall ordinarily be appointed for a term of six years. The terms may be renewable.

Should a member of the panel die or resign, the same procedure shall be followed for filling the vacancy as was followed for appointing him. In this case the appointment shall be made for another period of six years.

Article IX

The arbitral tribunal to which the specific controversy shall be submitted shall be constituted as follows:

Each Party shall nominate two arbitrators *selected from the permanent panel provided for in Article VIII of this Treaty.* Of the two persons selected only one may be a national of the said Party or selected from persons nominated by the said Party. These four shall in turn *select from the panel* a fifth arbitrator, who shall be president of the arbitral tribunal.

Should the four arbitrators be unable to agree *within one month* upon a fifth arbitrator *they shall each separately arrange the panel of jurists in their order of preference and upon comparison of the lists the one who first receives a majority of votes shall be declared elected.*

Article X

When there are more than two States directly interested in the same controversy, and the interests of two or more of them are identical, the State or States which are on the same side of the controversy may increase the number of arbitrators on the court, provided that in all cases the Parties on each side of the controversy shall appoint an equal number of arbitrators. There shall also be a presiding arbitrator selected in the same manner as that provided in the last paragraph of Article IX, the Parties on each side of the controversy being regarded as a single Party for this purpose.

Article XI

The Parties to the dispute shall formulate by common accord, in each case, a special agreement which shall clearly define the particular subject-matter of the controversy, the seat of the arbitral tribunal, the rules to be observed in the proceedings, *the period within which the award shall be given,* and the other conditions to which the Parties may

agree. *The Parties may authorize the tribunal, in the special agreement, to decide the case* EX AEQUO ET BONO.

If an accord has not been reached with regard to the special agreement within three months reckoned from the date of the installation of the arbitral tribunal, the agreement shall be formulated by the tribunal.

The Parties may be represented before the arbitral tribunal by the agents they may find it convenient to appoint.

Article XII

The award shall be accompanied by an opinion justifying it; it shall be adopted by a majority vote; and it shall be published after notification to the Parties. The dissenting arbitrators shall have the right to state the basis of their dissent.

The award, duly pronounced and notified to the Parties, settles the dispute definitively and without appeal.

Differences which arise with regard to the interpretation or the execution of the award shall be submitted to the decision of the arbitral tribunal which rendered the award.

Within six months following its notification, the award shall be open to revision before the same tribunal at the request of one of the Parties in the event that a new fact is discovered unknown to the tribunal and to the Party soliciting the revision, if the tribunal is of the opinion that the said fact would have been a decisive factor in making the award.

Part IV. PROCEDURE OF INVESTIGATION AND CONCILIATION

Article XIII

The High Contracting Parties agree that all controversies which for any cause whatever may arise, or may have arisen, between two or more of them, and which it has not been possible to settle by direct negotiation, by mediation, or by the procedure of arbitration in accordance with the terms of this Treaty, shall be submitted to a Commission of Investigation and Conciliation in accordance with the provisions set forth in subsequent articles of this Treaty.

No reservations may be made with respect to the procedure of investigation and conciliation provided for in this Treaty.

Article XIV

Three Comissions, to be designated as "Permanent Diplomatic Commissions", shall be established with their seats at Washington (United States of America), at Montevideo (Uruguay), *and at Bogotá (Colombia)*, respectively. They shall be composed of the three American heads

of missions longest accredited in the said capitals. *However, in the event that with respect to a given dispute or conflict the commission would include the diplomatic representative of a Party to the dispute or conflict, the diplomatic representative next in length of service at the capital in question shall serve in his stead in dealing with that particular dispute or conflict. At the call of the senior diplomatic representatives* the members of the commissions shall organize, appointing their respective chairmen.

Article XV

The Party initiating the procedure of investigation and conciliation established by this Treaty may address itself, in doing so, to the Permanent Diplomatic Commission which it considers most efficacious for a rapid organization of the Commission of Investigation and Conciliation.

Once the request for convocation has been received and the Permanent Diplomatic Commission has made the respective notifications, the question or controversy existing between the Parties, and as to which no agreement has been reached, shall *ipso facto* be suspended, and *the Parties shall refrain from every act which might aggravate the controversy or which might alter the situation existing at the moment at which the controversy is submitted to conciliation.*

To that end both the Permanent Diplomatic Commission, before the Commission of Investigation and Conciliation has been constituted, as well as the latter when it has been constituted, may require of the Parties the adoption of the measures believed to be necessary.

Article XVI

The Commission of Investigation and Conciliation to which the specific controversy shall be submitted shall be constituted as follows:

Each Party shall, at the time the controversy is to be submitted to investigation and conciliation, nominate two members *selected from the Permanent Panel of American Jurists, established in pursuance of the terms of Article VIII of this Treaty.* Of the two persons selected only one shall be a national of the said Party or selected from persons nominated by the said Party. These four shall in turn select from the panel a fifth member, who shall be president of the commission.

Should the four members, *within a period of thirty days following the notification of their selection,* be unable to agree upon a fifth member, *they shall each separately arrange the panel of jurists in their order of preference, and upon comparison of the lists the one who first receives a majority of votes shall be declared elected, and shall exercise the functions of president of the commission.*

Article XVII

Whenever there are more than two States directly interested in the controversy, and the interests of two or more of them are identical, the State or States on each side of the controversy shall have the right to designate additional members, so far as may be necessary, so that both sides of the controversy may always have equal representation on the commission. *In such cases the selection of the presiding member shall be by the procedure set forth in the preceding article.*

Article XVIII

Once the Commission has been thus organized in the capital city, seat of the Permanent Diplomatic Commission which issued the order of convocation, it shall notify the respective Governments of the date of its inauguration, and it may then determine upon the place or places in which it will function, taking into account the greater facilities for its work.

Article XIX

The Commission of Investigation and Conciliation, acting as an organ of conciliation, has as its object to bring about a settlement of the controversies submitted to its examination, endeavoring at all times to obtain an agreement between the Parties.

To that end the Commission shall carry on its functions of conciliation, *hearing the Parties as often as it may be necessary*, and proposing to them bases of settlement. It shall conclude its work *within a period of six months from the date of its inauguration*, at which time it shall present its formal report. However, the Commission shall endeavor to fulfill its task within a shorter period; and the Parties may, by mutual agreement, lengthen or shorten the said period of six months.

If an agreement is reached between the Parties, the final report shall be limited as far as possible to the terms of the agreement reached; if no agreement is reached, the final report shall contain a summary of the work of the Commission. In either case the final report *shall be adopted by majority vote* and shall be published after being submitted to the Parties.

During the proceedings before the Commission the Parties shall be represented by *delegates with full powers* or by agents, who shall serve as intermediaries between them and the Commission. The Parties may make use of counsel and of technical experts.

Article XX

When, in the course of the proceedings referred to in the preceding article, it may be necessary, in the judgment of the Commission or of one

of the Parties, to clarify some point of fact or of law relative to the controversy, the Commission shall notify the Parties to that effect and the Parties shall furnish the necessary data and information.

In order to carry out this investigation the Commission shall draw up its rules of procedure, and it shall summon and hear witnesses and take all the measures necessary and proper to the better clarification of the point at issue.

The Commission shall thereupon present a report upon the circumstances of the controversy *within six months following the commencement of the investigation,* but it shall endeavor to conclude the proceedings within a shorter period. If it should be impossible to conclude the investigation within the said period, the time may be extended by agreement of the parties.

This report shall be submitted to the Parties as soon as possible, and the Commission shall continue its efforts of conciliation within the succeeding six months, seeking to make the bases of settlement rest as far as possible upon the results of the investigation.

The final report of the Commission shall be limited as far as possible to the terms of the settlement if an agreement has been reached between the Parties; and, if an agreement has not been reached, the report shall contain a summary of the work of the Commission, it shall be adopted by a majority vote and shall be published after being submitted to the Parties, as set forth in the preceding article.

Article XXI

If in the judgment of the Parties the controversy relates exclusively to questions of fact, the Commission of Investigation and Conciliation *shall limit itself to the investigation of the said questions of fact, in accordance with the formal procedure established in the preceding article;* and it shall conclude its activities with the report which it must present upon the circumstances of the controversy.

The Parties may be represented before the Commission in the manner in which they may deem convenient.

Article XXII

The reports referred to in Articles XIX, XX, and XXI, and the recommendations of the Commission of Investigation and Conciliation, shall not have the character of a judicial decision or of an arbitral award, and they shall not be binding upon the parties either in respect to the statement of the facts or as regards the questions of law; and they shall have no other character than that of suggestions submitted to the consideration of the Parties in order to facilitate the friendly settlement of the controversy.

Article XXIII

The Commission of Investigation and Conciliation shall forward to each of the Parties, as well as to the Pan American Union, a certified copy of the minutes of its proceedings which it may believe it necessary to draw up. These minutes shall not be published unless the Parties so decide.

Article XXIV

The Parties shall fix by mutual agreement the compensation which the members of the Commission of Investigation and Conciliation shall receive by way of honoraria and expenses.

Each Party shall pay its own costs and an equal part of the general expenses of the Commission.

Article XXV

Once the procedure of investigation and conciliation is under way it shall not be interrupted except by a direct settlement between the Parties or by their agreement to accept absolutely the decision *ex aequo et bono* of an American Chief of State, or to submit the controversy to arbitration or to judicial settlement.

Part V. PROCEDURE OF CONSULTATION

Article XXVI

The High Contracting Parties, recognizing their common interest in the maintenance of peace upon the American continent, agree that, in the event of a controversy between two or more of them and of the failure of the Parties to the controversy to put into effect the procedures which they have agreed to accept, resulting in a threat to the peace, they will, in accordance with the terms of the Convention for the Maintenance, Preservation and Reestablishment of Peace, signed on December 23, 1936, resort to the procedure of consultation therein provided for, taking counsel together with full recognition of their juridical equality as sovereign and independent States and of their general right to individual liberty of action, with the objet of assisting, through the tender of friendly good offices and of mediation, the fulfillment by the Parties in controversy of their obligations of pacific settlement. *Should the tender of friendly good offices and mediation fail, the procedures of consultation shall then be directed to determine which of the Parties is responsible for the breakdown of the prescribed procedures of peaceful settlement, and what measures must be taken to maintain law and order and to insure an equitable settlement of the controversy.*

Part VI. FINAL PROVISIONS

Article XXVII

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

Article XXVIII

This Treaty shall come into effect between the High Contracting Parties in the order in which they deposit their ratifications, and with respect to each State after the expiration of thirty days from the date of the deposit of its ratification.

Any American State not a signatory of this Treaty may adhere to it by transmitting the official instrument setting forth such adherence to the Pan American Union, which will notify the other High Contracting Parties in the manner heretofore mentioned.

The present Treaty shall remain in effect indefinitely, but it may be denounced by means of notice given to the Pan American Union one year in advance, at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other signatories. Notice of the denunciation shall be transmitted by the Pan American Union to the other signatory governments. Denunciation shall not affect any pending proceedings instituted before notice of denunciation is given.

Article XXIX

Upon the coming into effect of this Treaty as between any two of the Parties, the following treaties, conventions and protocols shall cease to be in effect between such Parties in respect to any provisions contained therein which may be in conflict with the provisions of this Treaty, except in the case of any proceedings initiated or taken pursuant to any of the said treaties, conventions, or protocols:

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

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

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

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

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

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

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

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

Rio de Janeiro, March 6, 1944.

s) *Francisco Campos.*
s) *Charles G. Fenwick.*
s) *L. A. Podestá Costa.*
s) *C. E. Stolk.*
s) *Antonio Gómez Robledo.*

TEXT OF DOCUMENT C

REPORT TO ACCOMPANY THE DRAFT TREATY FOR THE COORDINATION OF INTER-AMERICAN PEACE AGREEMENTS AND DRAFT OF AN ALTERNATIVE TREATY

I. CIRCUMSTANCES UNDER WHICH THE JURIDICAL COMMITTEE UNDERTOOK THE STUDY OF A COORDINATED TREATY

1. On May 7, 1943, the Director General of the Pan American Union communicated to the Inter-American Juridical Committee the fact that the Governing Board of the Union had on the previous day approved a report of a committee of the Board on the codification of international law proposing the formulation by the Juridical Committee of a specific codification project. A copy of the said report was included in the communication of the Director General.

The report in question calls attention to the resolution (No. XV) of the Eighth International Conference of American States on the Improvement and Coordination of Inter-American Peace Agreements, stating that "the juridical measures to prevent war in America are scattered in numerous treaties, conventions, pacts, and declarations, which it is necessary to coordinate into an organized and harmonious unified instrument". The report then lists the various agreements, including certain declarations on the procedure of consultation adopted at the Eighth International Conference of American States and the Meetings of the Ministers of Foreign Affairs of the American Republics; and it further makes reference to a number of projects presented to the Lima Conference which had for their purpose the coordination of the Inter-American peace machinery, and which were referred by the Conference to the International Conference of American Jurists. The report also observes that in view of the limited time available to the said Conference of Jurists it would be helpful if the Inter-American Juridical Committee could prepare a definitive project of a coordinated peace agreement which could be made available to the Conference of Jurists when it convenes.

2. With respect to the form of the project which the Juridical Committee is called upon to present, the report of the committee of

the Governing Board of the Union recommends the preparation of a single instrument embodying the principles now included in the separate agreements enumerated in the report. These agreements are listed as follows:

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

2. General Convention of Inter-American Conciliation, of January 5, 1929.

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

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

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

6. Convention for the Maintenance, Preservation and Reestablishment of Peace, of December 23, 1936.

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

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

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

10. Declarations on the Procedure of Consultation adopted at the Eighth International Conference of American States and the Meetings of the Ministers of Foreign Affairs of the American Republics.

In the preparation of this coordinated instrument the Juridical Committee is requested to take into account projects presented to the Lima Conference, as well as the observations of the Governments on those projects. The report also recommends that the coordinated treaty be limited to those principles which have already been accepted by all or some of the American Republics. Should the Juridical Committee consider it desirable to propose principles other than those included in existing agreements, it is requested to do so in a separate report.

In view, however, of a certain obscurity in the instructions given to the Committee, it not being clear whether proposals made in the projects presented to the Lima Conference and the observations of the Governments on those projects could be taken into account in the preparation of the coordinated treaty provided they did not involve

new principles, and what meaning should be attached to the word "principles" in this connection, the Committee came to the conclusion that it would be simpler and more effective if two separate treaties were prepared, the first of which would be limited to the coordination of existing agreements and the second of which would take into account the proposals and observations of the Governments as well as the opinions of the Juridical Committee itself.

II. COMMENTS UPON THE DRAFT TREATY COORDINATING EXISTING AGREEMENTS

1. The primary task undertaken by the Committee was, therefore, to prepare a single instrument coordinating existing agreements and limited strictly to the principles contained in them. In pursuance of this task the Committee submits, attached hereto, a "Draft Treaty for the Coordination of Inter-American Peace Agreements", bearing the letter A, and described briefly as the "Coordination Draft". This draft merely seeks to harmonize the succession of treaties and conventions at present in force, without introducing any changes or proposals for amendment except in so far as it is necessary to adjust the provisions of one instrument with those of another. In this connection the question is presented with respect to the relative importance to be attached to treaties which have been ratified by a larger or smaller number of States. The failure on the part of the American States to ratify treaties and other agreements has created a situation of considerable confusion. Under normal conditions a later treaty modifying an earlier one would be expected to take precedence over it. But if the later treaty has been ratified only by a small number of States, the States ratifying it find themselves bound by one set of obligations in relation to co-ratifying States and by another set of obligations in relation to non-ratifying States with which the earlier treaty is still in force. In addition there is the complication which arises when treaties are ratified with numerous reservations, as in the case of the General Treaty of Inter-American Arbitration, signed at Washington in 1929.

In view of this situation the Juridical Committee came to the conclusion that the simplest rule to follow would be to examine the various treaties and conventions without respect to the number of ratifications of the particular treaty or the character of the reservations. The Committee is not called upon to determine the degree of binding force of the various treaties, but merely to regard them as efforts which the American States have made from time to time to establish peaceful procedures, and to draw from them conclusions leading to the adoption of a more effective system in the future. The fact that the report of the committee of the Governing Board of the Pan American Union refers to the existing treaties as "already accepted by all or some of the American Republics" suggests that it was not the intention of the

Annex 14

INTER-AMERICAN JURIDICAL COMMITTEE, *DRAFT OF AN INTER-AMERICAN PEACE SYSTEM AND AN ACCOMPANYING REPORT, ARTICLE XXIX*, 4 SEPTEMBER 1945

(Inter-American Juridical Committee, Pan American Union, Washington D.C., October 1945, pp. 11-12, 22)

Charter, Art. 53.

Article XXVII

Should the High Contracting Parties, during the procedure of consultation contemplated in this article, find it necessary to take enforcement action in pursuance of the provisions of continental security contemplated in the Act of Chapultepec, they shall not put into effect the measures determined upon until they have received the authorization of the Security Council of the United Nations. At the same time the High Contracting Parties recognize that in the event of a threat to the peace the Security Council may, in accordance with Articles 36 and 37 of the Charter of the United Nations, intervene for the purpose of making recommendations or of deciding upon the measures to be taken to maintain or restore peace and security.

PART VII

FINAL PROVISIONS

Article XXVIII

The present treaty shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures. The original instrument shall be deposited with the Pan American Union, which shall transmit authentic certified copies to the Governments for the afore-mentioned purpose of ratification. The instruments of ratification shall be deposited in the archives of the Pan American Union in Washington, which shall notify the signatory governments of such deposit. Such notification shall be considered as an exchange of ratifications.

Article XXIX

This treaty shall come into effect between the High Contracting Parties in the order in which they deposit their ratifications, and with respect to each state after the expiration of thirty days from the date of the deposit of its ratification.

Any American State not signatory of this treaty may adhere to it by transmitting the official instrument setting forth such adherence to the Pan American Union, which will notify the other High Contracting Parties in the manner heretofore mentioned.

The present treaty shall remain in effect indefinitely, but it may be denounced by means of notice given to the Pan American Union one year in advance, at the expiration of which it will cease to be in force as regards the party denouncing the same, but shall remain in force as regards the other signatories. Notice of the denunciation shall be transmitted by the Pan American Union to the other signatory governments. Denunciation shall not affect any pending proceedings instituted before notice of denunciation is given.

Article XXX

Upon the coming into effect of this treaty as between any two of the parties, the following treaties, conventions and protocols shall cease to be in effect between such parties in respect to any provisions contained therein which may be in conflict which the provisions of this treaty, except in the case of any proceedings initiated or taken pursuant to any of the said treaties, conventions, or protocols:

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

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

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

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

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

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

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

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

Rio de Janeiro, September 4, 1945.

(S) Francisco Campos
(S) F. Nieto del Río
(S) Charles G. Fenwick
(S) A. Gómez Robledo

By the Act of Chapultepec (Resolution VIII), approved by the Conference on Problems of War and Peace on March 6, 1945, the American States strengthened their system of regional security by agreeing that an act of aggression against any one of their group should be considered as an act of aggression against all of the other members, and that in case such an act of aggression should occur the signatory states would consult among themselves in order to agree upon the measures it might be desirable to undertake. Various forms of sanction were set forth, ranging from the recall of chiefs of diplomatic missions to the use of armed force. The American States have thus at their command all of the measures necessary for the maintenance of their regional peace system. Article XXVI of the draft treaty prepared by the Juridical Committee properly recognizes that it is a political question for the Foreign Ministers in consultation to determine what measures may be appropriate under the circumstances.

13. In consequence of the provisions of Article 53 of the Charter, dealing with regional arrangements, the American States may not take enforcement action against a state violating its obligations of peaceful settlement without the authorization of the Security Council of the United Nations. At the same time, by Articles 36 and 37 of the Charter, the American States recognize that if their regional peace system should fail to bring about a settlement of the dispute the Security Council has the right to intervene. Obviously it is the chief purpose of the proposed "Inter-American Peace System" that there shall be no necessity for the application of Articles 36 and 37 of the Charter. Attention should be called to the necessity of substituting in Article XXVII of the present draft the name of the treaty to be adopted at Rio de Janeiro next October in place of the Act of Chapultepec.

14. PART VII of the draft submitted by the Juridical Committee, entitled "Final Provisions," follows the general lines already approved by the American States. In the event that the treaty should be signed by all of the American States at a general conference the second paragraph of Article XXIX, dealing with the adherence of non-signatory states, should be omitted.

IV

GENERAL OBSERVATIONS

In submitting the present draft of an "Inter-American Peace System" to the American Governments in accordance with the provisions of Resolution XXXIX of the Conference on Problems of War and Peace the Juridical Committee begs to state that it has sought as far as possible to take into account on the one hand the necessity of making the inter-American system more efficient, and on the other hand to coordinate it with the universal system established by the Charter of the United Nations and the Statute of the International Court of Justice. To this end the provisions of earlier agreements have been as far as possible simplified and the procedures themselves have been made more flexible. The Committee now awaits the comments of the American Governments, upon receipt of which it will undertake to

Annex 15

INTER-AMERICAN JURIDICAL COMMITTEE, *INTER-AMERICAN PEACE SYSTEM: DEFINITIVE PROJECT SUBMITTED TO THE CONSIDERATION OF THE NINTH INTERNATIONAL CONFERENCE OF AMERICAN STATES IN BOGOTA*, ARTICLE XXVI, 18 NOVEMBER 1947

(Inter-American Juridical Committee, BOG/PacS/8, 18 November 1947, p. 9)

jurisdiction and the procedure set forth in the Statute of the Court.

PART VI. FINAL PROVISIONS

Article XXV

The present treaty shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures. The original instrument shall be deposited with the Pan American Union, which shall transmit authentic certified copies to the Governments for the aforementioned purpose of ratification. The instruments of ratification shall be deposited in the archives of the Pan American Union in Washington, which shall notify the signatory governments of such deposit. Such notification shall be considered as an exchange of ratifications.

Article XXVI

This treaty shall come into effect between the High Contracting Parties in the order in which they deposit their ratifications, and with respect to each state after the expiration of thirty days from the date of the deposit of its ratification.

Any American State not signatory of this treaty may adhere to it by transmitting the official instrument setting forth such adherence to the Pan American Union, which will notify the other High Contracting Parties in the manner heretofore mentioned.

The present treaty shall remain in effect indefinitely, but it may be denounced by means of notice given to the Pan American Union one year in advance, at the expiration of which it shall cease to be in force as regards the party denouncing the same, but shall remain in force as regards the other signatories. Notice of the denunciation shall be transmitted by the Pan American Union to the other signatory governments. Denunciation shall not affect any pending proceedings instituted before notice of denunciation is given.

Article XXVII

Upon the coming into effect of this treaty as between any two of the parties, the following treaties, conventions and protocols shall cease to be in effect between such parties, except in the case of any proceedings initiated or taken pursuant to any of the said treaties, conventions, or protocols:

Treaty

Annex 16

MINUTES OF THE SECOND PART OF THE FOURTH SESSION OF THE COORDINATION COMMISSION, NINTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, 29 APRIL 1948

(Ninth International Conference of American States, Bogotá, 30 March - 2 May 1948, *Acts and Documents,* Vol. II, Ministry of Foreign Affairs of Colombia, Bogotá, 1953, pp. 537, 541)

[p. 537]

(…)

Mr. PRESIDENT: …

(…)

Mssrs. delegates: We have before us for our consideration, the work, already concluded, of the Third Commission, the text of which is in my power, and with regard to which I am going to request Mr. delegate Enríquez, from Mexico, to give us a report. Mr. delegate Enríquez is part of the group named by the aforesaid Commission for the drafting, supplementing and coordination of the American Treaty on Pacific Settlement.

Mr. ENRIQUEZ (MEXICO): At its last session, the Third Commission designated a Drafting Committee, integrated by five delegates, with the purpose of making a careful review of the articles and make the necessary amendments thereto, so that the approved provisions would have a logical drafting. It was also entrusted with the drafting of certain articles with regard to which the Commission had taken express decisions, but it had not been possible to embody them in formulas, due to the difficulty of drafting them during the last moments of the session. [The task] was about finding a sufficiently clear and explicit legal expression for them. The Commission approved the provision[s] in general and left it up to the Committee to find the most adequate drafting.

Today, in the morning, that Committee concluded its tasks, after organizing, as best it could, the draft of the Treaty and making the style corrections that it detected were necessary. It also completed the drafting of all the articles and, therefore, submitted to the General Secretariat, for its internal processing, a definitive draft that incorporates the result of the work of the Third Commission.

(…)

[p. 541]

(…)

Next, former Article LV [now LVI], whose drafting the [Third] Commission entrusted the [Drafting] Committee. We decided that the best drafting possible would consist on replicating Article 16 of the 1929 Treaty [i.e., the General Convention of Inter-American Conciliation], and was drafted as follows:

> This treaty will be in force indefinitely, but it may be denounced through advance notice of one year, and will cease to have effect for the party making the denunciation, and remains in force for the other signatories. The denunciation will be made to the Pan-American Union, which will transmit it to the other contracting parties.
>
> The denunciation will not have any effect on proceedings pending and initiated prior to the transmission of the respective notice."

This article had been approved in a different form, because the Third Commission had considered that the Treaty [Pact of Bogotá] would be an annex to the OAS Charter. After the Treaty [Pact of Bogotá] project had been approved, the chapter to the [OAS] Charter corresponding to 'Peaceful Settlement of Disputes' was studied, and this Treaty [Pact of Bogotá] was to be inserted as an annex, but multiple objections were made, in the sense that it was not desirable that the [OAS] Charter made reference to treaties or annex pacts, but rather, that these were treated in an independent, special manner. Then, the duration that had been provided, and the form of denunciation, had to be changed for those which resulted adequate to the new characteristics of the independent treaty."

(…)

Annex 17

INTER-AMERICAN TREATIES FROM 1902 TO 1936, CLAUSES OF DENUNCIATION

(Pan American Union, *Inter-American Peace Treaties and Conventions*, OAS Official records OEA/ser.X/2, General Secretariat, Organization of American States, Washington, D.C., 1961, pp. 3, 7, 8, 12, 17, 27, 37, 38, 42, 46, 50, 56)

Treaty of Compulsory Arbitration, 29 January 1902, Article 22

[Excerpt transcribed from p. 3]

(…)

ARTICLE 22. The nations which do not sign the present Treaty may adhere to it at any time. If any of the signatory nations should desire to free itself from its obligations, it shall denounce the Treaty; but such denouncement shall not produce any effect except with respect to the nation which may denounce it, and only one year after the notification of the same has been made.

(…)

Treaty to Avoid or Prevent Conflicts Between the American States, Gondra Treaty, 3 May 1923, Article IX

[Excerpt transcribed from p. 7]

(…)

ARTICLE IX. The present Treaty shall be ratified by the High Contracting Parties, in conformity with their respective constitutional procedures, and the ratifications shall be deposited in the Ministry for Foreign Affairs of the Republic of Chile, which will communicate them through diplomatic channels to the other Signatory Governments, and it shall enter into effect for the Contracting Parties in the order of ratification.

[Excerpt transcribed from p. 8]

This Treaty shall remain in force indefinitely; any of the High Contracting Parties may denounce it and the denunciation shall take effect as regards the Party denouncing, one year after notification thereof has been given.

Notice of the denunciation shall be sent to the Government of Chile, which will transmit it for appropriate action to the other Signatory Governments.

(…)

General Convention of Inter-American Conciliation, 5 January 1929,
Article 16

[Excerpt transcribed from p. 12]

(…)

ARTICLE 16. The present convention shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures, provided that they have previously ratified the Treaty of Santiago, Chile, of May 3, 1923.

The original convention and the instruments of ratification shall be deposited in the Ministry for Foreign Affairs of the Republic of Chile which shall give notice of the ratifications through diplomatic channels to the other signatory Governments and the convention shall enter into effect for the High Contracting Parties in the order that they deposit their ratifications.

This convention shall remain in force indefinitely, but it may be denounced by means of notice given one year in advance at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other signatories. Notice of the denunciation shall be addressed to the Ministry for Foreign Affairs of the Republic of Chile which will transmit it for appropriate action to the other signatory Governments.

Any American State not a signatory of this convention may adhere to the same by transmitting the official instrument setting forth such adherence, to the Ministry for Foreign Affairs of the Republic of Chile which will notify the other High Contracting Parties thereof in the manner heretofore mentioned.

(…)

General Treaty Of Inter-American Arbitration, 5 January 1929, Article 9

[Excerpt transcribed from p. 17]

(…)

ARTICLE 9. The present treaty shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures.

The original treaty and the instruments of ratification shall be deposited in the Department of State of the United States of America which shall give notice of the ratifications through diplomatic channels to the other signatory Governments and the treaty shall enter into effect for the High Contracting Parties in the order that they deposit their ratifications.

This treaty shall remain in force indefinitely, but it may be denounced by means of one year's previous notice at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other signatories. Notice the denunciation shall be addressed to the Department of State of the United States of America which will transmit it for appropriate action to the other signatory Governments.

Any American State not a signatory of this treaty may adhere to the same by transmitting the official instrument setting forth such adherence to the Department of State of the United States of America which will notify the other High Contracting Parties thereof in the manner heretofore mentioned.

(…)

(Protocol of Progressive Arbitration, 5 January 1929*)*

There is no Denunciation Clause

Anti-War Treaty of Non-Aggression and Conciliation, 10 October 1933, Article 17

[Excerpt transcribed from p. 27]

(…)

ARTICLE 17. The present treaty is concluded for an indefinite time, but may be denounced by 1 year's notice, on the expiration of which the effects thereof shall cease for the denouncing state, and remain in force for the other states which are parties thereto, by signature or adherence.

The denunciation shall be addressed to the Ministry of Foreign Relations and Worship of the Argentine Republic, which shall transmit it to the other interested states.

(…)

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

There is no Denunciation Clause

Convention on Maintenance, Preservation and Reestablishment of Peace, 23 December 1936, Article 5

[Excerpt transcribed from p. 37]

(…)

ARTICLE 5. The present Convention shall remain in effect indefinitely but may be denounced by means of one year's notice, after the expiration of which period the Convention shall cease in its effects as regards the party which denounces it but shall remain in effect for the remaining signatory States. De-

[Excerpt transcribed from p. 38]

nunciations shall be addressed to the Government of the Argentine Republic, which shall transmit them to the other contracting States.

(…)

Additional Protocol Relative to Non-Intervention, 23 December 1936, Article 4

[Excerpt transcribed from p. 42]

(…)

ARTICLE 4. The present Additional Protocol shall remain in effect indefinitely but may be denounced by means of one year's notice after the expiration of which period the Protocol shall cease in its effects as regards the party which denounces it but shall remain in effect for the remaining Signatory States.

Denunciations shall be addressed to the Government of the Argentine Republic which shall notify them to the other Contracting States.

(…)

Treaty on the Prevention of Controversies, 23 December 1936, Article 7

[Excerpt transcribed from p. 46]

(…)

ARTICLE 7. The present Treaty shall remain in effect indefinitely but may be denounced by means of one year's notice given to the Pan American Union, which shall transmit it to the other signatory governments. After the expiration of this period the Treaty shall cease in its effects as regards the party which denounces it but shall remain in effect for the remaining High Contracting Parties.

(…)

Inter-American Treaty on Good Offices and Mediation, 23 December 1936, Article 9

[Excerpt transcribed from p. 50]

(…)

ARTICLE 9. The present Treaty shall remain in effect indefinitely but may be denounced by means of one year's notice given to the Pan American Union, which shall transmit it to the other signatory Governments. After the expiration of this period the Treaty shall cease in its effects as regards the Party which denounces it, but shall remain in effect for the remaining High Contracting Parties.

(…)

Convention to Coordinate, Extend and Assure the Fulfillment of the Existing Treaties Between the American States, 23 December 1936, Article 8

[Excerpt transcribed from p. 56]

(…)

ARTICLE 8. The present Convention shall be ratified by the High Contracting Parties in accordance with their constitutional procedures. The original convention and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Argentine Republic, which shall communicate the ratifications to the other Signatory States. It shall come into effect when ratifications have been deposited by not less than eleven of the Signatory States.

The Convention shall remain in force indefinitely; but it may be denounced by any of the High Contracting Parties, such denunciation to be effective one year after the date upon which such notification has been given. Notice of denunciation shall be communicated to the Ministry of Foreign Affairs of the Argentine Republic which shall transmit copies thereof to the other Signatory States. Denunciation shall not be regarded as valid if the Party making such denunciation shall be actually in a state of war, or shall be engaged in hostilities without fulfilling the provisions established by this Convention.

(…)

Annex 18

TEXT OF THE PACT OF BOGOTÁ, IN THE FOUR AUTHENTIC LANGUAGES (ENGLISH, FRENCH, PORTUGUESE, SPANISH)

(Ninth International Conference of American States, Bogotá, 30 March - 2 May 1948, "*Actas y Documentos, Volumen VI, Conclusiones, Acta Final-Instrumentos Diplomáticos",* Ministry of Foreign Affairs of Colombia, Bogotá, 1953, pp: 84-94 (English); 71-82 (Spanish); 95-106 (Portuguese); and 107-118 (French))

AMERICAN TREATY ON PACIFIC SETTLEMENT

"PACT OF BOGOTA"

In the name of their peoples, the Governments represented at the Ninth International Conference of American States have resolved, in fulfillment of Article 23 of the Charter of the Organization of American States, to conclude the following Treaty:

CHAPTER ONE

GENERAL OBLIGATION TO SETTLE DISPUTES BY PACIFIC MEANS

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

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

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

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

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

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

ARTICLE VI. The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangement between the parties, or by arbitral award

or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty.

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

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

CHAPTER TWO

PROCEDURES OF GOOD OFFICES AND MEDIATION

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

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

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

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

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

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

CHAPTER THREE

PROCEDURE OF INVESTIGATION AND CONCILIATION

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

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

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

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

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

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

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

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

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

ARTICLE XIX. In the event that a controversy should arise between two or more American States that have not appointed the Commission referred to in Article

XVII, the following procedure shall be observed:

(*a*) Each party shall designate two members from the permanent panel of American conciliators, who are not of the same nationality as the appointing party.

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

(*c*) If, within a period of 30 days following the notification of their selection, the four members are unable to agree upon a fifth member, they shall each separately list the conciliators composing the permanent panel, in order of their preference, and upon comparison of the lists so prepared, the one who first receives a majority of votes shall be declared elected. The person so elected shall perform the duties of Chairman of the Commission.

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

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

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

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

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

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

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

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

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

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

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

CHAPTER FOUR

JUDICIAL PROCEDURE

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

(*a*) The interpretation of a treaty;

(*b*) Any question of international law;

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

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

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

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

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

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

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

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

CHAPTER FIVE

PROCEDURE OF ARBITRATION

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

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

ARTICLE XL. (1) Within a period of two months after notification of the decision of the Court in the case provided for in Article XXXV, each party shall name one arbiter of recognized competence in questions of international law and of the highest integrity, and shall transmit the designation to the Council of the Organization. At the same time, each party shall present to the Council a list of 10 jurists chosen from among those on the general panel of members of the Permanent Court of Arbitration of The Hague who do not belong to its national group and who are willing to be members of the Arbitral Tribunal.

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

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

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

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

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

(*e*) If the lists contain only one name in common, that person shall be a member of the Tribunal, and another name shall be chosen by lot from among the 18 jurists remaining on the above-mentioned lists. The presiding officer shall be elected in accordance with the procedure established in the preceding clause.

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

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

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

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

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

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

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

ARTICLE XLV. If one of the parties fails to designate its arbiter and present its list of candidates within the period provided for in Article XL, the other party shall have the right to request the Council of the Organization to establish the Arbitral Tribunal. The Council shall immediately urge the delinquent party to fulfill its

obligations within an additional period of 15 days, after which time the Council itself shall establish the Tribunal in the following manner:

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

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

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

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

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

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

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

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

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

CHAPTER SIX

FULFILLMENT OF DECISIONS

ARTICLE L. If one of the High Contracting Parties should fail to carry out the obligations imposed upon it by a decision of the International Court of Justice or by an arbitral award, the other party or parties concerned shall, before resorting to the Security Council of the United Nations, propose a Meeting of Consultation of Ministers of Foreign Affairs to agree upon appropriate measures to ensure the fulfillment of the judicial decision or arbitral award.

CHAPTER SEVEN

ADVISORY OPINIONS

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

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

CHAPTER EIGHT

FINAL PROVISIONS

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

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

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

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

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

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

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

ARTICLE LVIII. As this Treaty comes into effect through the successive ratifications of the High Contracting Parties, the following Treaties, Conventions and Protocols shall cease to be in force with respect to such parties:

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

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

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having deposited their full powers, found to be in good and due form, sign the present Treaty, in the name of their respective governments, on the dates appearing below their signatures.[1]

Done at the city of Bogotá, in four texts, in the English, French, Portuguese and Spanish languages respectively, on the thirtieth day of April, of the year one thousand nine hundred and forty-eight

RESERVATIONS

Argentina

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

1) VII, concerning the protection of aliens;

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

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

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

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

[1] For signatures, *see* p. 119.

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

Bolivia

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

Ecuador

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

United States of America

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

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

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

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

Paraguay

"The Delegation of Paraguay makes the following reservation:

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

Peru

"The Delegation of Peru makes the following reservations:

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

2. Reservation with regard to Article XXXIII and the pertinent part of Article XXIV, inasmuch as it considers that the exceptions of *res judicata*, resolved by ttlement between the parties or governed by agreements and treaties in force, etermine, in virtue of their objective and peremptory nature, the exclusion of these ases from the application of every procedure.

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

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

icaragua

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

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

TRATADO AMERICANO DE SOLUCIONES PACIFICAS
"PACTO DE BOGOTA"

En nombre de sus pueblos, los Gobiernos representados en la Novena Conferencia Internacional Americana, han resuelto, en cumplimiento del Artículo 23 de la Carta de la Organización de los Estados Americanos, celebrar el siguiente Tratado:

CAPITULO PRIMERO

OBLIGACION GENERAL DE RESOLVER LAS CONTROVERSIAS POR MEDIOS PACIFICOS

ARTÍCULO I. Las Altas Partes Contratantes, reafirmando solemnemente sus compromisos contraídos por anteriores convenciones y declaraciones internacionales así como por la Carta de las Naciones Unidas, convienen en abstenerse de la amenaza, del uso de la fuerza o de cualquier otro medio de coacción para el arreglo de sus controversias y en recurrir en todo tiempo a procedimientos pacíficos.

ARTÍCULO II. Las Altas Partes Contratantes reconocen la obligación de resolver las controversias internacionales por los procedimientos pacíficos regionales antes de llevarlas al Consejo de Seguridad de las Naciones Unidas.

En consecuencia, en caso de que entre dos o más Estados signatarios se suscite una controversia que, en opinión de las partes, no pueda ser resuelta por negociaciones directas a través de los medios diplomáticos usuales, las partes se comprometen a hacer uso de los procedimientos establecidos en este Tratado en la forma y condiciones previstas en los artículos siguientes, o bien de los procedimientos especiales que, a su juicio, les permitan llegar a una solución.

ARTÍCULO III. El orden de los procedimientos pacíficos establecido en el presente Tratado no significa que las partes no puedan recurrir al que consideren más apropiado en cada caso, ni que deban seguirlos todos, ni que exista, salvo disposición expresa al respecto, prelación entre ellos.

ARTÍCULO IV. Iniciado uno de los procedimientos pacíficos, sea por acuerdo de las partes, o en cumplimiento del presente Tratado, o de un pacto anterior, no podrá incoarse otro procedimiento antes de terminar aquél.

ARTÍCULO V. Dichos procedimientos no podrán aplicarse a las materias que por su esencia son de la jurisdicción interna del Estado. Si las partes no estuvieren de acuerdo en que la controversia se refiere a un asunto de jurisdicción interna, a solicitud de cualquiera de ellas esta cuestión previa será sometida a la decisión de la Corte Internacional de Justicia.

ARTÍCULO VI. Tampoco podrán aplicarse dichos procedimientos a los asuntos ya resueltos por arreglo de las partes, o por laudo arbitral, o por sentencia de un tribunal internacional, o que se hallen regidos por acuerdos o tratados en vigencia en la fecha de la celebración del presente Pacto.

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ARTÍCULO VII. Las Altas Partes Contratantes se obligan a no intentar reclamación diplomática para proteger a sus nacionales, ni a iniciar al efecto una controversia ante la jurisdicción internacional, cuando dichos nacionales hayan tenido expeditos los medios para acudir a los tribunales domésticos competentes del Estado respectivo.

ARTÍCULO VIII. El recurso a los medios pacíficos de solución de las controversias, o la recomendación de su empleo, no podrán ser motivo, en caso de ataque armado, para retardar el ejercicio del derecho de legítima defensa individual o colectiva, previsto en la Carta de las Naciones Unidas.

CAPITULO SEGUNDO

PROCEDIMIENTOS DE BUENOS OFICIOS Y DE MEDIACION

ARTÍCULO IX. El procedimiento de los buenos oficios consiste en la gestión de uno o más Gobiernos Americanos o de uno o más ciudadanos eminentes de cualquier Estado Americano, ajenos a la controversia, en el sentido de aproximar a las partes, proporcionándoles la posibilidad de que encuentren directamente una solución adecuada.

ARTÍCULO X. Una vez que se haya logrado el acercamiento de las partes y que éstas hayan reanudado las negociaciones directas, quedará terminada la gestión del Estado o del ciudadano que hubiere ofrecido sus buenos oficios o aceptado la invitación a interponerlos; sin embargo, por acuerdo de las partes, podrán aquéllos estar presentes en las negociaciones.

ARTÍCULO XI. El procedimiento de mediación consiste en someter la controversia a uno o más Gobiernos Americanos, o a uno o más ciudadanos eminentes de cualquier Estado Americano extraños a la controversia. En uno y otro caso el mediador o los mediadores serán escogidos de común acuerdo por las partes.

ARTÍCULO XII. Las funciones del mediador o mediadores consistirán en asistir a las partes en el arreglo de las controversias de la manera más sencilla y directa, evitando formalidades y procurando hallar una solución aceptable. El mediador se abstendrá de hacer informe alguno y, en lo que a él atañe, los procedimientos serán absolutamente confidenciales.

ARTÍCULO XIII. En el caso de que las Altas Partes Contratantes hayan acordado el procedimiento de mediación y no pudieren ponerse de acuerdo en el plazo de dos meses sobre la elección del mediador o mediadores; o si iniciada la mediación transcurrieren hasta cinco meses sin llegar a la solución de la controversia, recurrirán sin demora a cualquiera de los otros procedimientos de arreglo pacífico establecidos en este Tratado.

ARTÍCULO XIV. Las Altas Partes Contratantes podrán ofrecer su mediación, bien sea individual o conjuntamente; pero convienen en no hacerlo mientras la controversia esté sujeta a otro de los procedimientos establecidos en el presente Tratado.

CAPITULO TERCERO

PROCEDIMIENTO DE INVESTIGACION Y CONCILIACION

ARTÍCULO XV. El procedimiento de investigación y conciliación consiste en someter la controversia a una comisión de investigación y conciliación que será constituída con arreglo a las disposiciones establecidas en los subsecuentes artículos del presente Tratado, y que funcionará dentro de las limitaciones en él señaladas.

ARTÍCULO XVI. La parte que promueva el procedimiento de investigación y conciliación pedirá al Consejo de la Organización de los Estados Americanos que convoque la Comisión de Investigación y Conciliación. El Consejo, por su parte, tomará las providencias inmediatas para convocarla.

Recibida la solicitud para que se convoque la Comisión, quedará inmediatamente suspendida la controversia entre las partes y éstas se abstendrán de todo acto que pueda dificultar la conciliación. Con este fin, el Consejo de la Organización de los Estados Americanos, podrá, a petición de parte mientras esté en trámite la convocatoria de la Comisión, hacerles recomendaciones en dicho sentido.

ARTÍCULO XVII. Las Altas Partes Contratantes podrán nombrar por medio de un acuerdo bilateral que se hará constar en un simple cambio de notas con cada uno de los otros signatarios, dos miembros de la Comisión de Investigación y Conciliación, de los cuales uno solo podrá ser de su propia nacionalidad. El quinto será elegido inmediatamente de común acuerdo por los ya designados y desempeñará las funciones de Presidente.

Cualquiera de las Partes Contratantes podrá reemplazar a los miembros que hubiere designado, sean éstos nacionales o extranjeros; y en el mismo acto deberá nombrar al substituto. En caso de no hacerlo, la remoción se tendrá por no formulada. Los nombramientos y substituciones deberán registrarse en la Unión Panamericana, que velará por que las Comisiones de cinco miembros estén siempre integradas.

ARTÍCULO XVIII. Sin perjuicio de lo dispuesto en el artículo anterior, la Unión Panamericana formará un Cuadro Permanente de Conciliadores Americanos que será integrado así:

a) Cada una de las Altas Partes Contratantes designará, por períodos de tres años, dos de sus nacionales que gocen de la más alta reputación por su ecuanimidad, competencia y honorabilidad.

b) La Unión Panamericana recabará la aceptación expresa de los candidatos y pondrá los nombres de las personas que le comuniquen su aceptación en el Cuadro de Conciliadores.

c) Los Gobiernos podrán en cualquier momento llenar las vacantes que ocurran entre sus designados y nombrarlos nuevamente.

ARTÍCULO XIX. En el caso de que ocurriere una controversia entre dos o más Estados Americanos que no tuvieren constituída la Comisión a que se refiere el

Artículo XVII, se observará el siguiente procedimiento:

a) Cada parte designará dos miembros elegidos del Cuadro Permanente de Conciliadores Americanos, que no pertenezcan a la nacionalidad del designante.

b) Estos cuatro miembros escogerán a su vez un quinto conciliador extraño a las partes, dentro del Cuadro Permanente.

c) Si dentro del plazo de 30 días después de haber sido notificados de su elección, los cuatro miembros no pudieren ponerse de acuerdo para escoger el quinto, cada uno de ellos formará separadamente la lista de conciliadores, tomándola del Cuadro Permanente en el orden de su preferencia; y después de comparar las listas así formadas se declarará electo aquél que primero reúna una mayoría de votos. El elegido ejercerá las funciones de Presidente de la Comisión.

ARTÍCULO XX. El Consejo de la Organización de los Estados Americanos al convocar la Comisión de Investigación y Conciliación determinará el lugar donde ésta haya de reunirse. Con posterioridad, la Comisión podrá determinar el lugar o lugares en donde deba funcionar, tomando en consideración las mayores facilidades para la realización de sus trabajos.

ARTÍCULO XXI. Cuando más de dos Estados estén implicados en la misma controversia, los Estados que sostengan iguales puntos de vista serán considerados como una sola parte. Si tuviesen intereses diversos tendrán derecho a aumentar el número de conciliadores con el objeto de que todas las partes tengan igual representación. El Presidente será elegido en la forma establecida en el Artículo XIX.

ARTÍCULO XXII. Corresponde a la Comisión de Investigación y Conciliación esclarecer los puntos controvertidos, procurando llevar a las partes a un acuerdo en condiciones recíprocamente aceptables. La Comisión promoverá las investigaciones que estime necesarias sobre los hechos de la controversia, con el propósito de proponer bases aceptables de solución.

ARTÍCULO XXIII. Es deber de las partes facilitar los trabajos de la Comisión y suministrarle, de la manera más amplia posible, todos los documentos e informaciones útiles, así como también emplear los medios de que dispongan para permitirle que proceda a citar y oír testigos o peritos y practicar otras diligencias, en sus respectivos territorios y de conformidad con sus leyes.

ARTÍCULO XXIV. Durante los procedimientos ante la Comisión, las partes serán representadas por Delegados Plenipotenciarios o por agentes que servirán de intermediarios entre ellas y la Comisión. Las partes y la Comisión podrán recurrir a los servicios de consejeros y expertos técnicos.

ARTÍCULO XXV. La Comisión concluirá sus trabajos dentro del plazo de seis meses a partir de la fecha de su constitución; pero las partes podrán, de común acuerdo, prorrogarlo.

ARTÍCULO XXVI. Si a juicio de las partes la controversia se concretare exclusivamente a cuestiones de hecho, la Comisión se limitará a la investigación de aquéllas y concluirá sus labores con el informe correspondiente.

ARTÍCULO XXVII. Si se obtuviere el acuerdo conciliatorio, el informe final de

la Comisión se limitará a reproducir el texto del arreglo alcanzado y se publicará después de su entrega a las partes, salvo que éstas acuerden otra cosa. En caso contrario, el informe final contendrá un resumen de los trabajos efectuados por la Comisión; se entregará a las partes y se publicará después de un plazo de seis meses, a menos que éstas tomaren otra decisión. En ambos eventos, el informe final será adoptado por mayoría de votos.

ARTÍCULO XXVIII. Los informes y conclusiones de la Comisión de Investigación y Conciliación no serán obligatorios para las partes ni en lo relativo a la exposición de los hechos ni en lo concerniente a las cuestiones de derecho, y no revestirán otro carácter que el de recomendaciones sometidas a la consideración de las partes para facilitar el arreglo amistoso de la controversia.

ARTÍCULO XXIX. La Comisión de Investigación y Conciliación entregará a cada una de las partes, así como a la Unión Panamericana, copias certificadas de las actas de sus trabajos. Estas actas no serán publicadas sino cuando así lo decidan las partes.

ARTÍCULO XXX. Cada uno de los miembros de la Comisión recibirá una compensación pecuniaria cuyo monto será fijado de común acuerdo por las partes. Si éstas no la acordaren, la señalará el Consejo de la Organización. Cada uno de los Gobiernos pagará sus propios gastos y una parte igual de las expensas comunes de la Comisión, comprendidas en éstas las compensaciones anteriormente previstas.

CAPITULO CUARTO

PROCEDIMIENTO JUDICIAL

ARTÍCULO XXXI. De conformidad con el inciso 2° del Artículo 36 del Estatuto de la Corte Internacional de Justicia, las Altas Partes Contratantes declaran que reconocen respecto a cualquier otro Estado Americano como obligatoria *ipso facto*, sin necesidad de ningún convenio especial mientras esté vigente el presente Tratado, la jurisdicción de la expresada Corte en todas las controversias de orden jurídico que surjan entre ellas y que versen sobre:

a) La interpretación de un tratado;

b) Cualquier cuestión de derecho internacional;

c) La existencia de todo hecho que, si fuere establecido, constituiría la violación de una obligación internacional; o

d) La naturaleza o extensión de la reparación que ha de hacerse por el quebrantamiento de una obligación internacional.

ARTÍCULO XXXII. Cuando el procedimiento de conciliación anteriormente establecido conforme a este Tratado o por voluntad de las partes, no llegare a una solución y dichas partes no hubieren convenido en un procedimiento arbitral, cualquiera de ellas tendrá derecho a recurrir a la Corte Internacional de Justicia en la forma establecida en el Artículo 40 de su Estatuto. La jurisdicción de la Corte quedará obligatoriamente abierta conforme al inciso 1 del Artículo 36 del mismo Estatuto.

ARTÍCULO XXXIII. Si las partes no se pusieren de acuerdo acerca de la competencia de la Corte sobre el litigio, la propia Corte decidirá previamente esta cuestión.

ARTÍCULO XXXIV. Si la Corte se declarare incompetente para conocer de la controversia por los motivos señalados en los Artículos V, VI y VII de este Tratado, se declarará terminada la controversia.

ARTÍCULO XXXV. Si la Corte se declarase incompetente por cualquier otro motivo para conocer y decidir de la controversia, las Altas Partes Contratantes se obligan a someterla a arbitraje, de acuerdo con las disposiciones del Capítulo Quinto de este Tratado.

ARTÍCULO XXXVI. En el caso de controversias sometidas al procedimiento judicial a que se refiere este Tratado, corresponderá su decisión a la Corte en pleno, o, si así lo solicitaren las partes, a una Sala Especial conforme al Artículo 26 de su Estatuto. Las partes podrán convenir, asimismo, en que el conflicto se falle *ex aequo et bono*.

ARTÍCULO XXXVII. El procedimiento a que deba ajustarse la Corte será el establecido en su Estatuto.

CAPITULO QUINTO

PROCEDIMIENTO DE ARBITRAJE

ARTÍCULO XXXVIII. No obstante lo establecido en el Capítulo Cuarto de este Tratado, las Altas Partes Contratantes tendrán la facultad de someter a arbitraje, si se pusieren de acuerdo en ello, las diferencias de cualquier naturaleza, sean o no jurídicas, que hayan surgido o surgieren en lo sucesivo entre ellas.

ARTÍCULO XXXIX. El Tribunal de Arbitraje, al cual se someterá la controversia en los casos de los Artículos XXXV y XXXVIII de este Tratado, se constituirá del modo siguiente, a menos de existir acuerdo en contrario.

ARTÍCULO XL. (1) Dentro del plazo de dos meses, contados desde la notificación de la decisión de la Corte, en el caso previsto en el Artículo XXXV, cada una de las partes designará un árbitro de reconocida competencia en las cuestiones de derecho internacional, que goce de la más alta consideración moral, y comunicará esta designación al Consejo de la Organización. Al propio tiempo presentará al mismo Consejo una lista de 10 juristas escogidos entre los que forman la nómina general de los miembros de la Corte Permanente de Arbitraje de La Haya, que no pertenezcan a su grupo nacional y que estén dispuestos a aceptar el cargo.

(2) El Consejo de la Organización procederá a integrar, dentro del mes siguiente a la presentación de las listas, el Tribunal de Arbitraje en la forma que a continuación se expresa:

(*a*) Si las listas presentadas por las partes coincidieren en tres nombres, dichas personas constituirán el Tribunal de Arbitraje con las dos designadas directamente por las partes.

(*b*) En el caso en que la coincidencia recaiga en más de tres nombres, se

determinarán por sorteo los tres árbitros que hayan de completar el Tribunal.

(*c*) En los eventos previstos en los dos incisos anteriores, los cinco árbitros designados escogerán entre ellos su Presidente.

(*d*) Si hubiere conformidad únicamente sobre dos nombres, dichos candidatos y los dos árbitros seleccionados directamente por las partes, elegirán de común acuerdo el quinto árbitro que presidirá el Tribunal. La elección deberá recaer en algún jurista de la misma nómina general de la Corte Permanente de Arbitraje de La Haya, que no haya sido incluído en las listas formadas por las partes.

(*e*) Si las listas presentaren un solo nombre común, esta persona formará parte del Tribunal y se sorteará otra entre los 18 juristas restantes en las mencionadas listas. El Presidente será elegido siguiendo el procedimiento establecido en el inciso anterior.

(*f*) No presentándose ninguna concordancia en las listas, se sortearán sendos árbitros en cada una de ellas; y el quinto árbitro, que actuará como Presidente, será elegido de la manera señalada anteriormente.

(*g*) Si los cuatro árbitros no pudieren ponerse de acuerdo sobre el quinto árbitro dentro del término de un mes contado desde la fecha en que el Consejo de la Organización les comunique su nombramiento, cada uno de ellos acomodará separadamente la lista de juristas en el orden de su preferencia y, después de comparar las listas así formadas, se declarará elegido aquél que reúna primero una mayoría de votos.

ARTÍCULO XLI. Las partes podrán de común acuerdo constituir el Tribunal, en la forma que consideren más conveniente, y aun elegir un árbitro único, designando en tal caso al Jefe de un Estado, a un jurista eminente o a cualquier tribunal de justicia en quien tengan mutua confianza.

ARTÍCULO XLII. Cuando más de dos Estados estén implicados en la misma controversia, los Estados que defiendan iguales intereses serán considerados como una sola parte. Si tuvieren intereses opuestos, tendrán derecho a aumentar el número de árbitros para que todas las partes tengan igual representación. El Presidente se elegirá en la forma establecida en el Artículo XL.

ARTÍCULO XLIII. Las partes celebrarán en cada caso el compromiso que defina claramente la materia específica objeto de la controversia, la sede del Tribunal, las reglas que hayan de observarse en el procedimiento, el plazo dentro del cual haya de pronunciarse el laudo y las demás condiciones que convengan entre sí.

Si no se llegare a un acuerdo sobre el compromiso dentro de tres meses contados desde la fecha de la instalación del Tribunal, el compromiso será formulado, con carácter obligatorio para las partes, por la Corte Internacional de Justicia, mediante el procedimiento sumario.

ARTÍCULO XLIV. Las partes podrán hacerse representar ante el Tribunal Arbitral por las personas que juzguen conveniente designar.

ARTÍCULO XLV. Si una de las partes no hiciere la designación de su árbitro y la presentación de su lista de candidatos, dentro del término previsto en el Artículo

XL, la otra parte tendrá el derecho de pedir al Consejo de la Organización que constituya el Tribunal de Arbitraje. El Consejo inmediatamente instará a la parte remisa para que cumpla esas obligaciones dentro de un término adicional de 15 días, pasado el cual, el propio Consejo integrará el Tribunal en la siguiente forma:

a) Sorteará un nombre de la lista presentada por la parte requirente.

b) Escogerá por mayoría absoluta de votos dos juristas de la nómina general de la Corte Permanente de Arbitraje de La Haya, que no pertenezcan al grupo nacional de ninguna de las partes.

c) Las tres personas así designadas, en unión de la seleccionada directamente por la parte requirente, elegirán de la manera prevista en el Artículo XL al quinto árbitro que actuará como Presidente.

d) Instalado el Tribunal, se seguirá el procedimiento organizado en el Artículo XLIII.

ARTÍCULO XLVI. El laudo será motivado, adoptado por mayoría de votos y publicado después de su notificación a las partes. El árbitro o árbitros disidentes podrán dejar testimonio de los fundamentos de su disidencia.

El laudo, debidamente pronunciado y notificado a las partes, decidirá la controversia definitivamente y sin apelación, y recibirá inmediata ejecución.

ARTÍCULO XLVII. Las diferencias que se susciten sobre la interpretación o ejecución del laudo, serán sometidas a la decisión del Tribunal Arbitral que lo dictó.

ARTÍCULO XLVIII. Dentro del año siguiente a su notificación, el laudo será susceptible de revisión ante el mismo Tribunal, a pedido de una de las partes, siempre que se descubriere un hecho anterior a la decisión ignorado del Tribunal y de la parte que solicita la revisión, y además siempre que, a juicio del Tribunal, ese hecho sea capaz de ejercer una influencia decisiva sobre el laudo.

ARTÍCULO XLIX. Cada uno de los miembros del Tribunal recibirá una compensación pecuniaria cuyo monto será fijado de común acuerdo por las partes. Si éstas no la convinieren, la señalará el Consejo de la Organización. Cada uno de los Gobiernos pagará sus propios gastos y una parte igual de las expensas comunes del Tribunal, comprendidas en éstas las compensaciones anteriormente previstas.

CAPITULO SEXTO

CUMPLIMIENTO DE LAS DECISIONES

ARTÍCULO L. Si una de las Altas Partes Contratantes dejare de cumplir las obligaciones que le imponga un fallo de la Corte Internacional de Justicia o un laudo arbitral, la otra u otras partes interesadas, antes de recurrir al Consejo de Seguridad de las Naciones Unidas, promoverá una Reunión de Consulta de Ministros de Relaciones Exteriores a fin de que acuerde las medidas que convenga tomar para que se ejecute la decisión judicial o arbitral.

CAPITULO SEPTIMO

OPINIONES CONSULTIVAS

ARTÍCULO LI. Las partes interesadas en la solución de una controversia podrán, de común acuerdo, pedir a la Asamblea General o al Consejo de Seguridad de las Naciones Unidas que soliciten de la Corte Internacional de Justicia opiniones consultivas sobre cualquier cuestión jurídica.

La petición la harán por intermedio del Consejo de la Organización de los Estados Americanos.

CAPITULO OCTAVO

DISPOSICIONES FINALES

ARTÍCULO LII. El presente Tratado será ratificado por las Altas Partes Contratantes de acuerdo con sus procedimientos constitucionales. El instrumento original será depositado en la Unión Panamericana, que enviará copia certificada auténtica a los Gobiernos para ese fin. Los instrumentos de ratificación serán depositados en los archivos de la Unión Panamericana, que notificará dicho depósito a los Gobiernos signatarios. Tal notificación será considerada como canje de ratificaciones.

ARTÍCULO LIII. El presente Tratado entrará en vigencia entre las Altas Partes Contratantes en el orden en que depositen sus respectivas ratificaciones.

ARTÍCULO LIV. Cualquier Estado Americano que no sea signatario de este Tratado o que haya hecho reservas al mismo, podrá adherir a éste o abandonar en todo o en parte sus reservas, mediante instrumento oficial dirigido a la Unión Panamericana, que notificará a las otras Altas Partes Contratantes en la forma que aquí se establece.

ARTÍCULO LV. Si alguna de las Altas Partes Contratantes hiciere reservas respecto del presente Tratado, tales reservas se aplicarán en relación con el Estado que las hiciera a todos los Estados signatarios, a título de reciprocidad.

ARTÍCULO LVI. El presente Tratado regirá indefinidamente, pero podrá ser denunciado mediante aviso anticipado de un año, transcurrido el cual cesará en sus efectos para el denunciante, quedando subsistente para los demás signatarios. La denuncia será dirigida a la Unión Panamericana, que la transmitirá a las otras Partes Contratantes.

La denuncia no tendrá efecto alguno sobre los procedimientos pendientes iniciados antes de transmitido el aviso respectivo.

ARTÍCULO LVII. Este Tratado será registrado en la Secretaría General de las Naciones Unidas por medio de la Unión Panamericana.

ARTÍCULO LVIII. A medida que este Tratado entre en vigencia por las sucesivas ratificaciones de las Altas Partes Contratantes, cesarán para ellas los efectos de los siguientes Tratados, Convenios y Protocolos:

Tratado para Evitar o Prevenir Conflictos entre los Estados Americanos, del 3 de mayo de 1923;

Convención General de Conciliación Interamericana, del 5 de enero de 1929;

Tratado General de Arbitraje Interamericano y Protocolo Adicional de Arbitraje Progresivo, del 5 de enero de 1929;

Protocolo Adicional a la Convención General de Conciliación Interamericana, del 26 de diciembre de 1933;

Tratado Antibélico de No Agresión y de Conciliación, del 10 de octubre de 1933;

Convención para Coordinar, Ampliar y Asegurar el Cumplimiento de los Tratados Existentes entre los Estados Americanos, del 23 de diciembre de 1936;

Tratado Interamericano sobre Buenos Oficios y Mediación, del 23 de diciembre de 1936; y

Tratado relativo a la Prevención de Controversias, del 23 de diciembre de 1936.

ARTÍCULO LIX. Lo dispuesto en el artículo anterior no se aplicará a los procedimientos ya iniciados o pactados conforme a alguno de los referidos instrumentos internacionales.

ARTÍCULO LX. Este Tratado se denominará "PACTO DE BOGOTÁ".

EN FE DE LO CUAL, los Plenipotenciarios que subscriben, habiendo depositado sus plenos poderes, que fueron hallados en buena y debida forma, firman este Tratado, en nombre de sus respectivos gobiernos, en las fechas que aparecen al pie de sus firmas.[1]

Hecho en la ciudad de Bogotá, en cuatro textos, respectivamente, en las lenguas española, francesa, inglesa y portuguesa, a los treinta días del mes de abril de mil novecientos cuarenta y ocho

RESERVAS

Argentina

"La Delegación de la República Argentina, al firmar el Tratado Americano de Soluciones Pacíficas (Pacto de Bogotá), formula sus reservas sobre los siguientes artículos, a los cuales no adhiere:

1) VII, relativo a la protección de extranjeros;

2) Capítulo Cuarto (Artículos XXXI a XXXVII), Procedimiento Judicial;

3) Capítulo Quinto (Artículos XXXVIII a XLIX), Procedimiento de Arbitraje; y

4) Capítulo Sexto (Artículo L), Cumplimiento de las Decisiones.

El arbitraje y el procedimiento judicial cuentan, como instituciones, con la firme adhesión de la República Argentina, pero la Delegación no puede aceptar la forma en que se han reglamentado los procedimientos para su aplicación, ya que a su juicio debieron establecerse solamente para las controversias que se originen en el futuro y que no tengan su origen ni relación alguna con causas, situaciones o

[1] Transcritas en la pág. 119.

hechos preexistentes a la firma de este instrumento. La ejecución compulsiva de las decisiones arbitrales o judiciales y la limitación que impide a los Estados juzgar por sí mismos acerca de los asuntos que pertenecen a su jurisdicción interna conforme al Artículo V, son contrarios a la tradición argentina. Es también contraria a esa tradición la protección de los extranjeros, que en la República Argentina están amparados, en un mismo grado que los nacionales, por la Ley Suprema."

Bolivia

"La Delegación de Bolivia formula reserva al Artículo VI, pues considera que los procedimientos pacíficos pueden también aplicarse a las controversias emergentes de asuntos resueltos por arreglo de las partes, cuando dicho arreglo afecta intereses vitales de un Estado."

Ecuador

"La Delegación del Ecuador, al subscribir este Pacto, hace reserva expresa del Artículo VI, y, además, de toda disposición que esté en pugna o no guarde armonía con los principios proclamados o las estipulaciones contenidas en la Carta de las Naciones Unidas, o en la Carta de la Organización de los Estados Americanos, o en la Constitución de la República del Ecuador."

Estados Unidos de América

"1. Los Estados Unidos de América no se comprometen, en caso de conflicto en que se consideren parte agraviada, a someter a la Corte Internacional de Justicia toda controversia que no se considere propiamente dentro de la jurisdicción de la Corte.

2. El planteo por parte de los Estados Unidos de América de cualquier controversia al arbitraje, a diferencia del arreglo judicial, dependerá de la conclusión de un acuerdo especial entre las partes interesadas.

3. La aceptación por parte de los Estados Unidos de América de la jurisdicción de la Corte Internacional de Justicia como obligatoria *ipso facto* y sin acuerdo especial, tal como se dispone en el Tratado, se halla determinada por toda limitación jurisdiccional o por otra clase de limitación contenidas en toda declaración depositada por los Estados Unidos de América según el Artículo 36, parágrafo 4, de los Estatutos de la Corte, y que se encuentre en vigor en el momento en que se plantee un caso determinado.

4. El Gobierno de los Estados Unidos de América no puede aceptar el Artículo VII relativo a la protección diplomática y al agotamiento de los recursos. Por su parte, el Gobierno de los Estados Unidos mantiene las reglas de la protección diplomática, incluyendo la regla del agotamiento de los recursos locales por parte de los extranjeros, tal como lo dispone el derecho internacional."

Paraguay

"La Delegación del Paraguay formula la siguiente reserva:

El Paraguay supedita al previo acuerdo de partes el procedimiento arbitral,

establecido en este protocolo para toda cuestión no jurídica que afecte a la soberanía nacional, no específicamente convenida en tratados actualmente vigentes."

Perú

"La Delegación del Perú formula las siguientes reservas:

1. Reserva a la segunda parte del Artículo V, porque considera que la jurisdicción interna debe ser definida por el propio Estado.

2. Reserva al Artículo XXXIII y a la parte pertinente del Artículo XXXIV, por considerar que las excepciones de cosa juzgada, resuelta por arreglo de las partes o regida por acuerdos o tratados vigentes, determinan, en virtud de su naturaleza objetiva y perentoria, la exclusión de estos casos de la aplicación de todo procedimiento.

3. Reserva al Artículo XXXV en el sentido de que antes del arbitraje puede proceder, a solicitud de parte, la Reunión del Organo de Consulta como lo establece la Carta de la Organización de los Estados Americanos.

4. Reserva al Artículo XLV porque estima que el arbitraje constituído sin intervención de parte, se halla en contraposición con sus preceptos constitucionales."

Nicaragua

"La Delegación de Nicaragua, al dar su aprobación al Tratado Americano de Soluciones Pacíficas (Pacto de Bogotá), desea dejar expresa constancia en el acta, que ninguna disposición contenida en dicho Tratado podrá perjudicar la posición que el Gobierno de Nicaragua tenga asumida respecto a sentencias arbitrales cuya validez haya impugnado basándose en los principios del derecho internacional, que claramente permiten impugnar fallos arbitrales que se juzguen nulos o viciados. En consecuencia, la firma de la Delegación de Nicaragua en el Tratado de la referencia, no podrá alegarse como aceptación de fallos arbitrales que Nicaragua haya impugnado y cuya validez no esté definida.

En esta forma, la Delegación de Nicaragua reitera la manifestación que hizo en fecha 28 de los corrientes, al aprobarse el texto del mencionado Tratado en la Comisión Tercera."

TRATADO AMERICANO DE SOLUÇÕES PACÍFICAS

"PACTO DE BOGOTÁ"

Em nome de seus povos, os Governos representados na Nona Conferência Internacional Americana resolvem, em cumprimento do Artigo 23º da Carta da Organização dos Estados Americanos, elaborar o seguinte Tratado:

CAPÍTULO PRIMEIRO

OBRIGAÇÃO GERAL DE RESOLVER AS CONTROVÉRSIAS POR MEIOS PACÍFICOS

ARTIGO I. As Altas Partes Contratantes, reafirmando solenemente os compromissos tomados mediante anteriores convenções e declarações internacionais, assim como pela Carta das Nações Unidas, concordam em se abster da ameaça, do uso da fôrça, ou de qualquer outro meio de coação, para o ajuste das suas controvérsias, e em recorrer, em qualquer tempo, a processos pacíficos.

ARTIGO II. As Altas Partes Contratantes reconhecem a obrigação de resolver as controvérsias internacionais por processos pacíficos regionais, antes de levá-las ao Conselho de Segurança das Nações Unidas.

Em consequência, no caso em que entre dois ou mais Estados signatários surja uma controvérsia que, na opinião das partes, não possa ser resolvida por negociações diretas ou através dos trâmites diplomáticos usuais, as partes comprometem-se a empregar os processos estabelecidos neste Tratado, na forma e condições previstas nos artigos a seguir, ou então os processos especiais que, a seu juízo, tornem possível uma solução.

ARTIGO III. A ordem dos processos pacíficos, estabelecida no presente Tratado, não impede às partes de recorrerem ao que considerarem mais adequado em cada caso, nem lhes impõe o dever de seguí-los todos, nem estabelece, salvo disposição expressa a respeito, preferência entre os mesmos.

ARTIGO IV. Iniciado um dos processos pacíficos, quer por acôrdo das partes, quer em cumprimento do presente Tratado, ou de pacto anterior, não poderá iniciar-se outro processo antes de terminado o primeiro.

ARTIGO V. Os processos acima previstos não poderão aplicar-se aos assuntos que são essencialmente da alçada da jurisdição interna do Estado. Se as partes não estiverem de acôrdo sôbre o fato de versar a controvérsia sôbre um assunto de jurisdição interna, a pedido de qualquer delas, esta questão prévia será submetida à decisão da Côrte Internacional de Justiça.

ARTIGO VI. Não se poderão, igualmente, aplicar os processos supracitados aos assuntos já resolvidos por entendimentos entre as partes, ou por laudo arbitral, ou por sentença de um tribunal internacional, ou que estejam regulados por acordos ou tratados, em vigor na data da assinatura do presente Tratado.

ARTIGO VII. As Altas Partes Contratantes comprometem-se a não fazer reclamações diplomáticas para proteger seus cidadãos, nem a iniciar a êsse respeito uma controvérsia perante a jurisdição internacional, quando aqueles cidadãos tenham à sua disposição meios expeditos de recorrer aos tribunais domésticos competentes do Estado correspondente.

ARTIGO VIII. O apêlo aos meios pacíficos para a solução de controvérsias, ou a recomendação para o seu emprêgo, não poderão ser motivo, no caso de ataque armado, para retardar o exercício do direito de legítima defesa individual ou coletiva, previsto na Carta das Nações Unidas.

CAPÍTULO SEGUNDO

BONS OFÍCIOS E MEDIAÇÃO

ARTIGO IX. O processo dos bons ofícios consiste na gestão por parte de um ou mais Governos americanos ou de um ou mais cidadãos eminentes de qualquer Estado Americano, alheios à controvérsia, no sentido de aproximar as partes, proporcionando-lhes a possibilidade de encontrarem, diretamente, uma solução adequada.

ARTIGO X. Uma vez que se tiver conseguido a aproximação das partes e que estas tiverem entrado novamente em negociações diretas, dar-se-á por terminada a ação do Estado ou do cidadão que tenham oferecido seus Bons Ofícios ou aceitado o convite para interpô-los; no entanto, por acôrdo das partes, aqueles poderão estar presentes às negociações.

ARTIGO XI. O processo de mediação consiste em submeter a controvérsia a um ou mais Governos americanos, ou a um ou mais cidadãos eminentes de qualquer Estado Americano alheios à controvérsia. Em qualquer dos casos, o mediador ou mediadores serão escolhidos mediante comum acôrdo das partes interessadas.

ARTIGO XII. As funções do mediador ou dos mediadores consistirão em coadjuvar as partes na solução da controvérsia da maneira mais simples e direta, evitando formalidades e tentando encontrar uma solução aceitável. O mediador se absterá de fazer qualquer relatório, e, no que lhe diz respeito, o processo será absolutamente confidencial.

ARTIGO XIII. No caso em que as Altas Partes Contratantes hajam combinado o processo de mediação e não possam entrar em acôrdo no prazo de dois meses sôbre a eleição do mediador ou mediadores; ou, se iniciada a mediação, transcorrerem cinco meses sem se chegar à solução da controvérsia, os mesmos recorrerão sem demora a qualquer dos demais processos de solução pacífica estabelecidos neste Tratado.

ARTIGO XIV. As Altas Partes Contratantes poderão oferecer sua mediação, quer individual, quer conjuntamente; concordam, entretanto, em não fazê-lo enquanto a controvérsia estiver sujeita a outros processos estabelecidos no presente Tratado.

CAPÍTULO TERCEIRO

PROCESSO DE INVESTIGAÇÃO E CONCILIAÇÃO

ARTIGO XV. O processo de investigação e conciliação consiste em submeter a controvérsia a uma comissão de investigação e conciliação, que será constituída de conformidade com as disposições estabelecidas nos subsequentes artigos do presente Tratado e que funcionará dentro das limitações nêle indicadas.

ARTIGO XVI. A parte que promova o processo de investigação e conciliação pedirá ao Conselho da Organização dos Estados Americanos que convoque a Comissão de Investigação e Conciliação. O Conselho, por sua vez, tomará as providências imediatas para convocá-la.

Recebida a petição para que se convoque a Comissão, ficará imediatamente suspensa a controvérsia entre as partes, que se absterão de todo ato que possa dificultar a conciliação.

Para êsse fim, o Conselho da Organização dos Estados Americanos poderá, a pedido das partes, enquanto esteja em trâmite a convocatória da Comissão, fazer-lhes recomendações nesse sentido.

ARTIGO XVII. As Altas Partes Contratantes poderão nomear, por meio de um acôrdo bilateral, que se fará por uma simples troca de notas com cada um dos outros signatários, dois membros da Comissão de Investigação e Conciliação, dos quais sòmente um poderá ser de sua própria nacionalidade. O quinto será eleito imediatamente, de comum acôrdo com os já designados, e desempenhará as funções de Presidente.

Qualquer das Partes Contratantes poderá substituir os membros que tiverem designado, sejam êstes nacionais ou estrangeiros; deverá, porém, no mesmo ato nomear o substituto. Se não o fizer, não será levada em conta a substituição. As nomeações e substituições deverão registrar-se na União Pan-Americana, que velará para que as Comissões de cinco membros estejam sempre integradas.

ARTIGO XVIII. Sem prejuízo do disposto no artigo anterior, a União Pan-Americana formará um Quadro Permanente de Conciliadores Americanos que será integrado assim:

a) Cada uma das Altas Partes Contratantes designará, por períodos de três anos, dois de seus nacionais que gozem da mais alta reputação por sua equanimidade, competência e honorabilidade.

b) A União Pan-Americana consultará os candidatos e inscreverá, no Quadro de Conciliadores, os nomes dos que tiverem aceito, expressamente, a designação.

c) Os governos poderão, em qualquer momento, preencher as vagas que ocorram entre seus designados, ou renomeá-los.

ARTIGO XIX. No caso de ocorrer uma controvérsia entre dois ou mais Estados Americanos que não tiverem constituído a Comissão a que se refere o artigo XVII, será observado o seguinte processo:

a) Cada parte designará dois membros escolhidos dentre os do Quadro

Permanente de Conciliadores Americanos, que não pertençam à nacionalidade do designante.

b) Êstes quatro membros escolherão, por sua vez, um quinto membro estranho às partes dentro do Quadro Permanente.

c) Se, dentro do prazo de 30 dias, depois de haverem sido notificados de sua designação, os quatro membros não puderem pôr-se de acôrdo na escolha do quinto membro, cada um dêles formará separadamente a lista de conciliadores, tomando-a do Quadro Permanente na ordem de sua preferência; e, depois de comparadas as listas assim formadas, declarar-se-á eleito aquele que primeiro reúna maioria de votos. O eleito exercerá as funções de Presidente da Comissão.

ARTIGO XX. O Conselho da Organização dos Estados Americanos, ao convocar a Comissão de Investigação e Conciliação, determinará o lugar onde esta deverá reunir-se. Posteriormente, a Comissão poderá determinar o lugar ou lugares onde deva a mesma funcionar, levando em conta as facilidades para a realização de seus trabalhos.

ARTIGO XXI. Quando mais de dois Estados estiverem envolvidos na mesma controvérsia, os Estados que sustentarem o mesmo ponto de vista serão considerados como uma única parte. Se os interêsses forem divergentes, terão direito a aumentar o número de conciliadores, a fim de que tôdas as partes contem com igual representação. O Presidente da Comissão será eleito na forma estabelecida no artigo XIX.

ARTIGO XXII. Compete à Comissão de Investigação e Conciliação esclarecer os pontos controvertidos, procurando levar as partes a um acôrdo em condições recìprocamente aceitáveis. A Comissão promoverá as investigações que julgar necessárias sôbre os motivos da controvérsia, com o fim de propor bases aceitáveis de solução.

ARTIGO XXIII. É dever das partes facilitar os trabalhos da Comissão e proporcionar-lhe, da maneira mais ampla possível, todos os documentos e informações úteis, assim como empregar os meios de que disponham para permitir-lhe citar e ouvir testemunhas ou peritos e praticar outras diligências, em seus respectivos territórios e de conformidade com suas leis.

ARTIGO XXIV. Durante o andamento dos processos perante a Comissão, as partes serão representadas por Delegados Plenipotenciários ou por agentes que servirão de intermediários entre elas e a Comissão. As partes e a Comissão poderão recorrer ao serviço de consultores e peritos.

ARTIGO XXV. A Comissão concluirá seus trabalhos dentro do prazo de seis meses, a partir da data da sua constituição; as partes poderão, entretanto, de comum acôrdo, prorrogar êsse prazo.

ARTIGO XXVI. Se, a juízo das partes, a controvérsia se limitar exclusivamente a questões de fato, a Comissão restringir-se-á à investigação das mesmas e concluirá seus trabalhos por um relatório correspondente.

ARTIGO XXVII. Se se obtiver o acôrdo conciliatório, o relatório final da Comissão se limitará a reproduzir o texto do acôrdo conseguido, que será publicado

depois de sua entrega às partes, salvo se estas decidirem de outra maneira. Em caso contrário, o relatório final conterá um resumo dos trabalhos efetuados pela Comissão; será entregue às partes e publicado depois de um prazo de seis meses, a menos que estas tomem outra decisão. Em ambos os casos, o relatório final será aprovado por maioria de votos.

ARTIGO XXVIII. Os relatórios e conclusões da Comissão de Investigação e Conciliação não serão obrigatórios para as partes, quer no tocante à exposição dos fatos, quer no concernente às questões de direito, e não se revestirão de outro caráter senão de recomendações submetidas à consideração das partes para facilitar a solução amigável da controvérsia.

ARTIGO XXIX. A Comissão de Investigação e Conciliação entregará a cada uma das partes, assim como à União Pan-Americana, cópias autenticadas das atas de seus trabalhos. Estas atas só serão publicadas quando assim decidirem as partes.

ARTIGO XXX. Cada um dos membros da Comissão receberá uma compensação pecuniária, cujo montante será fixado de comum acôrdo pelas partes. Se estas não entrarem em acôrdo, caberá ao Conselho da Organização fixá-la. Os Governos pagarão as suas próprias despesas e, em partes iguais, as despesas comuns da Comissão, compreendidas nestas as compensações anteriormente previstas.

CAPÍTULO QUARTO

PROCESSO JUDICIAL

ARTIGO XXXI. De conformidade com o inciso 2° do artigo 36° do Estatuto da Côrte Internacional de Justiça, as Altas Partes Contratantes declaram que reconhecem, com relação a qualquer outro Estado Americano, como obrigatória *ipso facto*, sem necessidade de nenhum convênio especial, desde que esteja em vigor o presente Tratado, a jurisdição da citada Côrte em tôdas as controvérsias de ordem jurídica que surjam entre elas e que versem sôbre:

a) A interpretação de um tratado;

b) Qualquer questão de Direito Internacional;

c) A existência de qualquer fato que, se comprovado, constitua violação de uma obrigação internacional; ou

d) A natureza ou extensão da reparação a ser feita em virtude do desrespeito a uma obrigação internacional.

ARTIGO XXXII. Quando o processo de conciliação estabelecido anteriormente, conforme êste Tratado ou por vontade das partes, não chegar a uma solução e as citadas partes não concordarem numa solução por arbitramento, qualquer delas terá direito a recorrer à Côrte Internacional de Justiça, na forma estabelecida no artigo 40° de seu Estatuto. A jurisdição da Côrte ficará obrigatòriamente aberta, conforme o inciso 1° do artigo 36° do referido Estatuto.

ARTIGO XXXIII. Se as partes não se puserem de acôrdo acêrca da competência da Côrte sôbre o litígio, a própria Côrte decidirá prèviamente esta questão.

ARTIGO XXXIV. Se a Côrte se declarar incompetente para tomar conheci-

mento da controvérsia pelos motivos assinalados nos artigos V, VI e VII dêste Tratado, declarar-se-á terminada a controvérsia.

ARTIGO XXXV. Se a Côrte se declarar incompetente por qualquer outro motivo para tomar conhecimento da controvérsia e decidir sôbre ela, as Altas Partes Contratantes se obrigam a submetê-la à arbitragem, de acôrdo com as disposições do Capítulo Quinto dêste Tratado.

ARTIGO XXXVI. No caso de controvérsias submetidas a processo judicial, a que se refere êste Tratado, competirá a sua decisão ao plenário da Côrte, ou, se assim o solicitarem as partes, a uma câmara especial, conforme o artigo 26° do seu Estatuto. As partes poderão convir, igualmente, que o conflito se decida *ex aequo et bono*.

ARTIGO XXXVII. O processo a que a Côrte deve ajustar-se será o estabelecido em seu Estatuto.

CAPÍTULO QUINTO

PROCESSO DE ARBITRAGEM

ARTIGO XXXVIII. Não obstante o estabelecido no Capítulo Quarto dêste Tratado, as Altas Partes Contratantes terão a faculdade de submeter à arbitragem, se se puserem de acôrdo nesse sentido, as diferenças de qualquer natureza, sejam ou não jurídicas, que hajam surgido ou surgirem subsequentemente entre elas.

ARTIGO XXXIX. O Tribunal de Arbitragem, ao qual se submeterá a controvérsia no caso dos artigos XXXV e XXXVIII dêste Tratado, se constituirá do modo seguinte, a menos que haja acôrdo em contrário.

ARTIGO XL. 1.—Dentro do prazo de dois meses, contados da data da notificação da decisão da Côrte, no caso previsto no artigo XXXV, cada uma das partes designará um árbitro de reconhecida competência em questões de Direito Internacional, que goze da mais alta consideração moral, e comunicará esta designação ao Conselho da Organização. Simultâneamente, apresentará ao mesmo Conselho uma lista de 10 juristas escolhidos entre os que constituem a lista geral dos membros da Côrte Permanente de Arbitragem de Haia, que não pertençam ao seu grupo nacional e que estejam dispostos a aceitar o cargo.

2.—O Conselho da Organização integrará, no mês seguinte à apresentação das listas, o Tribunal de Arbitragem, na forma que, a seguir, se define:

a) Se as listas apresentadas pelas partes coincidirem em três nomes, essas pessoas constituirão o Tribunal de Arbitragem, com as duas designadas diretamente pelas partes.

b) No caso em que a coincidência recaia em mais de três nomes, serão escolhidos por sorteio os três arbitros que deverão completar o Tribunal.

c) Nas circunstâncias prèvistas nos dois incisos anteriores, os cinco árbitros designados escolherão entre si o Presidente do Tribunal.

d) Se ùnicamente estiverem de acôrdo sôbre dois nomes, êsses candidatos e os dois árbitros selecionados diretamente pelas partes, elegerão, de comum acôrdo, o quinto árbitro, que presidirá ao Tribunal. A eleição deverá recair em um jurisconsulto, cujo nome conste da relação geral da Côrte Permanente

de Arbitragem de Haia, que não tenha sido incluído nas listas formadas pelas partes.

e) Se as listas apresentarem um só nome comum, esta pessoa formará parte do Tribunal, e deverá ser escolhida outra, por sorteio, entre os 18 juristas restantes nas mencionadas listas. O Presidente será eleito segundo o processo estabelecido no inciso anterior.

f) Caso não se verifique nenhuma concordância nas listas, será sorteado um árbitro de cada uma delas; e o quinto árbitro, que atuará como Presidente, será eleito na maneira indicada anteriormente.

g) Se os quatro árbitros não puderem entrar de acôrdo sôbre o quinto árbitro, dentro do prazo de um mês, contado a partir da data em que o Conselho da Organização lhes comunique sua nomeação, cada um dêles preparará separadamente a lista de juristas na ordem da sua preferência e, depois de comparar as listas assim formadas, será declarado eleito o que reunir primeiro maioria de votos.

ARTIGO XLI. As partes poderão, de comum acôrdo, constituir o Tribunal na forma que considerem mais conveniente, e ainda escolher um árbitro único, designando em tal caso um chefe de Estado, um jurista eminente ou qualquer tribunal de justiça em que tenham mútua confiança.

ARTIGO XLII. Quando mais de dois Estados estejam implicados na mesma controvérsia, os Estados que defendam iguais interêsses serão considerados como uma única parte. Se tiverem interêsses opostos, terão direito a aumentar o número de árbitros para que tôdas as partes tenham igual representação. O Presidente será eleito na forma estabelecida no artigo XL.

ARTIGO XLIII. As partes formularão em cada caso o compromisso que defina claramente a matéria específica objeto da controvérsia, a sede do tribunal, as regras que tenham que ser observadas no processo, o prazo dentro do qual o laudo tenha que ser pronunciado e as demais condições que convencionem entre si.

Se não se chegar a um acôrdo sôbre o compromisso, dentro de três meses contados da data da instalação do Tribunal, o compromisso será formulado, com caráter obrigatório para as partes, pela Côrte Internacional de Justiça, mediante processo sumário.

ARTIGO XLIV. As partes poderão fazer-se representar ante o Tribunal arbitral pelas pessoas que julguem conveniente designar.

ARTIGO XLV. Se uma das partes não fizer a designação do seu árbitro e a apresentação de sua lista de candidatos, dentro do prazo previsto no artigo XL, a outra parte terá o direito de pedir ao Conselho da Organização que constitúa o Tribunal de Arbitragem. O Conselho imediatamente insistirá com a parte remissa para que cumpra essas obrigações dentro de um prazo adicional de 15 dias, findo o qual, o próprio Conselho integrará o Tribunal, da seguinte forma:

a) Sorteará um nome da lista apresentada pela parte requerente.

b) Escolherá por maioria absoluta de votos dois juristas do quadro geral da Côrte Permanente de Arbitragem de Haia, que não pertençam ao grupo nacional de nenhuma das partes.

c) As três pessoas assim designadas, conjuntamente com a selecionada diretamente pela parte requerente, elegerão, na maneira prevista no artigo XL, o quinto árbitro, que será o Presidente.

d) Instalado o Tribunal, será seguido o processo estabelecido no artigo XLIII.

ARTIGO XLVI. O laudo será fundamentado, adotado por maioria de votos e publicado depois de sua notificação às partes. O árbitro ou árbitros dissidentes poderão fazer constar os fundamentos de sua dissidência. O laudo, devidamente pronunciado e notificado às partes, decidirá a controvérsia definitivamente e sem apelação, e receberá imediata execução.

ARTIGO XLVII. As divergências que se suscitem sôbre a interpretação ou execução do laudo, serão submetidas à decisão do Tribunal Arbitral que o proferiu.

ARTIGO XLVIII. Dentro do ano seguinte à sua notificação, o laudo será susceptível de revisão perante o mesmo Tribunal, a requerimento de uma das partes, sempre que se descobrir um fato anterior ao laudo, ignorado do Tribunal e da parte que solicitar a revisão, e sempre que, a juízo do Tribunal, êsse fato seja capaz de exercer influência decisiva sôbre o laudo.

ARTIGO XLIX. Cada um dos membros do Tribunal receberá uma compensação pecuniária, cujo montante será fixado de comum acôrdo pelas partes. Se essas não entrarem em acôrdo, caberá ao Conselho da Organização fixá-la. Os Governos pagarão as suas próprias despesas e uma parte igual das despesas comuns do Tribunal, compreendidas nestas as compensações anteriormente previstas.

CAPÍTULO SEXTO

CUMPRIMENTO DAS DECISÕES

ARTIGO L. Se uma das Altas Partes Contratantes deixar de cumprir as obrigações que lhe imponha uma sentença da Côrte Internacional de Justiça ou um laudo arbitral, a outra ou as outras partes interessadas, antes de recorrer ao Conselho de Segurança das Nações Unidas, promoverão uma Reunião de Consulta dos Ministros das Relações Exteriores, a fim de que se combinem as medidas que convenha tomar para que se execute a decisão judicial ou arbitral.

CAPÍTULO SÉTIMO

PARECERES CONSULTIVOS

ARTIGO LI. As partes interessadas na solução de uma controvérsia poderão, de comum acôrdo, requerer à Assembléia Geral, ou ao Conselho de Segurança das Nações Unidas, que solicite da Côrte Internacional de Justiça pareceres sôbre qualquer questão jurídica.

O requerimento será feito por intermédio do Conselho da Organização dos Estados Americanos.

CAPÍTULO OITAVO

DISPOSIÇÕES FINAIS

ARTIGO LII. O presente Tratado será ratificado pelas Altas Partes Contratantes, de acôrdo com os seus processos constitucionais. O instrumento original será depositado na União Pan-Americana, que enviará cópia autenticada aos Governos, para os devidos fins. Os instrumentos de ratificação serão depositados nos arquivos da União Pan-Americana, que notificará o citado depósito aos Governos signatários. Tal notificação será considerada como troca de ratificações.

ARTIGO LIII. O presente Tratado entrará em vigor entre as Altas Partes Contratantes de acôrdo com a ordem em que depositem suas respectivas ratificações.

ARTIGO LIV. Qualquer Estado Americano que não seja signatário dêste Tratado, ou que haja feito reservas ao mesmo, poderá aderir a êste, ou abandonar no todo ou em parte suas reservas, mediante instrumento oficial dirigido à União Pan-Americana, que notificará as outras Altas Partes Contratantes, na forma que aqui se estabelece.

ARTIGO LV. Se alguma das Altas Partes Contratantes fizer reservas com respeito ao presente Tratado, tais reservas se aplicarão, com relação ao Estado que as fizer, a todos os Estados signatários, a título de reciprocidade.

ARTIGO LVI. O presente Tratado vigorará indefinidamente, porém poderá ser denunciado mediante aviso prévio de um ano, transcorrido o qual cessarão seus efeitos para o denunciante, continuando a subsistir para os demais signatários. A denúncia será dirigida à União Pan-Americana, que a transmitirá às outras Partes Contratantes.

A denúncia não terá efeito algum sôbre os processos pendentes e iniciados antes de ser transmitido o aviso respectivo.

ARTIGO LVII. Êste Tratado será registrado na Secretaria Geral das Nações Unidas por intermédio da União Pan-Americana.

ARTIGO LVIII. A medida que êste Tratado entrar em vigor pelas sucessivas ratificações das Altas Partes Contratantes, cessarão para elas os efeitos dos seguintes Tratados, Convênios e Protocolos:

Tratado para Evitar ou Prevenir Conflitos entre os Estados Americanos, de 3 de maio de 1923;

Convenção Geral de Conciliação Interamericana, de 5 de janeiro de 1929;

Tratado Geral de Arbitramento Interamericano e Protocolo Adicional de Arbitramento Progressivo, de 5 de janeiro de 1929;

Protocolo Adicional à Convenção Geral de Conciliação Interamericana, de 26 de dezembro de 1933;

Tratado Antibélico de Não-Agressão e Conciliação, de 10 de outubro de 1933;

Convenção para Coordenar, Ampliar e Assegurar a Observância dos Tratados Existentes entre os Estados Americanos, de 23 de dezembro de 1936;

Tratado Interamericano sôbre Bons Ofícios e Mediação, de 23 de dezembro de 1936; e

Tratado Relativo à Prevenção de Controvérsias, de 23 de dezembro de 1936.

ARTIGO LIX. O disposto no artigo precedente não se aplicará aos processos já iniciados ou ajustados conforme algum dos referidos instrumentos internacionais.

ARTIGO LX. Êste Tratado se denominará "PACTO DE BOGOTÁ".

EM TESTEMUNHO DO QUE, os Plenipotenciários abaixo assinados, havendo depositado seus plenos poderes, que foram encontrados em boa e devida forma, firmam êste Tratado, em nome de seus respectivos Governos, nas datas que aparecem abaixo de suas firmas.[1]

Feito na cidade de Bogotá, em quatro textos, respectivamente nas línguas espanhola, francesa, inglesa e portuguesa, aos trinta dias do mês de abril de mil novecentos e quarenta e oito

RESERVAS

Argentina

"A Delegação da República Argentina, ao firmar o Tratado Americano de Soluções Pacíficas (Pacto de Bogotá), formula suas reservas sôbre os seguintes artigos, os quais não aprova:

1) VII, relativo à proteção de estrangeiros;
2) Capítulo Quarto (artigos XXXI a XXXVII), Processo Judicial;
3) Capítulo Quinto (artigos XXXVIII a XLIX), Processo de Arbitragem; e
4) Capítulo Sexto (artigo L), Cumprimento das Decisões.

A arbitragem e o processo judicial contam, como instituições, com a firme adesão da República Argentina, porém a Delegação não pode aceitar a forma em que se regulamentaram os processos para sua aplicação, já que a seu juízo dever-se-iam estabelecer sòmente para as controvérsias que se originem no futuro e que não tenham sua origem nem relação alguma com causas, situações ou fatos preexistentes à data da assinatura dêste instrumento. A execução compulsória das decisões arbitrais ou judiciais, e a limitação que impede aos Estados de julgar por si mesmos acêrca dos assuntos que pertencem à sua jurisdição interna, conforme o artigo V, são contrárias à tradição argentina. É também contrária a esta tradição a proteção dos estrangeiros que, na República Argentina, estão amparados pela Lei Suprema e encontram-se no mesmo nível que os nacionais."

Bolívia

"A Delegação da Bolívia formula reserva ao artigo VI, pois considera que os processos pacíficos podem também aplicar-se às controvérsias oriundas de assuntos resolvidos por acôrdo entre as partes, quando o citado acôrdo afeta interêsses vitais de um Estado."

Equador

"A Delegação do Equador, ao subscrever êste Pacto, faz reserva expressa ao artigo VI, bem como a tôda disposição que esteja em conflito, ou que não esteja

[1] As firmas dos Plenipotenciários acham-se à pág. 119.

em harmonia com os princípios proclamados ou as estipulações contidas na Carta das Nações Unidas, na Carta da Organização dos Estados Americanos ou na Constituição da República do Equador."

Estados Unidos da América

"1. Os Estados Unidos da América não se comprometem, no caso de conflito em que se considere parte agravada, a submeter à Côrte Internacional de Justiça qualquer controvérsia que não seja considerada de competência da Côrte.

2. A apresentação, por parte dos Estados Unidos da América, de qualquer controvérsia à arbitragem, diferentemente do ajuste judicial, dependerá da conclusão de um acôrdo especial entre as partes interessadas.

3. A aceitação, por parte dos Estados Unidos da América, da jurisdição da Côrte Internacional de Justiça como obrigatória, *ipso facto* e sem acôrdo especial, tal como se dispõe no Tratado, acha-se determinada por tôda limitação jurisdicional, ou por outra classe de limitação, contidas em qualquer declaração depositada pelos Estados Unidos da América, segundo o artigo 36°, parágrafo 4°, do Estatuto da Côrte, e que se encontrem em vigor no momento em que se apresente um caso determinado.

4. O Govêrno dos Estados Unidos da América não pode aceitar o artigo VII relativo à proteção diplomática e ao esgotamento dos recursos. Por sua parte, o Govêrno dos Estados Unidos da América mantém as regras da proteção diplomática, incluindo a regra do esgotamento dos recursos locais por parte dos estrangeiros, tal como dispõe o Direito Internacional."

Paraguai

"A Delegação do Paraguai formula a seguinte reserva:

O Paraguai subordina ao prévio acôrdo das partes o processo arbitral estabelecido neste protocolo para tôda questão não jurídica que afete a soberania nacional, não especìficamente resolvida nos tratados atualmente em vigor."

Peru

"A Delegação do Peru formula as seguintes reservas:

1. À segunda parte do artigo V, por considerar que a jurisdição interna deve ser definida pelo próprio Estado.

2. Ao artigo XXXIII e à parte pertinente do artigo XXXIV, por considerar que as exceções de coisa julgada, resolvida por acôrdo entre as partes, ou regida por acôrdos ou tratados vigentes, determinam, em virtude de sua natureza objetiva e peremptória, a exclusão nestes casos da aplicação de todo o processo.

3. Ao artigo XXXV, no sentido de que, antes da arbitragem, se pode convocar, a requerimento da parte, a reunião do Orgão de Consulta, tal como estabelece a Carta da Organização dos Estados Americanos.

4. Ao artigo XLV, porque é de opinião que a arbitragem constituída sem a intervenção da parte se acha em contraposição com os seus preceitos constitucionais."

Nicarágua

"A Delegação de Nicarágua, ao dar aprovação ao Tratado Americano de Soluções Pacíficas (Pacto de Bogotá), deseja deixar registrado na Ata que nenhuma disposição no citado Tratado poderá prejudicar a posição que o Govêrno de Nicarágua tenha assumido com referência a sentenças arbitrais cuja validez haja impugnado, baseando-se nos princípios de Direito Internacional que claramente permitem impugnar decisões arbitrais que se julguem nulas ou inválidas. Consequentemente, a assinatura da Delegação de Nicarágua no aludido Tratado não poderá alegar-se como aceitação de sentenças arbitrais que Nicarágua haja impugnado e cuja validez não esteja definida.

Destarte, a Delegação de Nicarágua reitera a declaração que fez em 28 do corrente mês, ao aprovar-se o texto do mencionado Tratado na Terceira Comissão."

TRAITE AMERICAIN DE REGLEMENT PACIFIQUE

"PACTE DE BOGOTA"

Au nom de leurs peuples, les Gouvernements représentés à la Neuvième Conférence internationale américaine ont décidé, conformément à l'article 23 de la Charte de l'Organisation des Etats Américains, de signer le Traité suivant:

CHAPITRE PREMIER

OBLIGATION GENERALE DE REGLER LES DIFFERENDS PAR DES MOYENS PACIFIQUES

ARTICLE I. Les Hautes Parties Contractantes réaffirment solennellement les obligations qu'elles ont aceptées dans des conventions et des déclarations internationales antérieures ainsi que dans la Charte des Nations Unies; elles décident de s'abstenir de la menace, de l'emploi de la force ou de n'importe quel autre moyen de coercition pour régler leurs différends et de recourir, en toutes circonstances, à des moyens pacifiques.

ARTICLE II. Les Hautes Parties Contractantes acceptent l'obligation de résoudre les différends internationaux à l'aide des procédures pacifiques régionales avant de recourir au Conseil de Sécurité des Nations Unies.

En conséquence, au cas où surgirait, entre deux ou plusieurs Etats signataires, un différend qui, de l'avis de l'une des parties, ne pourrait être résolu au moyen de négociations directes suivant les voies diplomatiques ordinaires, les parties s'engagent à employer les procédures établies dans ce Traité sous la forme et dans les conditions prévues aux articles suivants, ou les procédures spéciales qui, à leur avis, leur permettront d'arriver à une solution.

ARTICLE III. L'ordre des procédures pacifiques établi dans le présent Traité ne signifie pas que les parties ne peuvent recourir à celle qu'elles considèrent le plus appropriée à chaque cas, ni qu'elles doivent les suivre toutes, ni qu'il n'existe, sauf disposition expresse à cet égard, une préférence pour l'une d'elles.

ARTICLE IV. Lorsque l'une des procédures pacifiques aura été entamée, soit en vertu d'un accord entre les parties, soit en exécution du présent Traité, ou d'un pacte antérieur, il ne pourra être recouru à aucune autre avant l'épuisement de celle déjà entamée.

ARTICLE V. Lesdites procédures ne pourront s'appliquer aux questions qui, par leur nature, relèvent de la compétence nationale des Etats. Si les parties ne tombent pas d'accord sur le fait que le différend est une question relevant de la compétence nationale, sur la demande de l'une quelconque d'entre elles, cette question préjudicielle sera soumise au jugement de la Cour internationale de Justice.

ARTICLE VI. Ces procédures ne pourront non plus s'appliquer ni aux questions

déjà réglées au moyen d'une entente entre les parties, ou d'une décision arbitrale ou d'une décision d'un tribunal international, ni à celles régies par des accords ou traités en vigueur à la date de la signature du présent Pacte.

ARTICLE VII. Les Hautes Parties Contractantes s'engagent à ne pas produire de réclamations diplomatiques pour protéger leurs nationaux et à n'introduire, dans le même but, aucune action devant les juridictions internationales tant que lesdits nationaux n'auront pas épuisé les voies de recours par devant les tribunaux locaux compétents de l'Etat en question.

ARTICLE VIII. Ni le recours aux moyens pacifiques de solution des différends, ni la recommandation de leur emploi ne pourront, en cas d'attaque armée, constituer un motif pour retarder l'exercice du droit de légitime défense individuelle ou collective prévu dans la Charte des Nations Unies.

CHAPITRE DEUX

PROCEDURE DES BONS OFFICES ET DE MEDIATION

ARTICLE IX. La procédure des bons offices consiste dans les démarches d'un ou de plusieurs gouvernements américains, ou d'un ou de plusieurs citoyens éminents de l'un quelconque des Etats américains étrangers à la controverse, en vue de rapprocher les parties en leur offrant la possibilité de trouver directement une solution adéquate.

ARTICLE X. Dès que le rapprochement des parties aura été réalisé et que les négociations directes auront repris, la mission de l'Etat ou du citoyen qui avait offert ses bons offices ou accepté l'invitation de s'interposer sera considérée comme terminée; cependant, par accord des parties, ledit Etat ou ledit citoyen pourra être présent aux négociations.

ARTICLE XI. La procédure de médiation consiste à soumettre le différend soit à un ou plusieurs gouvernements américains, soit à un ou plusieurs citoyens éminents de l'un quelconque des Etats américains étrangers au différend. Dans l'un et l'autre cas le ou les médiateurs seront choisis d'un commun accord par les parties.

ARTICLE XII. Les fonctions du ou des médiateurs consisteront à assister les parties dans le règlement de leur différend de la manière la plus simple et la plus directe, en évitant les formalités et faisant en sorte de trouver une solution acceptable. Le médiateur s'abstiendra de faire aucun rapport et, en ce qui le concerne, les procédures seront strictement confidentielles.

ARTICLE XIII. Si après avoir convenu de se soumettre à la procédure de conciliation les Hautes Parties Contractantes ne pouvaient parvenir, dans un délai de deux mois, à se mettre d'accord sur le choix du ou des médiateurs, ou si, une fois entamée ladite procédure de médiation, cinq mois s'écoulaient sans qu'une solution puisse être donnée au différend, les parties recourront sans retard à l'une quelconque des autres procédures de règlement pacifique prévues au présent Traité.

ARTICLE XIV. Les Hautes Parties Contractantes pourront, individuellement ou collectivement, offrir leur médiation, mais elles s'engagent à ne pas le faire tant

que le différend demeure sujet à l'une des autres procédures prévues au présent Traité.

CHAPITRE TROIS

PROCEDURE D'ENQUETE ET DE CONCILIATION

ARTICLE XV. La procédure d'enquête et de conciliation consiste à soumettre le différend à une Commission d'enquête et de conciliation qui sera constituée conformément aux dispositions établies dans les articles suivants du présent Traité et qui fonctionnera dans les limites qui y sont fixées ci-après.

ARTICLE XVI. La partie qui recourt à la procédure d'enquête et de conciliation sollicitera du Conseil de l'Organisation des Etats Américains la convocation de la Commission d'enquête et de conciliation. Le Conseil, de son côté, prendra immédiatement les mesures nécessaires en vue de cette convocation.

Une fois reçue la demande de convocation de la Commission, le différend entre les parties demeure en suspens et celles-ci s'abstiendront de tout acte pouvant rendre difficile la conciliation. A cette fin, le Conseil de l'Organisation des Etats Américains pourra, sur la demande de l'une des parties, faire des recommandations dans ce sens à ces dernières, tandis que la convocation est en voie de réalisation.

ARTICLE XVII. Les Hautes Parties Contractantes pourront nommer, par accord bilatéral qui s'effectuera au moyen d'un simple échange de notes avec chacun des autres signataires, deux membres de la Commission d'enquête et de conciliation dont l'un seulement pourra être de leur propre nationalité. Le cinquième sera élu immédiatement, au moyen d'un commun accord par ceux déjà désignés et il remplira les fonctions de Président.

L'une quelconque des Parties Contractantes pourra remplacer les membres qu'elle aura désignés quelle que soit la nationalité de ceux-ci et elle devra, dans le même acte, désigner leurs remplaçants. Lorsqu'elle aura omis de le faire, la nouvelle nomination sera considérée comme n'ayant pas été faite. Les nominations et les remplacements en question devront être enregistrés à l'Union Panaméricaine qui veillera à ce que l'effectif des Commissions de cinq membres soit toujours au complet.

ARTICLE XVIII. Sans préjudice des dispositions de l'article précédent, l'Union Panaméricaine établira un Cadre permanent de Conciliateurs américains composé de la façon suivante:

a) Chacune des Hautes Parties Contractantes désignera, tous les trois ans, deux de leurs ressortissants jouissant de la meilleure réputation pour leur valeur, leur compétence et leur honorabilité;

b) L'Union Panaméricaine s'informera de l'acceptation expresse des candidats et placera dans le Cadre des Conciliateurs les noms de ceux qui auront donné leur agrément.

c) Les gouvernements auront, à tout moment, la faculté de combler les vacances qui pourront se produire et de nommer à nouveau les mêmes membres.

ARTICLE XIX. En cas de différend entre deux ou plusieurs Etats américains qui n'auraient pas établi la Commission visée à l'article XVII, la procédure suivante devra être adoptée:

a) Chacune des parties désignera du Cadre permanent des Conciliateurs américains deux membres dont la nationalité devra être différente de la sienne.

b) Ces quatre membres désigneront à leur tour un cinquième conciliateur étranger aux parties et qui sera également tiré du Cadre permanent.

c) Si 30 jours après que leur nomination a été notifiée aux quatre membres sus-indiqués, ces derniers ne sont pas parvenus à se mettre d'accord sur le choix d'un cinquième membre, chacun d'eux établira séparément une liste de conciliateurs choisis dans le Cadre permanent et énumérés par ordre de préférence. Et après comparaison des listes ainsi établies sera déclaré élu celui qui le premier aura réuni une majorité de voix. L'élu exercera les fonctions de Président de la Commission.

ARTICLE XX. Le Conseil de l'Organisation des Etats Américains, en convoquant la Commission d'enquête et de conciliation, fixera le lieu où elle doit se réunir. Par la suite, la Commission pourra déterminer le ou les endroits où elle doit exercer ses fonctions, en tenant compte des conditions les plus propres à la réalisation de ses travaux.

ARTICLE XXI. Lorsque le même différend existe entre plus de deux Etats, les Etats qui soutiennent le même point de vue seront considérés comme une même partie. Si leurs intérêts sont divergents, ils auront le droit d'augmenter le nombre des conciliateurs de façon à ce que toutes les parties aient une représentation égale. Le Président sera élu conformément aux dispositions de l'article XIX.

ARTICLE XXII. Il appartient à la Commission d'enquête et de conciliation d'éclaircir les points en litige et de s'efforcer d'amener celles-ci à un accord dans des conditions mutuellement acceptables. Dans le but de trouver une solution acceptable, la Commission procédera aux enquêtes qu'elle jugera nécessaires sur les faits qui ont donné naissance au différend.

ARTICLE XXIII. Il est dû devoir des parties de faciliter les travaux de la Commission et de lui fournir, de la façon la plus large possible, tous les documents et renseignements utiles, et elles ont l'obligation d'employer les moyens dont elles disposent en vue de lui permettre de citer et entendre des témoins ou des experts, ou d'effectuer toutes autres démarches utiles, dans les limites de leurs territoires respectifs et en conformité avec leurs lois.

ARTICLE XXIV. Au cours des procédures devant la Commission, les parties se feront représenter par des délégués plénipotentiaires ou par des agents qui serviront d'intermédiaires entre elles et la Commission. Les parties et la Commission pourront avoir recours aux services de conseillers et experts techniques.

ARTICLE XXV. La Commission terminera ses travaux dans un délai de six mois à compter du jour de sa constitution; mais les parties pourront, d'un commun accord, proroger ce délai.

ARTICLE XXVI. Si, de l'opinion des parties, le différend se limite exclusivement

à des questions de fait, la Commission se bornera à faire une enquête au sujet de celles-ci et terminera ses travaux en présentant son rapport.

ARTICLE XXVII. Au cas où un accord résulterait de la conciliation, la Commission, dans son rapport final, se bornera à reproduire le texte du règlement auquel sont parvenues les parties et ledit texte sera publié après avoir été remis aux parties, sauf si ces dernières en décident autrement. Au cas contraire, le rapport final contiendra un résumé des travaux effectués par la Commission; il sera remis aux parties et publié dans un délai de six mois, à moins que celles-ci en décident autrement. Dans l'un et l'autre cas, le rapport final sera adopté à la majorité des voix.

ARTICLE XXVIII. Les rapports et conclusions de la Commission d'enquête et de conciliation n'auront aucun caractère obligatoire pour les parties ni en ce qui concerne l'exposition des faits ni en ce qui concerne les questions de droit; ils n'auront d'autre caractère que celui de recommandations soumises à la considération des parties pour faciliter le règlement amical du différend.

ARTICLE XXIX. La Commission d'enquête et de conciliation remettra à chacune des parties, ainsi qu'à l'Union Panaméricaine, des copies certifiées des actes de ses travaux. Ces actes ne seront publiés qu'au moment où les parties en auront ainsi décidé.

ARTICLE XXX. Chacun des membres de la Commission recevra une compensation pécuniaire dont le montant sera fixé d'un commun accord entre les parties. En cas de désaccord de celles-ci, le Conseil de l'Organisation en fixera le montant. Chacun des gouvernements aura à sa charge ses propres frais et une partie égale des dépenses communes de la Commission, celles-ci comprenant les compensations prévues précédemment.

CHAPITRE QUATRE

PROCEDURE JUDICIAIRE

ARTICLE XXXI. Conformément au paragraphe 2 de l'article 36 du Statut de la Cour internationale de Justice, les Hautes Parties Contractantes en ce qui concerne tout autre Etat américain déclarent reconnaître comme obligatoire de plein droit, et sans convention spéciale tant que le présent Traité restera en vigueur, la juridiction de la Cour sur tous les différends d'ordre juridique surgissant entre elles et ayant pour objet:

a) L'interprétation d'un traité;

b) Toute question de droit international;

c) L'existence de tout fait qui, s'il était établi, constituerait la violation d'un engagement international; ou

d) La nature ou l'étendue de la réparation qui découle de la rupture d'un engagement international.

ARTICLE XXXII. Lorsque la procédure de conciliation établie précédemment, conformément à ce Traité ou par la volonté des parties, n'aboutit pas à une solution et que ces dites parties n'ont pas convenu d'une procédure arbitrale, l'une quel-

conque d'entre elles aura le droit de porter la question devant la Cour internationale de Justice de la façon établie par l'article 40 de son Statut. La compétence de la Cour restera obligatoire, conformément au paragraphe 1 de l'article 36 du même Statut.

ARTICLE XXXIII. Au cas où les parties ne se mettraient pas d'accord sur la compétence de la Cour au sujet du litige, la Cour elle-même décidera au préalable de cette question.

ARTICLE XXXIV. Si, pour les motifs indiqués aux articles V, VI et VII de ce Traité, la Cour se déclarait incompétente pour juger le différend, celui-ci sera déclaré terminé.

ARTICLE XXXV. Si, pour une raison quelconque, la Cour se déclarait incompétente pour juger un différend et prendre une décision à son sujet, les Hautes Parties Contractantes s'engagent à soumettre celui-ci à l'arbitrage, conformément aux dispositions du Chapitre Cinq du présent Traité.

ARTICLE XXXVI. En cas de différends soumis à la procédure de règlement judiciaire envisagée dans ce Traité, la Cour prendra sa décision en séance plénière, ou, si les parties le demandent, en chambre spéciale, conformément à l'article 26 de son Statut. De cette façon, les parties pourront convenir que le conflit est jugé *ex aequo et bono*.

ARTICLE XXXVII. La procédure que devra suivre la Cour est celle fixée par son Statut.

CHAPITRE CINQ

PROCEDURE D'ARBITRAGE

ARTICLE XXXVIII. Outre ce qui est établi dans le Chapitre Quatre de ce Traité, les Hautes Parties Contractantes auront la faculté de soumettre à l'arbitrage, après accord entre elles, les différends d'ordre quelconque, juridiques ou non, qui auront surgi ou seraient appelés à surgir entre elles par la suite.

ARTICLE XXXIX. Le Tribunal d'Arbitrage appelé à connaître du différend dans les cas visés aux articles XXXV et XXXVIII de ce Traité sera, à moins d'accord contraire, constitué de la façon indiquée ci-après.

ARTICLE XL. (1) Dans un délai de deux mois, à compter de la notification de la décision de la Cour, dans le cas prévu à l'article XXXV, chacune des parties désignera un arbitre d'une compétence reconnue en matière de droit international et jouissant d'une haute réputation morale et elle fera part de son choix au Conseil de l'Organisation. En temps voulu, elle présentera à ce même Conseil une liste de 10 juristes choisis parmi ceux qui composent la liste générale des membres de la Cour permanente d'Arbitrage de La Haye, n'appartenant pas à son groupe national et disposés à accepter cette fonction.

(2) Dans le mois suivant la présentation des listes, le Conseil de l'Organisation procédera à la formation du Tribunal d'Arbitrage de la façon suivante:

(*a*) Les personnes dont les noms sont reproduits trois fois sur les listes

présentées par les parties composeront, avec les deux membres désignés directement par les parties, le Tribunal d'Arbitrage.

(*b*) Au cas où plus de trois personnes se trouveraient dans la situation visée au paragraphe précédent, les trois arbitres qui doivent compléter le Tribunal seront choisis par tirage au sort.

(*c*) Dans les cas prévus aux deux paragraphes précédents, les cinq arbitres désignés choisiront entre eux leur Président.

(*d*) Si deux noms seulement se trouvaient dans le cas envisagé par le paragraphe (*a*) du présent article, les candidats auxquels ils s'appliquent et les deux arbitres choisis directement par les parties, éliront d'un commun accord le cinquième arbitre qui présidera le Tribunal. Le choix devra se faire parmi les juristes de la même liste générale de la Cour permanente d'Arbitrage de La Haye et porter sur un arbitre qui n'était pas désigné dans les listes préparées par les parties.

(*e*) Si les listes ne présentent qu'un seul nom commun, cette personne fera partie du Tribunal et un autre arbitre sera choisi au moyen d'un tirage au sort parmi les 18 juristes restants des listes mentionnées. Le Président sera élu conformément à la procédure établie au paragraphe précédent.

(*f*) Au cas où aucune concordance n'existerait entre les listes, deux arbitres seront tirés de chacune d'elles au moyen d'un tirage au sort; le cinquième arbitre sera élu de la manière indiquée précédemment, et il exercera les fonctions de Président.

(*g*) Si les quatre arbitres ne peuvent se mettre d'accord sur le choix d'un cinquième arbitre dans un délai d'un mois à partir de la date à laquelle le Conseil de l'Organisation leur a fait part de leur nomination, chacun d'eux établira séparément et en disposant les noms par ordre de préférence, la liste des juristes et, après comparaison des listes ainsi formées, sera déclaré élu celui qui réunit le plus grand nombre de votes.

ARTICLE XLI. Les parties pourront, d'un commun accord, constituer le Tribunal de la manière jugée par elles la plus appropriée. Elles pourront même choisir un seul arbitre, désignant en pareil cas un chef d'Etat, un juriste éminent ou n'importe quel tribunal de justice dans lequel elles ont la même confiance.

ARTICLE XLII. Lorsque plus de deux Etats sont parties au même différend, ceux qui défendent des intérêts semblables seront considérés comme une seule partie. Si leurs intérêts sont opposés, ils auront le droit d'augmenter le nombre des arbitres de telle façon que toutes les parties aient une représentation égale. Le Président sera élu conformément aux dispositions de l'article XL.

ARTICLE XLIII. Les parties établiront dans chaque cas le compromis qui devra définir clairement le point spécifique qui fait l'objet du différend, désigner le siège du Tribunal, fixer les règles à observer au cours de la procédure, déterminer le délai dans lequel le jugement doit être prononcé et les autres conditions dont elles conviennent entre elles.

Au cas où un accord ne serait pas obtenu, relativement au compromis, dans un

délai de trois mois à compter de la date de l'installation du Tribunal, la Cour internationale de Justice formulera un compromis obligatoire pour les parties, au moyen de la procédure sommaire.

ARTICLE XLIV. Les parties peuvent se faire représenter devant le Tribunal d'Arbitrage par les personnes qu'elles jugent convenable de désigner.

ARTICLE XLV. Au cas où, dans le délai prévu à l'article XL, l'une des parties ne désignerait pas son arbitre et ne présenterait pas sa liste de candidats, l'autre partie aurait le droit de demander au Conseil de l'Organisation de constituer le Tribunal d'Arbitrage. Le Conseil invitera immédiatement la partie défaillante à remplir les obligations précitées dans un délai additionnel de 15 jours à l'échéance duquel le même Conseil procédera à l'établissement du Tribunal de la façon suivante:

a) Il tirera au sort un nom parmi ceux contenus dans la liste présentée par la partie requérante.

b) Il choisira, de la liste générale de la Cour permanente d'Arbitrage de La Haye et à la majorité absolue des voix, deux juristes dont aucun ne devra appartenir au groupe national de l'une des parties.

c) Les trois personnes ainsi désignées, avec celles choisies directement par la partie requérante, éliront, conformément aux dispositions de l'article XL, le cinquième arbitre qui exercera les fonctions de Président.

d) Le Tribunal une fois installé, la procédure fixée à l'article XLIII sera suivie.

ARTICLE XLVI. La décision arbitrale devra être motivée, adoptée à la majorité des voix et publiée après que notification en aura été faite aux parties. Le ou les arbitres dissidents pourront formuler les motifs de leur désaccord.

La décision, dûment prononcée et notifiée aux parties, règlera définitivement le différend, sera sans appel et devra recevoir exécution immédiate.

ARTICLE XLVII. Les différences qui naissent relativement à l'interprétation et l'exécution de la décision arbitrale seront portées devant le Tribunal d'Arbitrage qui a prononcé le jugement.

ARTICLE XLVIII. Dans l'année suivant sa notification, la décision arbitrale pourra donner lieu à une révision devant le même Tribunal qui l'a rendue si l'une des parties le demande, toutes les fois que se découvrira un fait, antérieur au jugement qui était ignoré du Tribunal et du demandeur en révision, et qui au surplus est susceptible, dans l'opinion du Tribunal, d'exercer une influence décisive sur la sentence arbitrale.

ARTICLE XLIX. Chacun des membres du Tribunal recevra une compensation pécuniaire, dont le montant sera fixé par l'accord des parties. Si les parties ne se sont pas entendues sur ce point le Conseil de l'Organisation leur indiquera le montant à accorder. Chacun des gouvernements aura à sa charge ses propres frais et une partie égale des dépenses communes du Tribunal, dans lesquelles seront comprises les compensations précédemment prévues.

CHAPITRE SIX

MISE A EXECUTION DES DECISIONS

ARTICLE L. Si l'une des Hautes Parties Contractantes ne remplit pas les obligations découlant d'un jugement de la Cour internationale de Justice ou d'un jugement arbitral, l'autre ou les autres parties intéressées, avant de recourir au Conseil de Sécurité des Nations Unies, demanderont une Réunion de Consultation des Ministres des Relations extérieures afin que celle-ci convienne des mesures à prendre en vue d'assurer l'exécution de la décision juridique ou arbitrale.

CHAPITRE SEPT

AVIS CONSULTATIFS

ARTICLE LI. Les parties intéressées à la solution d'un différend pourront, d'un commun accord, demander à l'Assemblée générale ou au Conseil de Sécurité des Nations Unies de solliciter l'avis consultatif de la Cour internationale de Justice sur une question juridique quelconque.

La pétition se fera par l'intermédiaire du Conseil de l'Organisation des Etats Américains.

CHAPITRE HUIT

DISPOSITIONS FINALES

ARTICLE LII. Le présent Traité sera ratifié par les Hautes Parties Contractantes conformément à la procédure prévue par leur constitution. L'instrument original sera déposé à l'Union Panaméricaine qui, à cette fin, en enverra copie certifiée authentique aux Gouvernements. Les instruments de ratification seront déposés aux Archives de l'Union Panaméricaine laquelle en notifiera le dépôt aux Gouvernements signataires. Cette notification sera considérée comme un échange de ratifications.

ARTICLE LIII. Le présent Traité entrera en vigueur pour les Hautes Parties Contractantes suivant l'ordre de dépôt de leurs ratifications respectives.

ARTICLE LIV. Tout Etat américain non signataire de ce Traité ou qui aura fait des réserves à son sujet pourra y adhérer ou renoncer à la totalité ou partie de ses réserves, au moyen d'un instrument officiel adressé à l'Union Panaméricaine qui en notifiera les Hautes Parties Contractantes de la façon déterminée au présent Traité.

ARTICLE LV. Si l'une des Hautes Parties Contractantes fait des réserves au présent Traité, ces réserves, à titre de réciprocité, s'appliqueront à tous les Etats signataires en ce qui concerne l'Etat qui les a faites.

ARTICLE LVI. La durée du présent Traité sera indéfinie, mais il pourra être dénoncé moyennant un préavis d'un an; passé ce délai il cessera de produire ses effets par rapport à la partie qui l'a dénoncé, et demeurera en vigueur en ce qui

concerne les autres signataires. L'avis de dénonciation sera adressé à l'Union Panaméricaine qui le transmettra aux autres Parties Contractantes.

La dénonciation n'aura aucun effet sur les procédures en cours entamées avant la transmission de l'avis en question.

ARTICLE LVII. Ce Traité sera enregistré au Secrétariat général des Nations Unies par les soins de l'Union Panaméricaine.

ARTICLE LVIII. Les traités, conventions et protocoles ci-après énumérés cesseront de produire leurs effets par rapport aux Hautes Parties Contractantes au fur et à mesure que le présent Traité entrera en vigueur en ce qui les concerne au moyen de leurs ratifications successives:

Traité pour Eviter ou Prévenir les Conflits entre les Etats américains, du 3 mai 1923;

Convention générale de Conciliation interaméricaine, du 5 janvier 1929;

Traité général d'Arbitrage interaméricain et Protocole additionnel d'Arbitrage progressif, du 5 janvier 1929;

Protocole additionnel à la Convention générale de Conciliation interaméricaine, du 26 décembre 1933;

Traité pacifique de Non Agression et de Conciliation, du 10 octobre 1933;

Convention pour Coordonner, Développer et Assurer l'Application des Traités conclus entre les Etats américains, du 23 décembre 1936;

Traité interaméricain sur les Bons Offices et la Médiation, du 23 décembre 1936; et

Traité relatif à la Prévention des Différends, du 23 décembre 1936.

ARTICLE LIX. Les dispositions de l'article précédent ne s'appliqueront pas aux procédures déjà entamées ou réglées conformément à l'un des instruments internationaux déjà mentionnés.

ARTICLE LX. Ce Traité aura pour nom: "PACTE DE BOGOTÁ".

EN FOI DE QUOI, les Plénipotentiaires soussignés, après avoir déposé leurs pleins pouvoirs qui ont été trouvés en bonne et due forme, signent ce Traité au nom de leurs gouvernements respectifs, aux dates mentionnées en regard de leur signature.

Fait à Bogotá, en quatre originaux, l'un en anglais, l'un en espagnol, l'un en français et le quatrième en portugais, le trente avril, mil neuf cent quarante-huit.

RESERVES

Argentine

"La Délégation de la République Argentine, en signant le Traité américain de Règlement pacifique (Pacte de Bogotá), formule des réserves au sujet des articles suivants, auxquels elle n'a pas donné son adhésion:

1) Article VII, relatif à la protection des étrangers;

2) Chapitre Quatre (article XXXI à article XXXVII), Procédure judiciaire;

3) Chapitre Cinq (article XXXVIII à article XLIX), Procédure d'Arbitrage; et

4) Chapitre Six (article L), Mise à Exécution des Décisions.

L'arbitrage et le règlement judiciaire possèdent, en tant qu'institutions, la ferme adhésion de la République de l'Argentine, mais la Délégation ne peut accepter la façon dont se trouvent réglementées leurs procédures de mise en application, car, à son avis, elles devraient seulement être établies pour les différends susceptibles de se produire dans l'avenir, ne puisant leur source dans aucun fait, cause ou situation antérieurs à la signature de cet instrument et n'ayant aucun rapport avec ces derniers. L'exécution obligatoire des décisions arbitrales ou judiciaires et la limitation établie qui empêche les Etats de trancher eux-mêmes les questions relevant de leur compétence nationale, conformément à l'article V, sont contraires à la tradition de l'Argentine. Est également contraire à cette tradition la protection des étrangers qui, dans la République Argentine sont protégés, de la même façon que les nationaux, par la loi suprême."

Bolivie

"La Délégation de Bolivie formule une réserve en ce qui concerne l'article VI, car elle estime que les procédures pacifiques peuvent également s'appliquer aux différends relatifs à des questions résolues par arrangement entre les parties, lorsque pareil arrangement touche aux intérêts vitaux d'un Etat."

Equateur

"La Délégation de l'Equateur, en souscrivant à ce Pacte, formule une réserve expresse relativement à l'article VI et à toute disposition qui viole les principes proclamés ou les stipulations contenues dans la Charte des Nations Unies, dans la Charte de l'Organisation des Etats Américains ou dans la Constitution de la République de l'Equateur, ou qui n'est pas en harmonie avec ceux-ci."

Etats-Unis d'Amérique

"1. Les Etats-Unis d'Amérique ne s'engagent pas, en cas de conflit dans lequel ils se considèrent comme partie lésée, à soumettre à la Cour internationale de Justice un différend qui ne relève pas proprement de la compétence de la Cour.

2. La soumission de la part des Etats-Unis d'Amérique d'un différend quelconque à l'arbitrage, et non au règlement judiciaire, dépendra de la conclusion d'un accord spécial entre les parties intéressées.

3. L'acceptation par les Etats-Unis d'Amérique de la juridiction de la Cour internationale de Justice comme obligatoire *ipso facto* et sans accord spécial, telle que cette juridiction est établie au présent Traité, se trouve déterminée par toute limitation de juridiction et autre catégorie de limitation contenues dans les déclarations faites par les Etats-Unis conformément à l'article 36, paragraphe 4 du Statut de la Cour, et qui sont en vigueur au moment de l'étude d'un cas déterminé.

4. Le Gouvernement des Etats-Unis d'Amérique ne peut accepter l'article VII relatif à la protection diplomatique et à l'épuisement des ressources. Pour sa part, le Gouvernement des Etats-Unis d'Amérique maintient les règles de la protection diplomatique, y compris la règle de l'épuisement des ressources locales pour les étrangers, ainsi qu'il est réglé par le droit international."

Paraguay

"La Délégation du Paraguay formule la réserve suivante:

Le Paraguay soumet à l'accord préalable des parties la procédure arbitrale établie dans ce protocole au sujet de toute question de caractère non juridique qui touche à la souveraineté nationale et dont il n'est pas expressément convenu dans les traités actuellement en vigueur."

Pérou

"La Délégation du Pérou formule les réserves suivantes:

1. Réserve à la deuxième partie de l'article V, car elle estime que la juridiction intérieure doit être fixée par l'Etat lui-même.

2. Réserve à l'article XXXIII et la partie de l'article XXXIV qui s'y rapporte, car elle estime que les exceptions de la chose jugée résolue au moyen d'un accord entre les parties ou régie par les accords ou traités en vigueur, empêchent, en raison de leur nature objective et péremptoire, l'application à ces cas de toute procédure.

3. Réserve à l'article XXXV, parce que, avant qu'il soit recouru à l'arbitrage, la réunion de l'Organe de Consultation peut être convoquée, sur la demande d'une partie, ainsi que l'établit la Charte de l'Organisation des Etats Américains.

4. Réserve à l'article XLV, car elle estime que l'emploi de l'arbitrage sans intervention d'une partie se trouve en contradiction avec ses préceptes constitutionnels."

Nicaragua

"La Délégation du Nicaragua, tout en donnant son approbation au Traité américain de Règlement pacifique (Pacte de Bogotá), désire déclarer dans l'Acte qu'aucune des dispositions contenues dans ledit Traité ne peut détourner le Gouvernement du Nicaragua de la position qu'il a toujours prise en ce qui concerne les décisions arbitrales dont la validité a été contestée en se basant sur les principes du droit international, lequel permet clairement de contester des décisions arbitrales jugées nulles ou viciées. En conséquence, la Délégation du Nicaragua, en donnant sa signature au Traité, formule une réserve au sujet de l'acceptation des décisions arbitrales que le Nicaragua a contestées et dont la validité n'a pas été établie.

La Délégation de Nicaragua réitère de cette façon la déclaration qu'elle a faite le 28 courant en approuvant le texte du Traité mentionné de la Troisième Comission."

Annex 19

NOTE N^{O} MCRONU-438-2013 FROM THE PERMANENT MISSION OF COSTA RICA TO THE SECRETARY-GENERAL OF THE UNITED NATIONS, 15 JULY 2013

(Available at: http://www.un.org/Depts/los/clcs_new/submissions_files /nic66_13/cri_re_nic_15_7_2013e.pdf (last visited 6 August 2014))

Permanent Mission of Costa Rica to the United Nations
New York

MCRONU-438-2013

New York, 15 July 2013

The Permanent Mission of Costa Rica to the United Nations presents its compliments to the Secretary-General of the United Nations and, with respect to the communication submitted to the Commission on the Limits of the Continental Shelf by the Republic of Nicaragua on 24 June 2013 concerning the extension of its continental shelf in the Caribbean Sea, would like to state the following:

In section II, paragraph 8, of its executive summary, Nicaragua states that there are no unresolved maritime disputes relating to its request. This is incorrect. Costa Rica and Nicaragua have an unresolved maritime dispute relating to Nicaragua's request in so far as the marine areas claimed by Nicaragua encroach upon marine areas belonging to Costa Rica under international law.

The existence of a maritime dispute between Costa Rica and Nicaragua is a well-known fact; this has led the Republic of Costa Rica to request that Nicaragua continue negotiations with a view to an agreement on maritime boundaries in the Caribbean Sea, a copy of which was sent to the Secretary-General of the United Nations on 8 March 2013 through note No. MCRONU-318-2013.

Therefore, in accordance with rule 46 of the Rules of Procedure of the Commission, which deals with cases involving land or maritime disputes such as this one, Nicaragua's request is governed by paragraph 5 (a) of Annex I to the Rules of Procedure.

Costa Rica requests the Commission on the Limits of the Continental Shelf to take note of this communication and have it duly circulated and issued.

The Permanent Mission of the Republic of Costa Rica to the United Nations takes this opportunity to convey to the Secretary-General of the United Nations the renewed assurances of its highest consideration.

H.E. Mr. Ban Ki-moon
Secretary-General of the United Nations
New York

Annex 20

NOTE N^{O} LOS/15 FROM THE PERMANENT MISSION OF JAMAICA TO THE UNITED NATIONS, 12 SEPTEMBER 2013

(Available at: http://www.un.org/Depts/los/clcs_new/submissions_files/nic66_13/jam_re_nic_12_9_2013.pdf (last visited 6 August 2014))

PERMANENT MISSION OF JAMAICA
TO THE UNITED NATIONS
767 Third Avenue, 9th Fl.
New York, NY 10017
Tel: (212) 935-7509
Fax: (212) 935-7607
Email: jamaica@un.int

Ref: LOS/15

The Permanent Mission of Jamaica to the United Nations presents its compliments to the Secretary General of the United Nations, in his capacity as depository of the United Nations Convention on the Law of the Sea *("the Convention")*, and has the honour to refer to the submission made by the Government of the Republic of Nicaragua on 24th June 2013, to the Commission on the Limits of the Continental Shelf *("the Commission")*, in accordance with Article 76 paragraph 8, and Annex II of the Convention.

Having regard to the potential areas of continental shelf that Nicaragua is seeking to establish through the above-mentioned submission, the Permanent Mission hereby advises of the overlapping claims in the areas of exclusive economic zone appertaining to Jamaica. The Permanent Mission affirms, therefore, that Jamaica reserves its rights under the Convention.

The Permanent Mission of Jamaica to the United Nations avails itself of this opportunity to renew to the Secretary General of the United Nations the assurances of its highest consideration.

New York, 12th September 2013

PERMANENT MISSION OF JAMAICA TO THE UNITED NATIONS
New York

United Nations Secretariat
United Nations, New York

Annex 21

COMMUNICATION FROM THE GOVERNMENTS OF COLOMBIA, COSTA RICA AND PANAMA TO THE SECRETARY-GENERAL OF THE UNITED NATIONS, NEW YORK, 23 SEPTEMBER 2013

(Available at: http://www.un.org/Depts/los/clcs_new/submissions_files/nic66_13/col_cri_pan_re_nic_2013_09_23e.pdf (last visited 6 August 2014))

13.48845

Translated from Spanish

New York, 23 September 2013

Sir,

We, the Heads of State and Government of Colombia, Costa Rica and Panama, have the honour to address you in order to express our concern at the claim submitted by Nicaragua for the extension of its marine and submarine areas and its land territory to the detriment of the legitimate rights and interests of our respective countries, which constitutes a clear threat to regional peace and security.

In that connection, our States, through dialogue and good faith, have for decades contributed to peace and stability in the Caribbean Sea region, based on respect for international law and for the rights of each State, ensuring peaceful coexistence and security in a highly complex and diverse region.

Nicaragua, disregarding the rights of our States, has stated before the Commission on the Limits of the Continental Shelf that there are no unresolved maritime disputes in relation to its unfounded claim to a continental shelf area beyond 200 nautical miles. This is incorrect and we, the undersigned, all emphatically reject this claim since it affects extensive areas belonging to our countries.

In view of the above, we, the undersigned, categorically reject the unfounded claims of Nicaragua to continental shelf areas and other marine areas not belonging to it, which are detrimental to our legitimate rights in the area, and we hereby state our firm resolve to prevent such claims from succeeding.

His Excellency Mr. Ban Ki-moon

United Nations Secretary-General

New York

We trust that the United Nations, true to its purpose of maintaining international peace and security, will take account of this concern and this unequivocal joint statement.

We should be grateful if you would have a copy of this letter sent to all Member States, to the Commission on the Limits of the Continental Shelf and to the International Court of Justice.

Accept, Sir, the assurances of our highest consideration.

(*Signed*) Juan Manuel **Santos**
President of Colombia

(*Signed*) Laura **Chinchilla**
President of Costa Rica

(*Signed*) Ricardo **Martinelli**
President of Panama

Annex 22

NOTE N^{O} S-DM-13-035351 FROM THE ACTING COLOMBIAN FOREIGN MINISTER TO THE SECRETARY-GENERAL OF THE UNITED NATIONS, 24 SEPTEMBER 2013

(Available at:
http://www.un.org/Depts/los/clcs_new/submissions_files/
nic66_13/col_re_nic_2013_09_24.pdf (last visited 6 August 2014))

Libertad y Orden

Ministerio de Relaciones Exteriores
República de Colombia

S-DM-13-035351

Bogotá, 24 September 2013

Mr. Secretary General,

I have the honour to address Your Excellency on the occasion of referring to the document entitled "Submission to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea, 1982 – Part I: Executive Summary", submitted by Nicaragua on 24 June 2013, which was published on the website of that Commission.

As Your Excellency is aware, the Republic of Colombia is not a party to the United Nations Convention on the Law of the Sea. Nicaragua's submission is therefore not opposable to Colombia and does not affect Colombia's rights to its continental shelf. Colombia further notes that no action or inaction by the Commission on the Limits of the Continental shelf is opposable to Colombia, nor could such action or inaction affect Colombia's rights under international law.

In this connection, the Republic of Colombia wishes to inform the United Nations and its member States that Nicaragua's submission makes reference to submarine areas in the Caribbean Sea that belong to Colombia under international law.

His Excellency
BAN KI-MOON
Secretary-General of the United Nations
New York

Libertad y Orden

Ministerio de Relaciones Exteriores
República de Colombia

I take this opportunity to reiterate the contents of my Note of 23 April 2013, addressed to Your Excellency, to the effect that, under customary international law, the Republic of Colombia exercises, ipso facto and ab initio and by virtue of its sovereignty over its land, sovereign rights over its continental shelf inter alia in the Caribbean Sea. In accordance with customary international law, this comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. Also in accordance with customary international law, the Republic of Colombia's islands, regardless of their size, enjoy the same maritime rights as the country's other land territory.

By virtue of the abovementioned, the Republic of Colombia formulates an express reservation on the entire document mentioned before and requests Your Excellency that the present statement be circulated to all members of the United Nations, including the States Party to the aforesaid Convention and be transmitted to the Commission on the Limits of the Continental Shelf.

I avail myself to renew to Your Excellency the assurances of my highest consideration.

MONICA LANZETTA MUTIS
Acting Minister of Foreign Affairs
Deputy Minister of Foreign Affairs

Annex 23

NOTE N^{O} DGPE/DG/665/22013 FROM THE MINISTER OF FOREIGN AFFAIRS OF PANAMÁ TO THE SECRETARY-GENERAL OF THE UNITED NATIONS, 30 SEPTEMBER 2013

(Available at: http://www.un.org/Depts/los/clcs_new/submissions_files/nic66_13/pan_re_nic_2013_09_30e.pdf (last visited 6 August 2014); Map included as attachment to the Spanish original of the Note, is reproduced on the last page of this Annex (the full text of the original Note and attachments, is found in the Original Annexes and is also available at: http://www.un.org/Depts/los/clcs_new/submissions_files/nic66_13/pan_re_nic_2013_09_30.pdf))

Republic of Panama

Ministry of Foreign Affairs
Office of the Minister
DGPE/DG/665/22013

30 September 2013

Sir,

I have the honour to address you with reference to the request dated 24 June 2013 submitted by the Republic of Nicaragua to the Commission on the Limits on the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea, with a view to extending its continental shelf beyond 200 nautical miles.

Panama wishes to make the following comments in connection with that request because it affects Panamanian maritime space. We thus consider it advisable to make some relevant legal and technical points relating to Panamanian maritime boundaries, so that the Commission on the Limits of the Continental Shelf can take them into account as it weighs the matter.

In its Judgment of 19 November 2012 entitled "Territorial and Maritime Dispute (Nicaragua v. Colombia)", the International Court of Justice recognized the right of the Republic of Panama over its maritime areas and specifically stated the following:

> "155. […] For Nicaragua, the southern boundary of the relevant area is formed by the demarcation lines agreed between Colombia and Panama and Colombia and Costa Rica (see paragraph 160 below) on the basis that, since Colombia has agreed with those States that it has no title to any maritime areas to the south of those lines, they do not fall within an area of overlapping entitlements." […]
>
> […]
>
> "163. The Court recalls that the relevant area *cannot extend beyond the area in which the entitlements of both Parties overlap*. Accordingly, if either Party has no entitlement in a particular area, whether because of an agreement it has concluded with a third State or because that area lies beyond a judicially determined boundary between that Party and a third State, that area cannot be treated as part of the relevant area for present purposes. *Since Colombia has no potential entitlements to the south and east of the boundaries which it has agreed with Costa Rica and Panama, the relevant area cannot extend beyond those boundaries*." [*italics added*].

Moreover, the Court recognized the delimitation treaties of 1976 between Colombia and Panama which lay down the coordinates for the maritime boundary between the two countries. It likewise stated the following:

His Excellency Ban Ki-moon
Secretary-General
United Nations
New York

"160. In both the north and the south, the interests of third States become involved."

"[…] The endpoint of that boundary was not determined but 'the Court made a clear determination [in paragraphs 306-319 of the 2007 Judgment] that *the bisector line would extend beyond the 82nd meridian until it reached the area where the rights of a third State may be affected*' […]."

"In the south, the Colombia-Panama Agreement (*UNTS*, Vol. 1074, p. 221) was signed in 1976 and entered into force on 30 November 1977. It *adopted a step-line boundary as a simplified form of equidistance in the area between the Colombian islands and the Panamanian mainland*. Colombia and Costa Rica signed an Agreement in 1977, which adopts a boundary line that extends from the boundaries agreed between Colombia and Panama (described above) and between Costa Rica and Panama. […]" [*italics added*].

It must be pointed out that, throughout, the International Court of Justice paid special attention to the limited application of its Judgment and its impact on neighbouring States, determining that both must respect rights previously recognized and agreed between countries. Consequently the result of the decision resolving the maritime and territorial conflict between Nicaragua and Colombia may not compromise the law protecting Panama's maritime territorial extension. Furthermore, as stipulated in article 59 of the Statute of the Court, the decision of the Court has no binding force except between the parties and in respect of that particular case, meaning that decisions of the Court neither benefit nor prejudice third States.

In order to make available the technical considerations provided by the Tommy Guardia National Geographic Institute on which our comments are based, and in order to allow the Commission to consider them in its evaluation, we attach herewith a map showing the full extent of the maritime space of the Republic of Panama, delimited by the boundary treaties signed with the Republic of Costa Rica and the Republic of Colombia, and the indisputable overlap caused by the Republic of Nicaragua's request for an extension of its continental shelf. Also attached is a certified copy of the relevant bilateral treaties signed with neighbouring States.

Consequently, in view of the foregoing, I have the honour to request that the present note should be included in the documentation for the agenda of the Commission on the Limits of the Continental Shelf when it formulates its observations regarding the request submitted by the Republic of Nicaragua.

Accept, Sir, the renewed assurances of our highest consideration.

(*Signed*) Fernando Núñez Fábrega
Minister for Foreign Affairs

MARITIME BORDERS OF THE REPUBLIC OF PANAMA

Overlap on the maritime space of the Republic of Panama resulting from the proposal of the Republic of Nicaragua to extend the limits of its continental shelf

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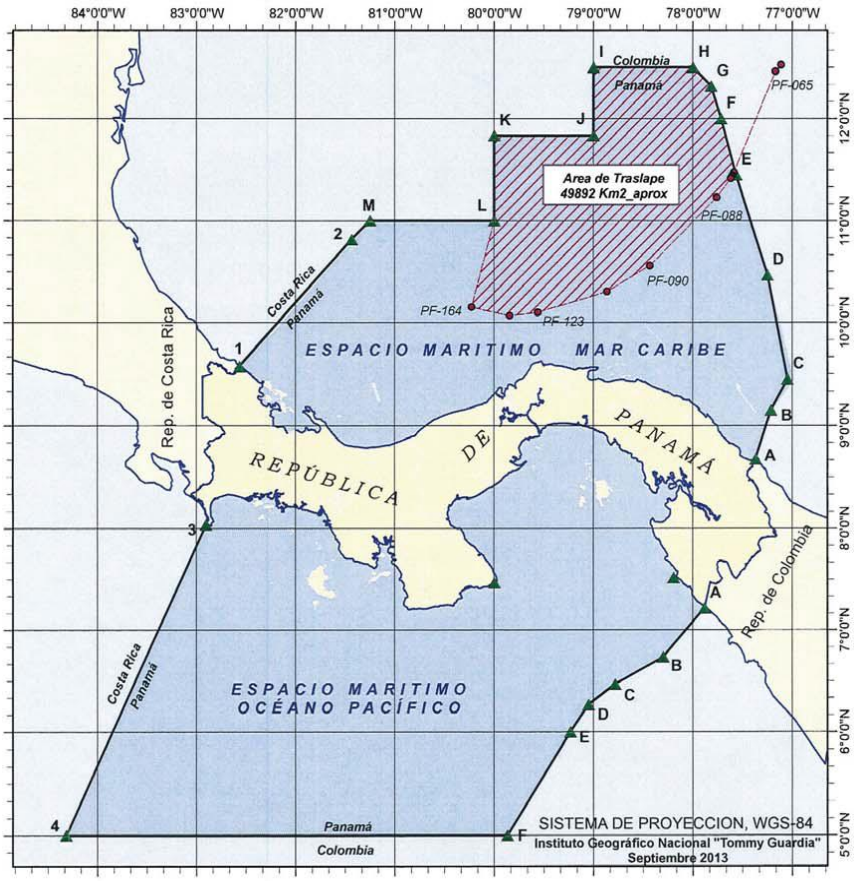
[Map referred to above, included in the Spanish original of the Note, is reproduced on the next page]

FRONTERAS MARITIMAS DE LA REPUBLICA DE PANAMA

TRASLAPE DEL ESPACIO MARITIMO DE LA REPUBLICA DE PANAMA POR LA PROPUESTA DE LA REPUBLICA DE NICARAGUA DE EXTENDER LOS LIMITES DE SU PLATAFORMA CONTINENTAL



COSTA RICA

REPÚBLICA DE PANAMÁ

TRATADO SOBRE DELIMITACIÓN DE ÁREAS MARINAS ENTRE LA REPÚBLICA DE PANAMÁ Y LA REPÚBLICA DE COSTA RICA FIRMADO EL DÍA 2 DE FEBRERO DE 1980 RATIFICADO MEDIANTE LEY 5, DEL 5 DE NOV. DE 1981

COLOMBIA

REPÚBLICA DE PANAMÁ

TRATADO SOBRE DELIMITACION DE ÁREAS MARINAS ENTRE LA REPÚBLICA DE PANAMÁ Y LA REPÚBLICA DE COLOMBIA FIRMADO EL DÍA 20 DE NOVIEMBRE DE 1976 RATIFICADO MEDIANTE LEY 18, DEL 10 DE NOV. DE 1977

COORDENADAS GEOGRAFICAS, NAD-27

MAR CARIBE

PUNTOS	LATITUD	LONGITUD W
1	09°34'16"	82°34'00"
2	10°49'00"	81°26'08.2"

OCÉANO PACÍFICO

PUNTOS	LATITUD	LONGITUD W
3	08°02'18"	82°54'12.5"
4	05°00'00"	84°19'00"

MAR CARIBE

PUNTOS	LATITUD	LONGITUD W
A	08°41'07.3"	77°21'50.9"
B	09°09'00"	77°13'00"
C	09°27'00"	77°03'00"
D	10°28'00"	77°15'00"
E	11°27'00"	77°34'00"
F	12°00'00"	77°43'00"
G	12°19'00"	77°49'00"
H	12°30'00"	78°00'00"
I	12°30'00"	79°00'00"

MAR CARIBE

PUNTOS	LATITUD	LONGITUD W
J	11°50'00"	79°00'00"
K	11°50'00"	80°00'00"
L	11°00'00"	80°00'00"
M	11°00'00"	81°15'00"

OCÉANO PACÍFICO

PUNTOS	LATITUD	LONGITUD W
A	07°12'39"	77°53'20.9"
B	06°44'00"	78°18'00"
C	06°28'00"	78°47'00"
D	06°16'00"	79°03'00"
E	06°00'00"	79°14'00"
F	05°00'00"	79°52'00"

COORDENADAS GEOGRAFICAS, WGS-84

MAR CARIBE

PUNTOS	LATITUD	LONGITUD
1	09°34'20.59"	82°33'59.47"
2	10°49'04.34"	81°26'07.59"

OCÉANO PACÍFICO

PUNTOS	LATITUD	LONGITUD
3	08°02'22.91"	82°54'12.00"
4	05°00'05.53"	84°18'59.60"

MAR CARIBE

PUNTOS	LATITUD	LONGITUD
A	08°40'36.32"	77°22'13.81"
B	09°09'04.67"	77°12'59.09"
C	09°27'04.60"	77°02'59.08"
D	10°28'04.40"	77°14'59.09"
E	11°27'04.20"	77°33'59.11"
F	12°00'04.09"	77°42'59.12"
G	12°19'04.02"	77°48'59.13"
H	12°30'03.99"	77°59'59.14"
I	12°30'03.99"	78°59'59.21"

MAR CARIBE

PUNTOS	LATITUD	LONGITUD
J	11°50'04.12"	78°59'59.20"
K	11°50'04.13"	79°59'59.28"
L	11°00'04.29"	79°59'59.28"
M	11°00'04.30"	81°14'59.37"

OCÉANO PACÍFICO

PUNTOS	LATITUD	LONGITUD
A	07°13'07.25"	77°52'58.89"
B	06°44'05.17"	78°17'59.17"
C	06°28'05.22"	78°46'59.21"
D	06°16'05.27"	79°02'59.23"
E	06°00'05.32"	79°13'59.24"
F	05°00'05.53"	79°51'59.29"

Annex 24

UNITED NATIONS GENERAL ASSEMBLY DOCUMENT N^{O} A/68/741, NOTE FROM THE PERMANENT REPRESENTATIVE OF COSTA RICA TO THE SECRETARY-GENERAL OF THE UNITED NATIONS (20 JANUARY 2014), 7 FEBRUARY 2014

(Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/68/741 (last visited 6 August 2014))

United Nations A/68/741

General Assembly

Distr.: General
7 February 2014

Original: English

Sixty-eighth session
Agenda items 76 (a) and 85

Oceans and the law of the sea

The rule of law at the national and international levels

Letter dated 20 January 2014 from the Permanent Representative of Costa Rica to the United Nations addressed to the Secretary-General

Costa Rica reaffirms its communication submitted on 15 July 2013 regarding Nicaragua's submission to the Commission on the Limits of the Continental Shelf and, with respect to Nicaragua's communication MINIC-NU-048-13 of 20 December 2013, would like to state the following.

The delimitation of the continental shelf between Costa Rica and Nicaragua is pending and is in dispute. Areas claimed by Nicaragua in its submission encroach on Costa Rican entitlements. The tripoint that Nicaragua refers to in its communication of 20 December 2013 does not reflect accurately the geographic or legal relationship among Costa Rica, Panama and Colombia, and is wholly unrelated to the outstanding question of the disputed maritime boundary between Costa Rica and Nicaragua. Costa Rica made its position clear during its request to intervene in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. Nicaragua's continued insistence upon its conflicting and incorrect position reflects the existence of a dispute between the two countries.

Consequently, Costa Rica rejects the claims advanced by Nicaragua in its submission, considers them to be without legal effect, reserves its rights in this regard and refers the Commission to its Rules of Procedure, specifically rule 46 and annex I, governing submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes.

In that regard, I kindly request that the present letter be circulated as a document of the General Assembly, under agenda items 76 (a) and 85. Upon instructions from my Government, I also request that this letter be sent to all relevant organs, bodies and entities of the United Nations, be posted on the website of the Division for Ocean Affairs and the Law of the Sea and be included in the next Law of the Sea Bulletin.

(*Signed*) Eduardo **Ulibarri**
Ambassador
Permanent Representative

14-23004 (E) 110214

Annex 25

NOTE N^{O} DGPE/FRONT/082/14 FROM THE MINISTER OF FOREIGN AFFAIRS OF PANAMA TO THE SECRETARY-GENERAL OF THE UNITED NATIONS, 3 FEBRUARY 2014

(Available at: http://www.un.org/Depts/los/clcs_new/submissions_files/nic66_13/pan_re_nic_2014_02_03_e.pdf (last visited 6 August 2014))

DGPE/FRONT/082/14

3 February 2014

Sir,

I have the honour to write to you with regard to note MINIC-UN-50-13 of 20 December 2013, by which the Permanent Mission of Nicaragua to the United Nations submitted to the Commission on the Limits of the Continental Shelf its views concerning the position of the Government of Panama regarding Nicaragua's request to extend its continental shelf beyond 200 nautical miles.

In this regard, I would like to state that the extension claimed by Nicaragua overlaps with Panamanian maritime areas. When the limits established in the Treaty on the delimitation of marine and submarine areas and related matters between the Republic of Panama and the Republic of Colombia are compared against the area between the coordinates of fixed points (FP) FP-83 and FP-164 set out in the executive summary submitted by Nicaragua, it is absolutely clear that those coordinates fall within Panama's marine and submarine areas and continental shelf. A map is attached hereto for your reference.

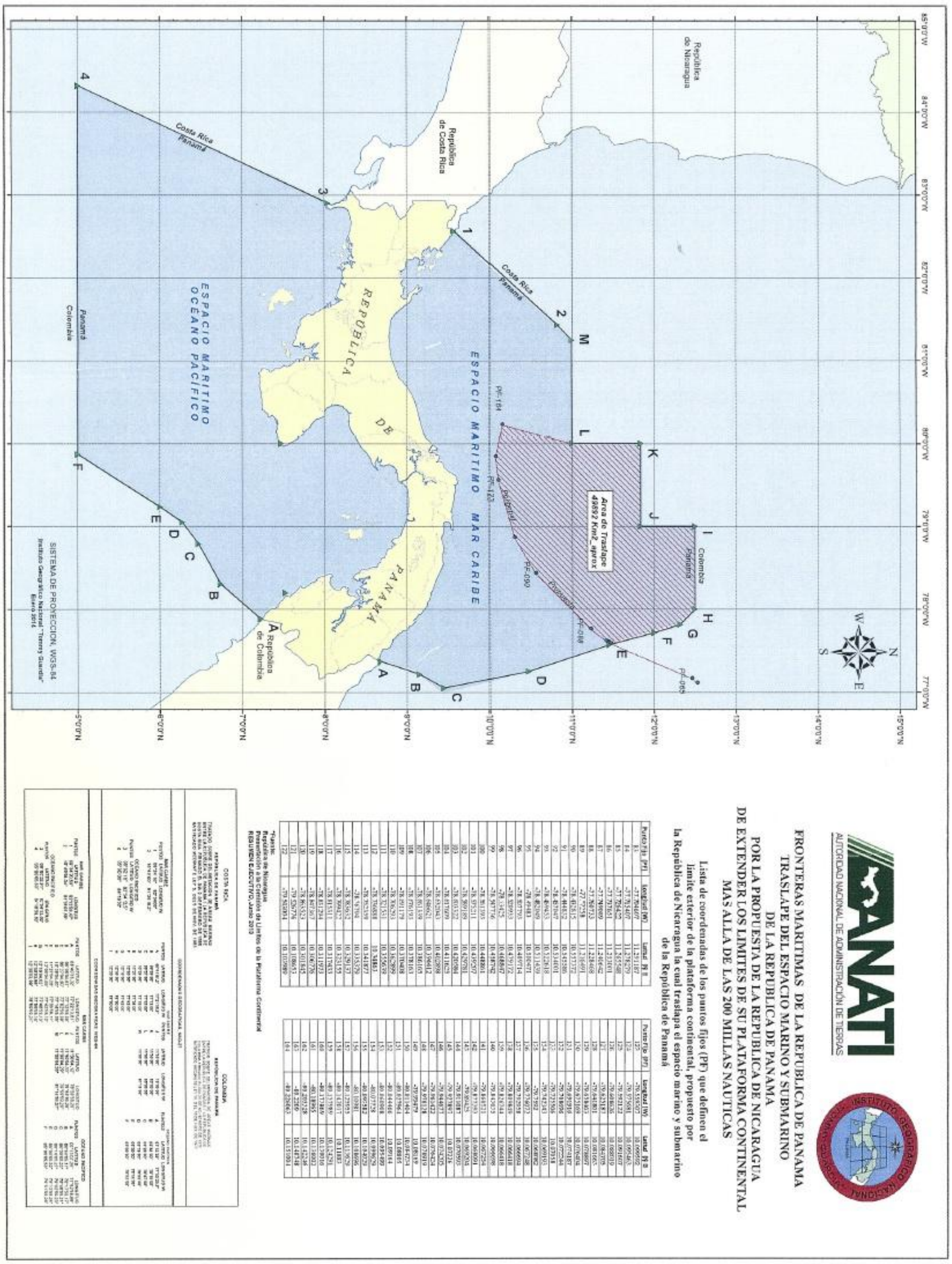
In this regard, the United Nations Convention on the Law of the Sea recognizes the scope and obligations set out in agreements between States parties, such as the delimitation treaty signed between Panama and Colombia, which covers marine and submarine areas. Therefore, the claim for extension submitted by Nicaragua cannot affect the limits of the continental shelf established in the Treaty on the delimitation of marine and submarine areas between Panama and Colombia.

We strongly object to the claim for the extension of the continental shelf submitted by the Republic of Nicaragua; we do not consent to the Commission's consideration or assessment of Nicaragua's submission and we request the Commission to dismiss it in its entirety.

Accept, Sir, the renewed assurances of my highest consideration.

Francisco **Álvarez De Soto**
Minister for Foreign Affairs

His Excellency
Ban Ki-moon
Secretary-General
United Nations
New York



AUTORIDAD NACIONAL DE ADMINISTRACIÓN DE TIERRAS
FRONTERAS MARITIMAS DE LA REPUBLICA DE PANAMA
TRASLAPE DEL ESPACIO MARINO Y SUBMARINO
DE LA REPUBLICA DE PANAMA
POR LA PROPUESTA DE LA REPUBLICA DE NICARAGUA
DE EXTENDER LOS LIMITES DE SU PLATAFORMA CONTINENTAL
MAS ALLA DE LAS 200 MILLAS NAUTICAS
Lista de coordenadas de los puntos fijos (PF) que definen el límite exterior de la plataforma continental, propuesto por la República de Nicaragua la cual traslapa el espacio marino y submarino de la República de Panamá
República de Nicaragua
República de Costa Rica
Costa Rica
Panamá
REPUBLICA DE PANAMA
ESPACIO MARITIMO MAR CARIBE
ESPACIO MARITIMO OCÉANO PACÍFICO
Área de Traslape 49692 Km2 aprox.
Colombia
República de Colombia
SISTEMA DE PROYECCIÓN: WGS-84
Instituto Geográfico Nacional "Tommy Guardia"

Annex 26

NOTE FROM THE GOVERNMENTS OF COLOMBIA, COSTA RICA AND PANAMA TO THE SECRETARY-GENERAL OF THE UNITED NATIONS, 5 FEBRUARY 2014

(Available at: http://www.un.org/Depts/los/clcs_new/submissions_files/nic66_13/col_cri_pan_re_nic_2014_02_05_e.pdf (last visited 6 August 2014))

5 February 2014

Sir,

We, representatives of the Governments of Colombia, Costa Rica and Panama, have the honour to refer to Nicaragua's communication of 20 December 2013, in response to the objection raised by our countries to its submission to the Commission on the Limits of the Continental Shelf, contained in the note dated 23 September 2013 addressed to the Secretary-General, in which Nicaragua affirms, inter alia, that such submission, which refers to the outer limits of its so-called continental shelf beyond 200 miles measured from the coast of Nicaragua, is "without prejudice to the delimitation of the continental shelf between Colombia, Costa Rica and Panama".

Nicaragua's assertion in the abovementioned note is erroneous, as its submission does indeed affect the rights of our States.

Without prejudice to what each of our countries have stated separately Nicaragua's submission to the Commission on the Limits of the Continental Shelf violates the rights and ocean space of our countries, including their continental shelf; it also peaceful coexistence in the western Caribbean Sea region.

In view of the foregoing, we reiterate the concern of our Governments over Nicaragua's submission and request that you to convey to the Commission on the Limits of the Continental Shelf our strong objection thereto and our opposition to the Commission considering or ruling on Nicaragua's submission.

Ban Ki-Moon

Secretary-General of the United Nations

Moreover, we strongly deny the claim that our States have threatened Nicaragua with the use of force as contained in the note from Nicaragua. That assertion is baseless. The Republic of Nicaragua is the only country that has been a source of instability in the region, through acts contrary to international law.

Lastly, we trust that the United Nations, in keeping with its goal of maintaining international peace and security, will take this concern and our joint declaration into account. Likewise, we request Your Excellency to transmit a copy of this letter to the Commission on the Limits of the Continental Shelf and to all States Members of the Organization.

We take this opportunity to convey to you the renewed assurances of our highest consideration.

(*Signed*) María Ángela **Holguín Cuéllar**

Minister for Foreign Affairs

(*Signed*) José Enrique **Castillo Barrantes**

Minister for Foreign Affairs of Costa Rica

(*Signed*) Francisco **Álvarez de Soto**

Minister for Foreign Affairs of Panama

Annex 27

UNITED NATIONS GENERAL ASSEMBLY DOCUMENT N^{O} A/68/743, NOTE VERBALE FROM THE PERMANENT MISSION OF COLOMBIA TO THE SECRETARY-GENERAL OF THE UNITED NATIONS WITH ANNEX (6 FEBRUARY 2014), 11 FEBRUARY 2014

(Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/68/743 (last visited 6 August 2014))

United Nations A/68/743

General Assembly

Distr.: General
11 February 2014
English
Original: Spanish

Sixty-eighth session
Agenda item 76
Oceans and the law of the sea

Note verbale dated 6 February 2014 from the Permanent Mission of Colombia to the United Nations addressed to the Secretary-General

The Permanent Mission of Colombia to the United Nations presents its compliments to the Secretary-General and has the honour to transmit herewith the diplomatic note dated 5 February 2014 from the Minister for Foreign Affairs, María Ángela Holguín Cuéllar, addressed to the Secretary-General of the United Nations, by means of which the Government of Colombia makes a declaration concerning the letter of the Republic of Nicaragua dated 20 December 2013 with the terms and conditions contained therein (see annex).

The Permanent Mission of Colombia to the United Nations would be grateful if the Secretary-General would circulate the present note to all Members of the United Nations, including States parties to the United Nations Convention on the Law of the Sea, as a document of the General Assembly under agenda item 76, and transmit it to the Commission on the Limits of the Continental Shelf.

14-23241 (E) 140214 180214

Annex to the note verbale dated 6 February 2014 from the Permanent Mission of Colombia to the United Nations addressed to the Secretary-General

[Original: English]

5 February 2014

I have the honour to address you on the occasion of referring to the letter sent by the Republic of Nicaragua on 20 December 2013 in relation to our note of 24 September 2013, wherein we expressed our concern with regard to Nicaragua's document entitled "Submission to the Commission on the Limits of the Continental Shelf pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea, 1982 — Part I: Executive Summary", submitted by Nicaragua on 24 June 2013 and published on the Commission's website. In reference to the aforementioned, we would like to reiterate our concern regarding various matters.

Nicaragua's submission makes reference to submarine areas in the Caribbean Sea that belong to Colombia under international law. The Republic of Colombia rejects Nicaragua's submission in which it claims rights to the seabed and the subsoil of the submarine areas appurtenant to the Colombian islands in the Caribbean as well as Colombia's continental territory. It should also be noted that Nicaragua's submission disregards matters relating to the delimitation of boundaries with Colombia which have already been resolved.

Furthermore, we reaffirm that the Republic of Colombia is not a party to the United Nations Convention on the Law of the Sea. As a result, Nicaragua's submission is not opposable to Colombia and does not affect Colombia's rights to its continental shelf. Colombia also reiterates that it has not consented to this procedure.

By virtue of the above, the Republic of Colombia reiterates the terms of our notes of 22 April 2013 and 24 September 2013 submitted to you, and trusts that the Commission on the Limits of the Continental Shelf will refrain from considering Nicaragua's submission of 24 June 2013.

The Government of the Republic of Colombia requests that this note be circulated to all Members of the United Nations, including the States parties to the aforementioned convention, and be transmitted to the Commission on the Limits of the Continental Shelf.

(*Signed*) María Ángela **Holguín Cuéllar**
Minister for Foreign Affairs

Figure 1 Figure 1 from the Nicaraguan Memorial (in *Territorial and Maritime Dispute*)

The Delimitation Area

Median Line

Nicaragua

Colombia

Law of the Sea

ADMIRALTY

CONSULTANCY SERVICES

UK HYDROGRAPHIC OFFICE LAW OF THE SEA DIVISION
E-Mail LOS@ukho.gov.uk
Tel + 44 (0)1823 337900 Fax +44 (0)1823 353075

Figure 1

Figure I from the Nicaraguan Memorial

Figure 2 Figure 3-1 from the Nicaraguan Reply (in *Territorial and Maritime Dispute*)

Figure 3-1 from the Nicaraguan Reply

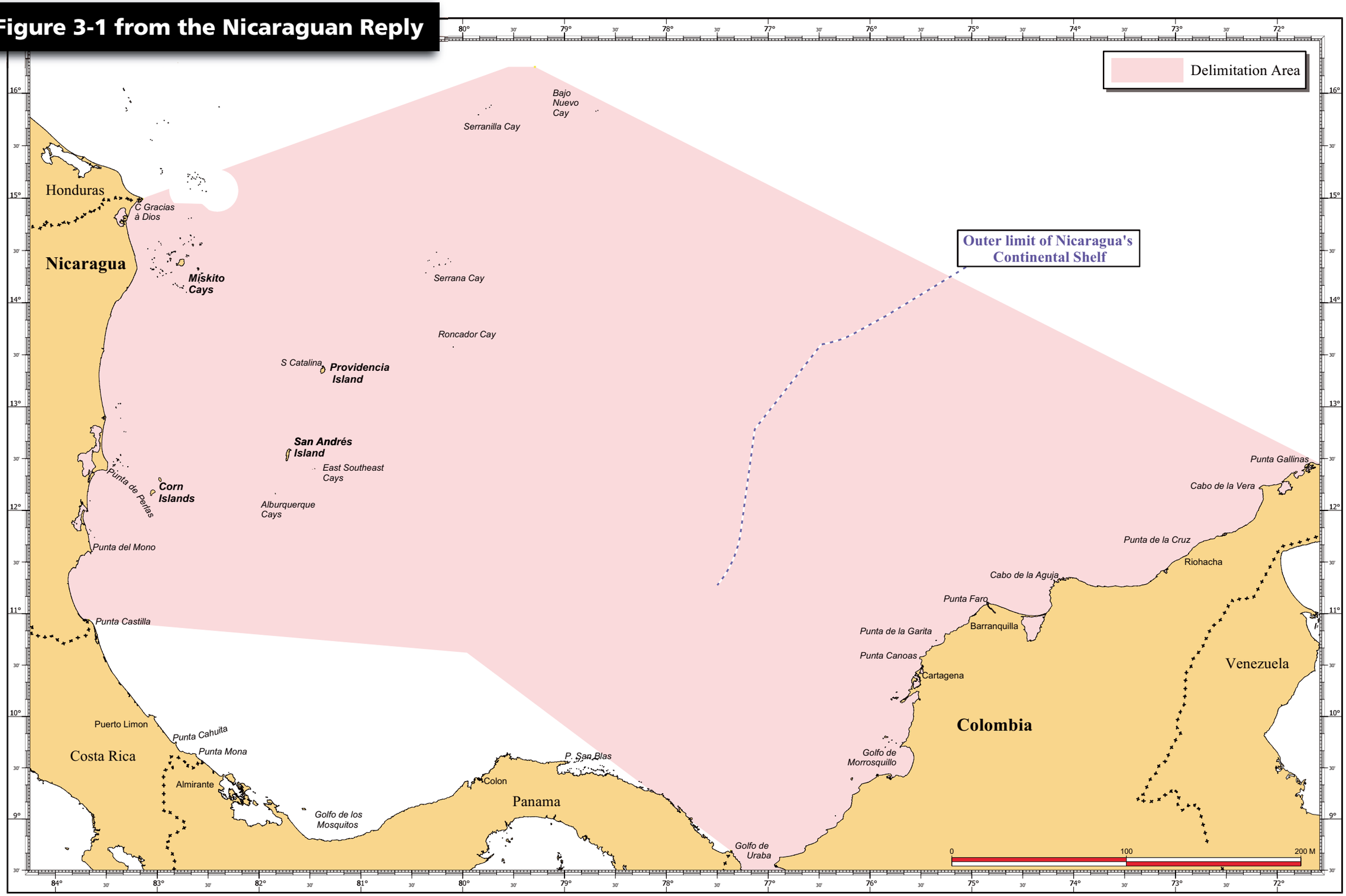


Figure 2

Based on NM Figure 1

The Delimitation Area according to Nicaragua

Figure 3 Sketch-map No. 7 from the Court's 2012 Judgment (in *Territorial and Maritime Dispute*)

Sketch Map No. 7 from ICJ's 2012 Judgment

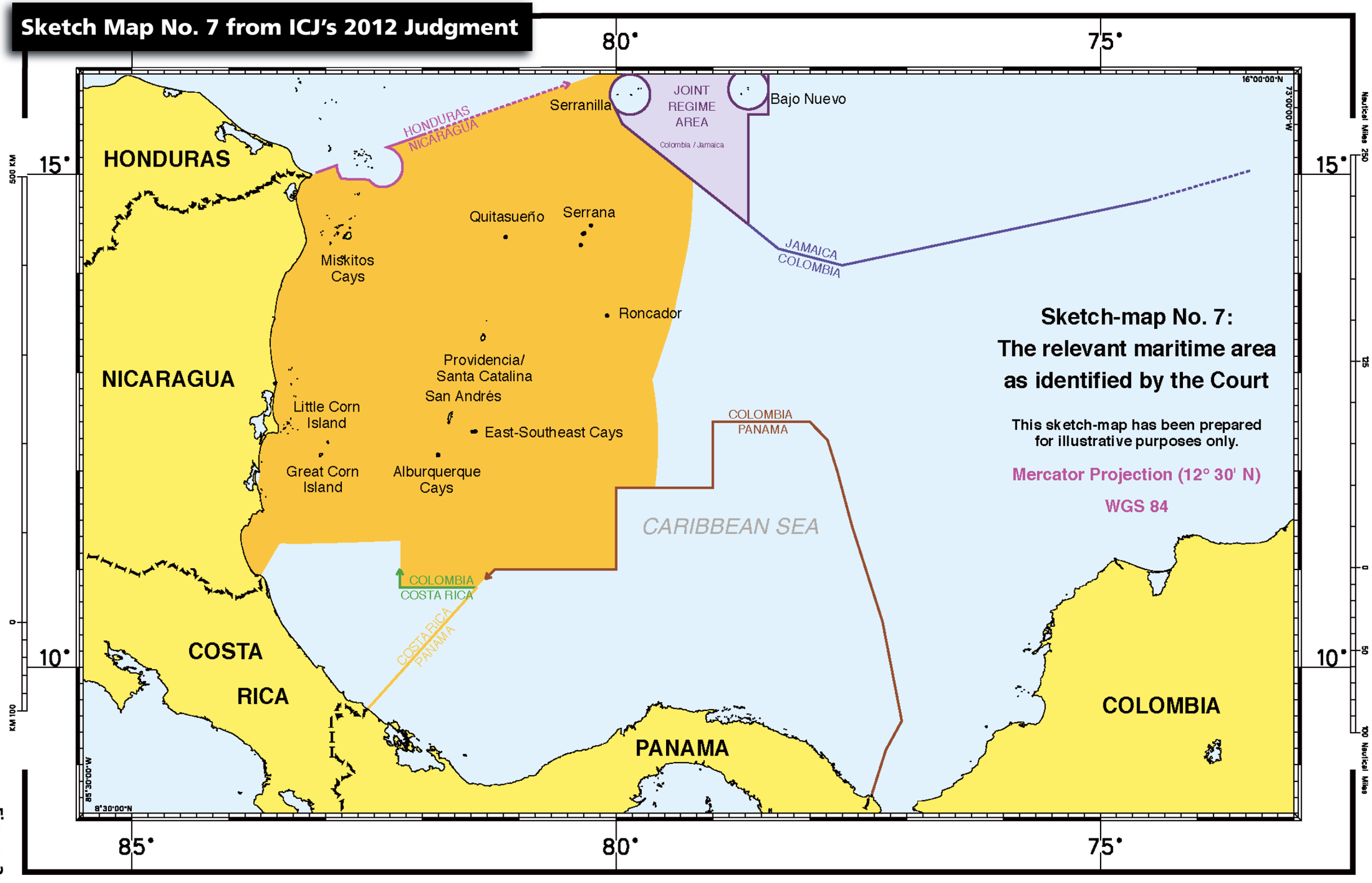


Figure 3

Figure 4 Figure 3-10 from the Nicaraguan Reply (in *Territorial and Maritime Dispute*)

Figure 3-10 from the Nicaraguan Reply

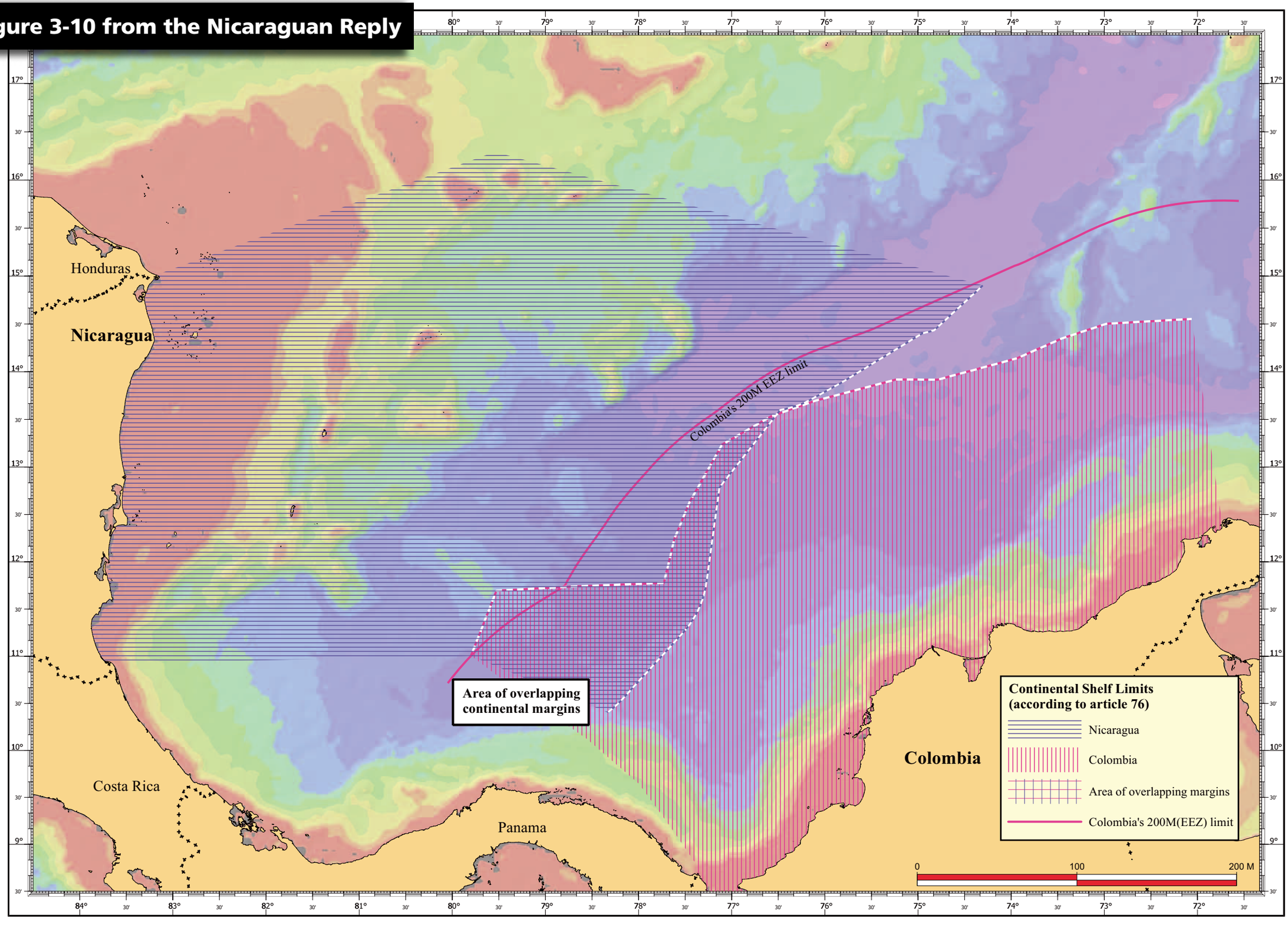


Figure 4

Area of Overlapping Continental Margins

Figure 5 Figure 3-11 from the Nicaraguan Reply (in *Territorial and Maritime Dispute*)

Figure 3-11 from the Nicaraguan Reply

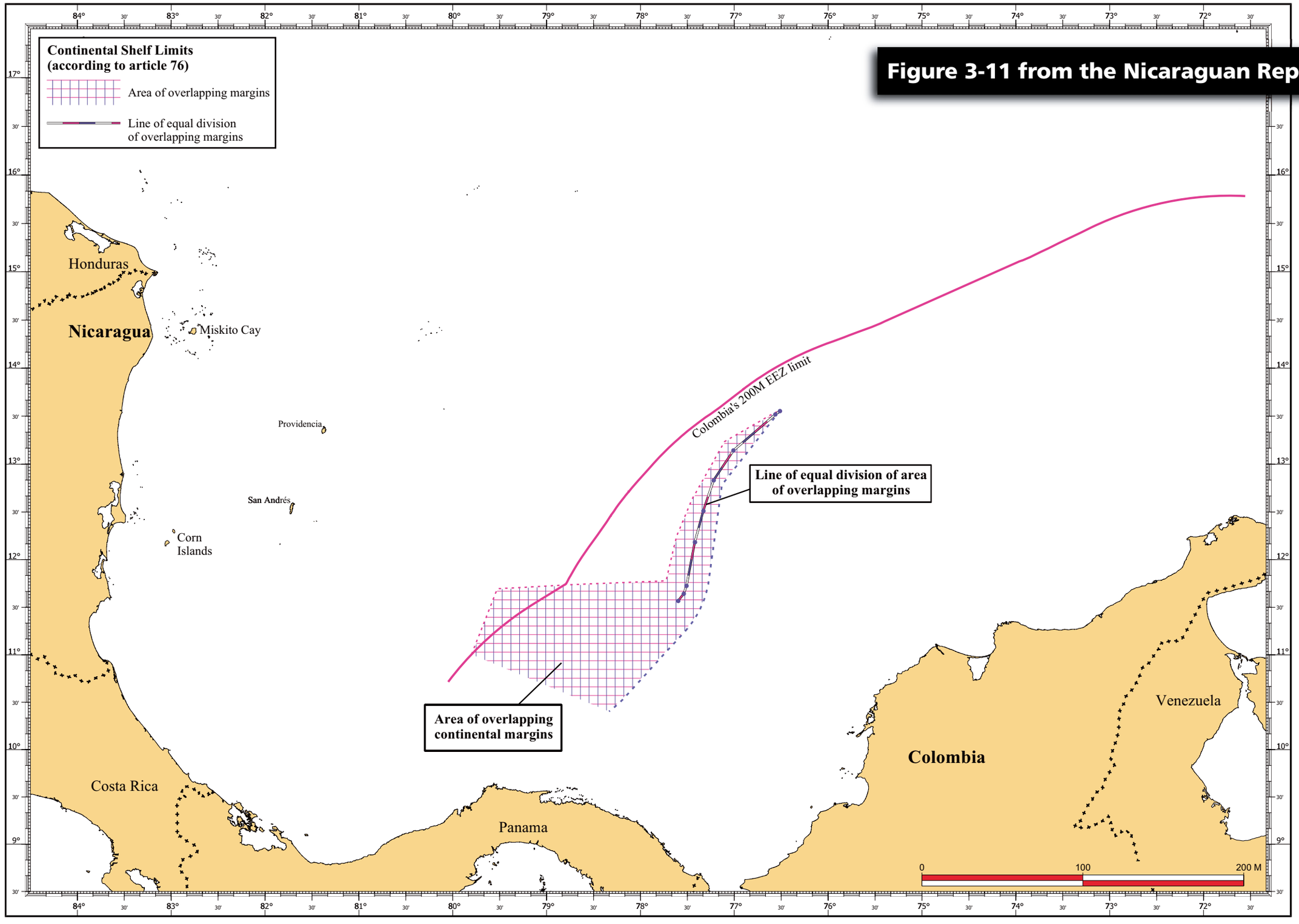


Figure 5

Delimitation of the Continental Shelf

Figure 6 Nicaragua's Extended Continental Shelf Claims

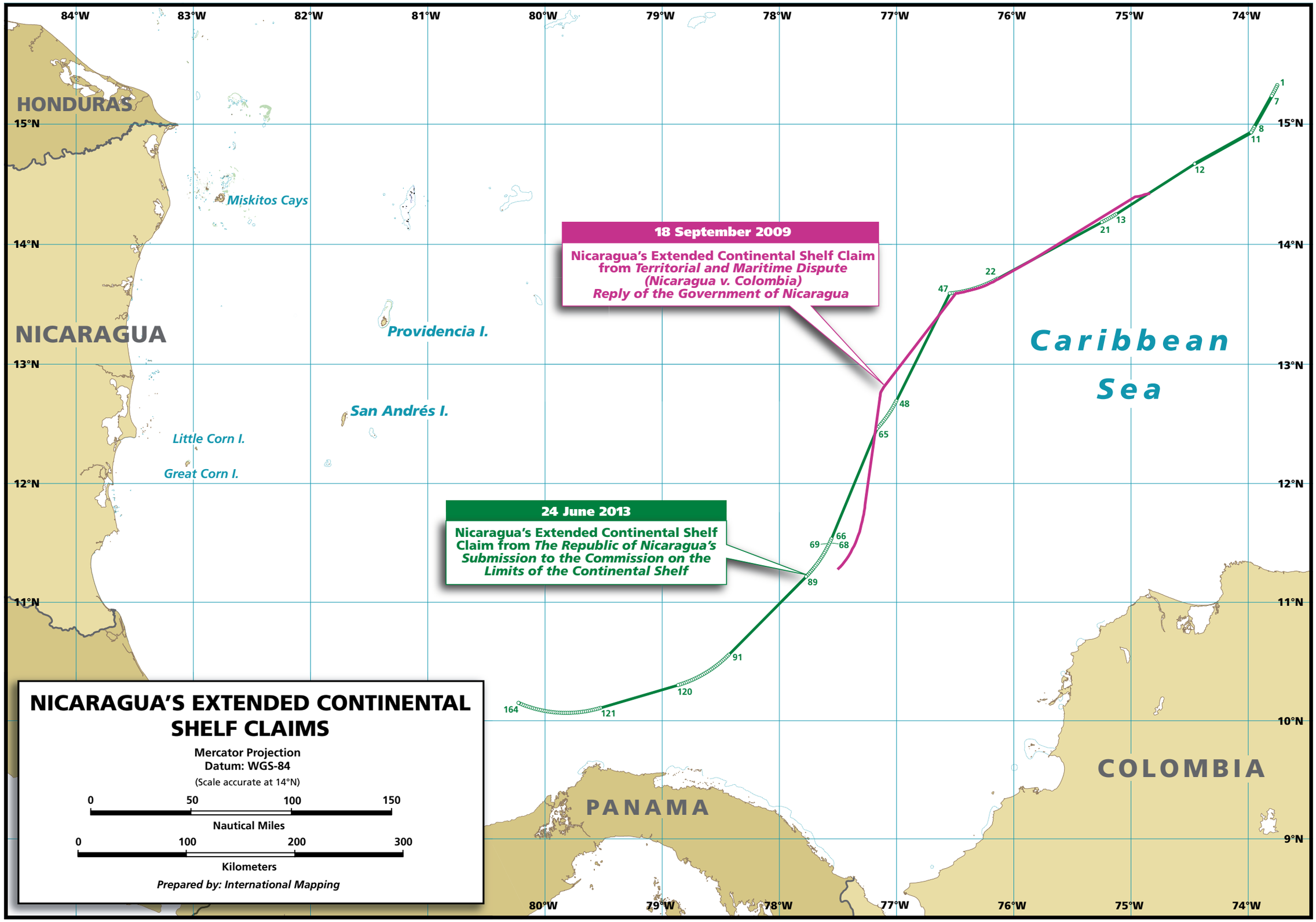

84°W
83°W
82°W
81°W
80°W
79°W
78°W
77°W
76°W
75°W
74°W
15°N
14°N
13°N
12°N
11°N
10°N
9°N
HONDURAS
NICARAGUA
PANAMA
COLOMBIA
Caribbean Sea
Miskitos Cays
Providencia I.
San Andrés I.
Little Corn I.
Great Corn I.
18 September 2009
Nicaragua's Extended Continental Shelf Claim from Territorial and Maritime Dispute (Nicaragua v. Colombia) Reply of the Government of Nicaragua
24 June 2013
Nicaragua's Extended Continental Shelf Claim from The Republic of Nicaragua's Submission to the Commission on the Limits of the Continental Shelf
1
7
8
11
12
13
21
22
47
48
65
66
68
69
89
91
120
121
164
NICARAGUA'S EXTENDED CONTINENTAL SHELF CLAIMS
Mercator Projection
Datum: WGS-84
(Scale accurate at 14°N)
0
50
100
150
Nautical Miles
0
100
200
300
Kilometers
Prepared by: International Mapping

Figure 6