INTERNATIONAL COURT OF JUSTICE

ALLEGED VIOLATIONS OF SOVEREIGN RIGHTS AND MARITIME SPACES IN THE CARIBBEAN SEA

(NICARAGUA *v.* COLOMBIA)

PRELIMINARY OBJECTIONS OF THE REPUBLIC OF COLOMBIA

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(Constitutional Gazette No. 116 of 20 July 1991)

POLITICAL CONSTITUTION OF COLOMBIA

Constitutional Gazette No. 116 of 20 July 1991

(…)

Article 101.

The boundaries of Colombia are those established in international treaties approved by Congress, duly ratified by the President of the Republic, and the ones defined in arbitral wards to which the Nation is a party.

The boundaries fixed in the manner set forth in this Constitution may only be modified by virtue of treaties approved by Congress, duly ratified by the President of the Republic.

Besides the continental territory, the archipelago of San Andrés, Providencia, Santa Catalina and Malpelo are part of Colombia, in addition to the islands, islets, keys, headlands and banks that belong to it.

Also part of Colombia is the subsoil, the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone, the airspace, the segment of the geostationary orbit, the electromagnetic spectrum and the space in which it operates, in accordance with international law or the laws of Colombia in the absence of international norms.

(…)

Annex 2

ACTIO POPULARIS OF UNCONSTITUTIONALITY AGAINST ARTICLES XXXI AND L OF THE PACT OF BOGOTÁ (LAW NO. 37 OF 1961), SUBMITTED BY THE PRESIDENT OF THE REPUBLIC OF COLOMBIA TO THE CONSTITUTIONAL COURT, 12 SEPTEMBER 2013

(Presidency of the Republic of Colombia)

Honourable Magistrates
Constitutional Court
E. S. D.

Ref.: Complaint against Articles XXXI and L of the Pact of Bogotá (Law 37 of 1961)

Respectable Magistrates:

JUAN MANUEL SANTOS identified with I.D. number 19123402, address you in exercise of a constitutional public action to request the declaration of **unconstitutionality** of articles XXXI and L of the *American Treaty on Pacific Settlement (Pact of Bogotá)",* incorporated in domestic law by Law 37 of 1961, which in that part is also subject of the present complaint.

I. LEGAL PROVISIONS CHALLENGED

The challenged paragraphs of Articles XXXI and L of the American Treaty on Pacific Settlement (Pact of Bogotá) are transcribed below, which were incorporated to national legislation by Law 37 of 1961, that in that part is also object of this complaint.

> *"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;

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

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 fulfilment of the judicial decision or arbitral award.

II. INFRINGED CONSTITUTIONAL NORMS

The challenged provisions violate articles 3, 9 and 101 of the Political Constitution.

III. LEGAL BASIS

1. Introduction and summary of the charges formulated

Law 37 of 1961[1] approving the Pact of Bogotá predates the Constitution of 1991. This complaint alleges that some paragraphs of this law, which incorporated two provisions of the Pact of Bogotá to national legislation, permitting the automatic modification of Colombia's boundaries, based on a judgment of the International Court of Justice, turned out unconstitutional.

It is about a **supervening unconstitutionality** inasmuch as Article 101 of the Constitution provides that the country's boundaries may only be modified by an international treaty.

It is a constitutional rule that makes more concrete one of the essential elements of Colombia's sovereignty, which rests

[1] Law 37 of 1991, *"by means of which the American Treaty on Pacific Settlement (Pact of Bogotá)"* is approved.

"exclusively" in the people (Article 3 of the Political Constitution) and not in the International Court of Justice. In addition, Article 9 provides that Colombia's foreign relations are based on national sovereignty and on the self-determination of the peoples.

Therefore, Colombia's boundaries with other States cannot be altered by a judicial judgment handed down by the International Court of Justice, which does not represent the people of Colombia, or constitutes an expression of the self-determination of the Colombian people, or is one of the means set forth in Article 101 for fixing or modifying Colombia's boundaries.

Nonetheless, articles XXXI and L of the *American Treaty on Pacific Settlement (Pact of Bogotá),* incorporated to domestic law by Law 37 of 1961, permit for Colombia's boundaries to be modified by the International Court of Justice.

Article XXXI provides that "*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: b) Any question of international law."* Therefore, the disputes about land and maritime boundaries are part of the jurisdiction of the International Court of Justice regarding Colombia. This means that this article permits that land and maritime boundaries be fixed, in case of a dispute between Colombia and other State party to the Pact of Bogotá, by a judgment of said Court.

Once the International Court of Justice hands down a judgment modifying Colombia's boundaries, the Pact of Bogotá excludes the possibility that the States enter into a treaty to settle their disputes after the judgment, although the same International Court of Justice has admitted that possibility, as shall be seen further below.

Indeed, Article L mandates that the judgment of the International Court of Justice be automatically executed since it establishes that "*if one of the High Contracting Parties <u>should</u>*

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 fulfilment of the judicial decision or arbitral award."

The contradiction between the constitutional norms and these two articles of the Pact of Bogotá incorporated by Law 37 of 1961, is manifest. While these permit that the International Court of Justice modifies Colombia's land and maritime boundaries, article 101 of the Constitution clearly says that "*the boundaries fixed in the manner set forth by this Constitution can only be modified by virtue of treaties approved by Congress, duly ratified by the President of the Republic*".

The "*the boundaries fixed in the manner set forth by this Constitution*", the one adopted by the Constituent Assembly of 1991, are the ones drawn by the treaties in force in 1991. So was provided for by the very same article 101 in indicating that "the boundaries fixed in the manner set forth in international treaties approved by Congress, duly ratified by the President of the Republic, and those defined by arbitral awards in which the Nation is a party".

Therefore, if a treaty in force in 1991 fixed a land or maritime boundary, it can only be modified through a treaty. It cannot be modified by any other means. However, the challenged articles permit to do so with a judgment of the International Court of Justice.

This complaint also asserts (i) that the Constitutional Court is competent to hear constitutional challenges against treaties approved and ratified prior to 1991, and (ii) continues to have competence to adjudge on the law approving the Pact of Bogotá, notwithstanding that the National Government denounced such treaty in accordance with the procedure set forth in Article LVI.

In the following paragraphs it is shown that the Constitutional Court is competent to pronounce upon this complaint by a judgment on the merits. Then, the formulated charge is

developed and finally it is requested, either a declaration of unconstitutionality of the challenged provisions, or that the normative meaning contrary to articles 2 and 11 of the Constitution is excluded from the domestic legal order.

2. Competence of the Constitutional Court

The Constitutional Court is competent to hear the present complaint by virtue of numeral 4 of article 241 of the Constitution, since it is directed against a provision that makes part of a law of the Republic. In effect, the challenged provisions are part of Law 37 of 1961:

2.1 The evolution of the jurisprudence of the Constitutional Court about the constitutional review of treaties entered into prior to 1991 and their approbatory laws.

According to the constitutional jurisprudence the competence of the Court to review the constitutionality of a law approving a treaty prior to 1991 is clear.

The jurisprudence of the Constitutional Court has evolved, but the doctrine in force is that it does have competence to adjudge upon the approbatory law of a treaty prior to the Constitution of 1991, when a citizen files a complaint in exercise of the public action of unconstitutionality.

In Judgment C-027 of 1993 (Judge Simón Rodríguez Rodríguez) the Court exercised constitutional review over the Concordat between the Republic of Colombia and the Holy See, and declared unconstitutional various excerpts of the treaty. The approbatory law of the latter had been enacted prior to the Constitution of 1991, for which it was not subject to the previous integral review provided for in numeral 10° of Article 241. Then, a citizen challenged the law and the corresponding treaty, this is, the Concordat. The Court declared the challenge admissible with the argument that

> "*the Constituent Assembly did not prohibit nor excluded the constitutional review of the pre-constitutional legal order, in special the laws that incorporate to the*

> *domestic legal system international agreements or treaties ratified before the new Constitution*."

Subsequently, in Judgment C-276 of 1993 (Judge Vladimiro Naranjo Mesa) the Court upheld a different thesis and adjudged:

> "*SECOND. TO REFRAIN FROM rendering a decision on the merits with respect to the constitutionality of the "Treaty of International Civil Law and the Treaty of International Commercial Law"*, signed in Montevideo on 13 February, 1889".

Said treaty had been ratified by Colombia in 1993 and accordingly Colombia had already given its international consent to it. The Court considered that

> *"Once perfected, the international treaties establishes, by definition, a binding rule of conduct to all signatory States; enshrined in the principle pact sunt servanda, which is a principle of security, justice and international morals.*
>
> *[…]*
>
> *The mandatory character of the treaties already perfected and in force for the states that are parties to them, is, then, unquestionable in the light of international law principles. One wonders what will happen in the event that a treaty perfected prior to the entering into force of the 1991 Political Constitution resulted in a contradiction with one of the mandates established in it. In that case the National Government, and specifically the President of the Republic and its Minister of Foreign Affairs, are called to be the first ones to solve the problem. Therefrom, they are provided of suitable mechanisms enshrined in the Constitution itself and in international law, such as, the recognition of a treaty, or its reform, or depending on the case, its denunciation, if it is related to multilateral treaties.*
>
> *In any event, it is not the Constitutional Court the competent to solve the problem, which could only be*

> *possible through a citizen demand, which nowadays is excluded from the constitutional order in force, or by the officious control of the treaty, which is not allowed either except under the modality of a previous control, as enshrined in paragraph 10 of Article 241, which only applies, in consequence, to the treaties that have been perfected after the promulgation of the Constitution of 1991. In any case, being a Corporation, whose competence falls only on the national scope, it cannot take decision over commitments acquired by the Colombian State in the international field."*

However, this thesis was later refuted by the same Court in Judgment C-400 of 98 (Judge Alejandro Martínez Caballero), which reviewed the constitutionality of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. The Court declared constitutional article 27 of said treaty, which enshrines the principle *pact sunt servanda*. The Court declared inapplicable Article 27 of that treaty, which enshrines the pacta sunt servanda principle. Upon analyzing that article, the Court found that the Constitution upholds a moderate monist system, which harmonizes the obligation of the treaties with the internal supremacy of the Constitution. To the constitutionality of the principle of *pact sunt servanda* the Court added "*four ineludible consequences*". One of those consequences, according to the Court, was that "a treaty that is contrary to the Constitution should not be applied by the authorities, by virtue of the peremptory mandate of the superior Article 4. Another consequence was that "the doctrine developed by this Court in Judgment C-276 of 1993 is no longer acceptable" and, on the other hand, perfected treaties could be subject to constitutional control.

This is the jurisprudence in force. It has been subsequently reiterated by the Constitutional Court. The most recent judicial order in this respect is Order 288 of 2010 (Judge Jorge Ivan Palacio Palacio), whereby the Court ruled on a complaint against the agreement between Colombia and the United States on the use of military bases in Colombia by the armed forces of that country.

The agreement on the use of military bases in Colombia by the armed forces of the United States had incidence in various spaces of the national territory. While it did not directly regulate constitutional rights, as was the case of the Concordat, its impact in the people inhabiting the zones around the bases was clear. It was also clear that obligations for Colombia derived from the agreement which had to be approved by the people's representatives in the Congress of the Republic and then reviewed by the Constitutional Court.

In this decision the Court noted:

> *"the public action of unconstitutionality against international agreement has also been accepted by the jurisprudence of this Court ever since its first decisions and operates in at least three events:*
>
> *(i) Against laws approving treaties entered into and ratified prior to the Constitution of 1991. That was the position set forth in the Judgment that examined a complaint against the law approving the Concordat, which was abandoned for a short period and later reassumed in the Judgment that examined the Vienna Convention on the Law of Treaties between States and International Organizations.*
> *[...]"*

Therefore, jurisprudence admits the complaint against treaties prior to 1991 approved by laws passed prior to the Constitution of 1991 because otherwise the Constitutional Court would not be able to fulfil its responsibility of defending the supremacy of the Constitution.

The norms challenged on this occasion meet these requirements. Articles XXXI and L of the *American Treaty on Pacific Settlement (Pact of Bogotá)* were approved by Law 37 of 1961, which in that part is also object of this complaint. Their content permits the International Court of Justice to modify Colombia's land and maritime boundaries, affecting those people living in the areas affected by the respective judgment of the Court. The meaning of the challenged norms is overtly contrary to the Constitution because while Article 101 of the Constitution

prohibits any modification of Colombia's boundaries by any means other than an international treaty, the Pact of Bogotá permits land and maritime boundaries—an international law matter over which the International Court of Justice has jurisdiction (Article XXXI of the Pact)—to be affected by a judgment of the aforesaid Court, which execution is compulsory (Article L of the Pact) notwithstanding that the boundary has been modified by the judgment. Therefore, it is necessary to defend the supremacy of the Constitution and this *"treaty contrary to the Constitution should not be applied by the authorities by virtue of the superior peremptory mandate of Article 4"*, as set forth by the Constitutional Court in Judgment C-400 of 98 (Judge Alejandro Martinez Caballero), reiterating the doctrine that treaties prior to 1991 and their respective approbatory laws are subject to constitutional control.

The view that the text of the two articles of the Pact does not refer explicitly to territorial and maritime limits of states, is unacceptable. As was highlighted earlier, the boundaries between American states have been disputed before the International Court of Justice based on the Pact of Bogotá. That is the interpretation that the International Court of Justice itself has adopted. Therefore it cannot be argued that the Pact of Bogotá excludes boundary disputes. In any case, as has been said by the Court, *"if the legal provision supports multiple interpretations, some of which violate the Charter but others conform to it, then the Court must utter a conditional constitutionality or interpretative judgment that establishes which meanings of the provisions remain within the legal system and which are not constitutionally legitimate."*[2]

In conclusion, the Court is competent to hear this complaint and to decide on the merits about the challenged norms.

2.2 The Pact of Bogotá continues to produce effects for Colombia notwithstanding that it was denounced by Colombia because the Judgment of the International Court of Justice was handed down prior to the denunciation of the Pact.

[2] Judgment C-334 of 2010, Judge Juan Carlos Henao Pérez.

Article LVI of the Pact permits the denunciation of the treaty and regulates the effects of the same. Colombia denounced the Pact of Bogotá on 27 November 2012.

Although it may not be invoked by a State to file a new complaint against Colombia, the obligations acquired in previous proceedings continue in force. In other words, the Pact of Bogotá shall continue to produce effects for Colombia on the date this complaint is filed and on the date the judgment is pronounced by the Constitutional Court.

Therefore, the Court should not refrain from rendering judgment on the merits.

Article LVI of the Pact provides:

> *"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."*

Paragraphs 1 and 2 of the treaty must be harmonized. The first paragraph provides that the Pact shall cease to be in force one year after it is denounced. The second paragraph provides that the denunciation shall have no effect over procedures initiated prior to the transmission of the notification, from which it is inferred that denunciation can produce effects over procedures initiated subsequent to the notification.

The National Government has asserted that the jurisdiction of the International Court of Justice ceased as of the notification of Colombia, in accordance with paragraph two of Article LVI.

Whatever interpretation is adopted, it is clear that the denunciation shall have no effect on the proceedings initiated prior to the transmission of the respective notification. These proceedings could have concluded or could be underway.

The proceeding that led to the two rulings of the International Court of Justice modifying the maritime boundaries of Colombia with Nicaragua already concluded in two judgments. On 19 November 2012, the International Court of Justice rendered judgment in relation to the dispute between Colombia and Nicaragua concerning sovereignty over the Archipelago of San Andrés, Providencia and Santa Catalina and maritime delimitation between the continental shelf and exclusive economic zones of both States. In the judgment entered on 13 December 2007, the same Court warned that the Esguerra-Barcenas Treaty and the respective Exchange of Ratifications had not fixed a maritime boundary between the two countries and Meridian 82nd was only a criterion for the assignment of the islands.

Pursuant to Article 60 of the Statute, the judgments of the International Court of Justice are not subject to appeal.[3] Notwithstanding, the Statute of the International Court of Justice permit two requests related to that process. Pursuant to articles 60 and 61 of the Statute of the Court, with respect to a judgment of said Court it is admissible to request an interpretation and a revision. The request of interpretation seeks to clarify the meaning and scope of the judgment and has no limit in time. The request of revision requires the discovery of new evidence, unknown for Colombia before the Judgment, "of such a nature as to be a decisive factor". This means, that it must be a fact that provides a basis for questioning the decision adopted by the Court[4].

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[3] Statute of the ICJ. Article 60. "The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party."

[4] *Application for the Revision of the Judgment of 11 September 1992 in the case concerning* the Land, Island and Maritime Frontier Dispute (El Salvador / Honduras: Nicaragua intervening) (El Salvador v. Honduras), judgment, I.C.J. Reports 2003, p. 392, Paragraph 40.

In addition, some State, especially Nicaragua, could defend the thesis that Colombia continues subject to the compulsory jurisdiction of the Pact until November 27, 2013. Nicaragua, for example, could proceed to bring before the International Court of Justice the application it has announced asking it to recognize an extended continental shelf of 350 nautical miles and to fix a new boundary with Colombia close to Colombia's continental coast in the Caribbean Sea. Colombia would challenge both the jurisdiction of the Court and this claim, but the International Court of Justice would decide if it has jurisdiction and competence with respect to this new dispute.

Now then, the constitutional jurisprudence has constantly said that

> "*In guarding the integrity and supremacy of the Constitution, it should know what provisions have been challenged and repealed, provided that such norms continue to produce legal effects. On the other hand, if the challenged norm excluded from the legal framework no longer produces legal effects or never produced them, the judgment of constitutionality is innocuous due to a lack of object"*[5].

The Pact of Bogotá, in virtue of its denunciation by Colombia, is no longer in force for Colombia, in the abstract, with respect to future judicial proceedings, but it continues to produce effects because a judgment was rendered in a proceeding against Colombia, which modified its maritime boundaries in the waters of the Archipelago and affected the unit of the archipelago, together with another proceeding announced by Nicaragua to request recognition of an extended continental shelf, which would reduce the extension of the continental shelf derived from Colombia's continental coasts.

Therefore, the Constitutional Court is competent to deliver a judgment on the merits on this complaint and to review the

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[5] Judgment C-505 of 1995, Judge Alejandro Martinez Caballero. Reiterated, among others, in Judgment C-193 of 2011, Judge Mauricio Gonzalez Cuervo.

challenged legal norms for the purpose of defending the supremacy of the Constitution.

3. Development of the charge of violation of Articles 2 and 101 of the Constitution

3.1 The pact of Bogotá allows land and maritime boundaries to be modified *ipso facto* by a judgment of the International Court of Justice

The Pact of Bogotá does not exclusively regulate disputes concerning territorial matters. It deals with all international law matters that could arise between States. These include, among others, territorial disputes, but also other kind of disputes. As an example, this has been invoked before the International Court of Justice in order to substantiate litigation relating to extraterritorial[6] armed actions and fumigations with herbicides[7].

However, territorial disputes are matters resolved under the Pact of Bogotá.[8] This is because Article XXXI defines the jurisdiction of the International Court of Justice in a broad manner. It provides:

> *"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;*

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6 Honduras v. Nicaragua Case.
7 Ecuador v. Colombia Case.
8 Nicaragua v. Honduras Case.

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

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

The Pact of Bogotá does not contain norms related to the incorporation of international decisions. This is a matter left to the domestic legislation of each State.

However, Article L creates a proceeding for the enforcement of the International Court of Justice judgments. Article L provides:

"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."

Therefore, at first glance, the Pact of Bogotá really permits the modification of the territorial and maritime boundaries of the Colombian State without a treaty signed by the President of the Republic and approved by the Congress of the Republic, as established by Article 101 of the Constitution.

The Pact of Bogotá permits the modification of *"the boundaries fixed in the manner set forth in this Constitution"* without following the procedures laid down in the Constitution. A decision of the International Court of Justice would modify *ipso facto* the land and maritime boundaries.

This automatic modification is inadmissible because the Constitution gives a Constitutional rank to the boundaries drawn by virtue of the treaties prior to 1991. Those are the boundaries referred to in the first paragraph of Article 101, v.gr., "*the boundaries fixed in the manner set forth by this Constitution,"* which means, the boundaries that in 1991 were *"established in*

international treaties approved by the Congress, duly ratified by the President of the Republic."

First paragraph of article 101 of the Constitution provides:

"The boundaries of Colombia are those established in international treaties approved by the Congress, duly ratified by the President of the Republic, and those defined by arbitral awards to which the Nation is party."

In turn, the second paragraph sets forth a unique procedure for the modification of those boundaries. The only way permitted in the Constitution to change those boundaries is by concluding a treaty.

Second paragraph provides that

"The boundaries fixed in the manner set forth in this Constitution, could only be modified by virtue of treaties approved by the Congress, duly ratified by the President of the Republic."

The best interpretation of Article 101 of the Constitution is the one that has been set forth by the Constitutional Court in its judgments: any modification of boundaries demarcated prior to 1991 by a treaty, including the boundaries in maritime spaces such as those derived from the Archipelago of San Andrés and Providencia, requires an international treaty followed by a constitutional reform.

3.2 The meaning of Article 101 of the Constitution and the decision rendered by the Constituent Assembly not to accept for judgments to fix Colombia's boundaries.

Article 101 of the Constitution prohibits the automatic incorporation of judgments of the International Court of Justice that change the boundaries of Colombia.

When a judgment of the International Court of Justice modifies the boundary previously established in international instruments in force prior to 1991, Article 101 mandates that a new treaty

must be concluded wherein Colombia agrees with the concerned states on the situation of the boundary, and on the rights of the Colombian citizens affected after the judgment.

Therefore, a judgment of the International Court of Justice of such scope cannot be automatically applied, but instead it requires a complex process of incorporation or harmonization of its effects along with other constitutional precepts.

This process requires the concurrence of the three branches of public power, since the treaty, once signed by the Executive, is approved by the Congress, and adjudged by the Constitutional Court, before it is finally ratified by the President of the Republic.

The first paragraph of article 101 of the Constitution provides two sources in order to establish the boundaries of Colombia: (i) international treaties and (ii) arbitral awards.

During the National Constituent Assembly a similar text was put forward that included a third category of the instruments: international judgments.[9]

In the Constitutional Gazette No. 80 it is included a letter from the Vice-minister of External Affairs, who suggested the following text: "The boundaries of Colombia are those that had been fixed, or that will be hereafter fix, by international treaties validly concluded and ratified in accordance with this Constitution and the laws, **by judgments** or by arbitral awards dully recognized."

However, this reference to judgments was omitted in the final text of Article 101, which only refers to awards. Thus, the Constituent Assembly only permits the boundaries of Colombia to be fixed by means where the State in exercise of its sovereignty specifically consents to a new boundary. In concluding a treaty, State's consent is given in a direct manner over all the terms of the treaty. In appointing arbitrators and in

[9] A letter from the Vice-Minister of External Affairs, Rodrigo Pardo, who suggested the quoted text is transcribed in the Constitutional Gazette No. 80.

delimitating the object of its competence, the consent of the State is given over who decides and over what can be decided.

The expression "arbitral award" has not been explained in depth by the International Court of Justice. The relevant arbitral award for the definition of Colombia's territory in the Caribbean is the award rendered in 1900 by Emile Loubet, President of France, on the boundary between Colombia and Costa Rica.[10] According to the International Court of Justice, an arbitral award results from the "settlement of differences between states by judges of their own choice and on the basis of respect for law."[11] For the Court, a decision is not an arbitral award if the parties have not chosen the people in charge of deciding or have not indicated the method to make the decision, which can be in law or equity.[12]

Therefore, the concept of "award" does not include the judgments rendered by the International Court of Justice, because those are rendered by a judicial organ not chosen by the parties. A proposal was made during the National Constituent Assembly to include a reference to "judgments" in the boundary of Colombia[13]. This reference was not adopted in the final version of article 101, which only refers to "arbitral awards". This reference is consistent with the Constitutional Court's thesis in the sense that "the Constituent Assembly had a 'master image' of what was the consolidated territory of Colombia"[14]. This master image included the arbitral award issued by the President of France in 1900, but no international judgment, because Colombia had never been a party to a delimitation process before the International Court of Justice.

In effect, the difference between an award and a judgment is enormous. In the case of judgments, the State does not give its

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[10] *Award Relating to the Boundary between Colombia and costa Rica,* UN Reports of International Arbitral Awards, Vol. 28, p. 341 (www.un.org/law/riaa).

[11] Maritime Delimitation and Territorial questions between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001, p.40, paragraph 113.

[12] Ibíd., paragraph 114.

[13] See Anexes No. 1 and 4 to the proposal presented by the constituent Gustavo Zafra Roldán in the Constitutional Gazette No. 80.

[14] Judgment C-1022 of 1999, Judge Alejandro Martínez Caballero.

consent in respect of the three main aspects: who decides, what should be decided and which results are inadmissible.

In effect the judges are chosen by other States through a procedure at the General Assembly of the United Nations Organization, where Colombia has little effective incidence.

The concrete object of the dispute is defined by the Applicant State and then by the judges of the Court. The above, is clearly derived from challenged article XXXI. In abstract, States submit *ipso facto* to the jurisdiction of the International Court of Justice without the respondent State being able to circumscribe the object of the dispute, as can be gleaned from the provisions of the challenged article. This was evident in the judgment rendered on 19 November in the dispute between Colombia and Nicaragua because the Court did not limit itself to decide with respect to the sovereignty of the formations but also ruled with regard to the maritime boundary. Neither did it focus its judgment on the relevant area comprised in the Esguerra-Bárcenas Treaty (waters between the Archipelago and Nicaragua's coast), but extended its judgment to another relevant area located between the Archipelago of San Andrés and Providencia and the Colombian continental coast. The International Court of Justice not only sustained that the Meridian 82 was not a boundary,[15] but decided to delimit the exclusive economic zones and continental shelves. It is true that Colombia argued against this, but it did so in light of the previous non-appealable fact that the International Court of Justice, notwithstanding Colombia's objection and manifestation that it did not recognize its jurisdiction, decided that Colombia

[15] The Exchange of Notes of the Esguerra-Barcenas Treaty was also given a constitutional rank by the 1991 Constitution. This is integral part of the Esguerra-Barcenas treaty and besides it was taken into account by the Constituent Assembly as part of the "master image" of the national territory. The limit fixed by the Exchange of Notes changed with the 2007 and 2012 judgments of the International Court of Justice, and there is a contradiction between the "master image" constitutionalized in 1991 through article 101 and the text of the Exchange of Notes. There is a direct contradiction between both judgments and the Exchange of Notes. Where the Exchange of Notes establishes that the western boundary of the Archipelago is the Meridian 82, the judgments sustain that (i) this not a maritime limit (2007 judgment) and (ii) there is another limit (2012 judgment).

was compelled by the Pact of Bogotá to submit to the jurisdiction of the Court. In the ruling (3) on the operative part of the Judgment of 13 December 2007 concerning Colombia's objections, the Court invoked article XXXI of the Pact of Bogotá as the basis of its jurisdiction to adjudge on the sovereignty of each state with respect to maritime formations (3(a)) and with respect to the maritime boundary (3(b)) between Colombia and Nicaragua.

Additionally, the result of the new boundary cannot be appealed, since the Statute of the Court of The Hague, in its above-mentioned article 60, establishes that the judgments are without appeal, therefore Colombia cannot controvert the merits of the judgment. It is true that some applications proceed, but their scope and conditions are highly restricted. An application for interpretation is available to request a clarification of the scope of the decision, but not to modify it, and the application for revision, to demonstrate that there is new evidence that must be brought to the Court to change its decision, but not to controvert the juridical reasons of the judgments, nor the inequitable character of the decision.

The differences between awards and judgments in the international field have special relevance in light of the principle of self-determination of the peoples. Since arbitral jurisdiction depends on consent, the principle of self-determination of the peoples is realized with awards. This is manifest in the three elements previously mentioned: appointment of the arbitrators, delimitation of the object of the dispute to accurately circumscribe the competence of the arbitrators and establishment of specific parameters to avoid inadmissible awards for both parties. Awards are the expression of a specific concrete and precise manifestation of the sovereign will of a State that consented to the arbitration of a specific dispute subject to some defined parameters. Judgments, instead, are just the result of the generic ratification of a treaty, in the abstract, and a state cannot decide what specific matters will be included and excluded from the jurisdiction once the dispute arises, nor choose the judges who will settle that dispute in particular, or much less define the framework of reference of the judges, which in turn has an impact on the admissible result for the states.

Therefore, the difference between "awards" and "judgments" is not only technical, but has a principle of reason. The Constituent Assembly understood it this way, hence, while it enshrined the self-determination of the peoples as a fundamental principle of foreign affairs (Article 9 of the Political Constitution), it concluded that Colombia's boundaries could not be fixed by judgments, but only by awards and treaties.

Accordingly, when a judgment alters Colombia's boundaries, it is necessary that the State in exercise of its sovereignty and in accordance with the principle of self-determination of the peoples, signs a new treaty to solve the problems derived from the judgment, based on reciprocity, equity and national convenience (Article 226 of the Political Constitution), and must also determine the boundaries that the people of Colombia will accept in exercise of their right to self-determination (Article 9 of the Political Constitution). That is why the second paragraph of Article 101 had established that "*the boundaries fixed in the manner set forth in this Constitution, could only be modified by virtue of treaties approved by the Congress, duly ratified by the President of the Republic."*

When the boundaries modified by a judgment of the International Court of Justice had been fixed by international instruments prior to the 1991 Constitution, the obligation to sign a new treaty is even greater, since those boundaries where given constitutional rank by the Constitution of 1991.

The Constitutional Court has said that the first paragraph is not an open and undetermined reference to treaties, but specifically to the treaties that by 1991 had already stipulated Colombia's boundaries. In the judgment concerning the treaty on the maritime boundaries with Honduras, signed in 1986 but ratified in 1999, the Court sustained:

> "It is clear that the Constituent Assembly had a "master image" of what the consolidated Colombian territory was. Therefore, while noting that the continental and insular territory is part of Colombia, as well as the diverse maritime components, the subsoil and the space, the Constitutional Charter wanted to preserve the

> intangibility of that territory as material substratum of the exercise of the Colombian sovereignty. In this sense, the Constitutional Charter in some way constitutionalized the treaties that established uncontroverted boundaries and that where executed by the time of the approval of the 1991 Charter, which brings three important consequences, in relation to the control exercised by this Court."[16]

For the Court, three consequences are derived from the constitutional rank of the treaties on boundaries prior to 1991:

The *first consequence* is that "treaties of boundaries already perfected at the time that the Constitution entered into force cannot be subject to claims, because intrinsically those are norms that integrate the block of constitutionality".

The *second consequence* is that "due to the constitutional hierarchy of these treaties, this Court considers that the modification of boundaries, that implies an assignment of territory in relation to existent boundaries consolidated by the time that the 1991 Charter was approved, requires not only a new international treaty, as set forth by article 101 of the Charter, but this treaty should also be internally approved by the procedures of constitutional reform established in title XIII of the Charter."

Finally, the *third consequence* is that "the treaties that do not modify but define boundaries in dispute with other countries, do not imply a constitutional modification and can be approved through an ordinary procedure to incorporate the treaties to the domestic legislation. In effect, in these cases, to the extent that the boundaries where not clear when the Charter of 1991 was approved, it is evident that those boundaries have not been constitutionalized, so the political organs -President and Congress- enjoy certain freedom to agree on such boundaries with the neighboring nations, in terms of what is more convenient for the country and based on respect for the national sovereignty and international principles recognized by our country (Article 9 of the Political Constitution)."

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[16] Judgment C-1022, 1999, Judge Alejandro Martínez Caballero.

For reasons of legislative technique, in the Constitution of 1886[17] the specific reference to each treaty was not included, as derived from the paper regarding international relations presented by the constituents Arturo Mejía Borda, Guillermo Plazas Alcid, Miguel Santamaría Dávila, Aldredo Vásquez Carrizosa and Fabio de Jesús Villar[18]. From the aforementioned follows that the expression "international treaties approved by the Congress, dully ratified by the President of the Republic" refers, among others, to the Bárcenas- Esguerra treaty from 1928 and the exchange of notes of 1930[19]. Additionally it can be derived that article 101 refers to this treaty as it was interpreted by the Republic of Colombia in 1991. Namely, including the sovereignty of Colombia over all the maritime formations and the maritime delimitation made over the meridian 82.

The Court has also indicated the way to modify those boundaries. Although a treaty is required in all cases, the way in which it is approved is different depending on whether it is a cession of Colombian spaces or a demarcation of uncertain areas.

In the above-mentioned judgment, it was held that any treaty of boundaries implying a cession of territory instead of a clarification of uncertain boundaries would require an international treaty approved by Colombia by means of a constitutional reform. For the Court, only the treaties that do not imply assignment of territory, but the demarcation of uncertain areas, such as the delimitation treaty between Colombia and Honduras, could be approved through a law.

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[17] Article 3, modified by Legislative Act 1 of 1936 used to say: "[…] With Venezuela, those defined in the arbitral award rendered by the government of the King of Spain on 16 March 1891 and in the treaty of 5 April 1941; with Brazil, those defined in the treaties of 24 April 1907 and 15 November 1928; with Peru, those defined in the treaty of 24 March 1922; with Ecuador, those defined in the treaty of 15 July 1916, and with Panama, those defined in the treaty of 20 August 1924."

[18] Constitutional Gazette, No. 68.

[19] See, for example, the reference to this Treaty in the paper presented by the constituent Gustavo Zafra Roldán, Constitutional Gazette No. 80.

The Constitutional Court has distinguished two types of frontier treaties as follows:

> "Not all the treaties of frontiers have the same character. Thus, in some cases, two states share a frontier but this is not clearly delimitated, consequently the territorial rights of the countries are relatively uncertain. Therefore, after resorting to several pacific mechanisms to solve this dispute, the countries finally conclude a treaty that delineates their frontiers. In these cases, in strict sense there is no assignment or acquisition of territory by any State, because the frontiers were not clearly demarcated; the agreement overcomes that indetermination through a treaty that delimitates the frontiers between both countries.
>
> Conversely, in other events, two countries may have a defined frontier, but by reason of diverse political considerations, agree to change that drawing, in such a way that one of the countries receives territory that pertained to the other, or establish spaces of shared sovereignty, or they find other possible alternatives to modify the state's territory. Therefore, those treaties do not represent a "delimitation" of their frontier, since these were clear and uncontroverted, but an agreement that implies a "modification" of the existing limits."[20]

According to the aforementioned judgment, in the event of a modification or an assignment of territory it is necessary a constitutional reform, as already explained. According to the Constitutional Court, this reform will have to come along with an international treaty:

> "But the modification of a frontier cannot be done solely by a constitutional reform, since article 101 of the Charter not only demands an international treaty, and this requisite is inferred from the inevitable international dimension of boundaries. In consequence, an inevitable conclusion follows: an assignment of Colombia's territory demands the corresponding international treaty

[20] Judgment C-1022, 1999, Judge Alejandro Martínez Caballero

> to be approved domestically by the proceedings of constitutional reform enshrined in the Charter."

The third paragraph of article 101 went beyond. It expressly included the Archipelago of San Andrés, Providencia and Santa Catalina and all its formations within Colombia's territory. It clearly states:

> "In addition to the continental territory, the Archipelago of San Andrés, Providencia, Santa Catalina and Malpelo, form part of Colombia, along with to the islands, islets, keys, headlands and banks that belong to it."

As stated by the Constitutional Court, "a careful examination of the antecedents of article 101 of the Charter shows that the Constituents did not pretend to entirely delegate to the treaties the delimitation of the Colombian territory. Their discussion rather presupposed a very precise and developed idea of what this territory comprised."[21] Within that "precise and developed" idea was the composition of the Archipelago. For example, in the paper of the Constituent Cornelio Reyes, the different cays were mentioned by name, as well as the maritime limits of the Archipelago:

> "The Archipelago of San Andrés and Providencia is undoubtedly the most important insular territory of Colombia. Its strategic location, racial singling, touristic wealth, imposes on Colombians a special attention over its destiny.
> Located between the parallels of latitude north 12º and 16º, and the meridians of longitude west 78º and 82º, at a distance of 750 Km. from Cartagena, 200 from the eastern Central American Coast and 400 from the southwest of Jamaica, represents and advantage for our country in the west side of the Caribbean, opposed to the Mosquito coast, in Nicaragua, territory that used to be part of Colombia.
> The Archipelago comprises the islands of San Andrés, Providencia, Santa Catalina and the Roncador, Serrana, Quitasueño, Albuquerque, the ESE and Bajo Nuevo

[21] Ibíd.

> Cays, and the banks of Serranilla and Alicia. The Archipelago has a dimension of 52.5 Km^2, which generate a territorial sea of 9.814.42 Km^2."[22]

Then, the third paragraph of article 101 not only comprises the islands specifically named, but the seven cays previously in dispute with Nicaragua as well as the maritime boundaries of the archipelago, just as they were established in 1991, including the boundaries established in meridian 82. This meridian was expressly mentioned in the Constituent Assembly and forms part of the "master image" to which the Constitutional Court referred in the aforesaid judgment.

On the other hand, article 310 of the Constitution specifically regulates the "Department Archipelago of San Andrés, Providencia, and Santa Catalina." This article is important because it includes the archipelago as one of the 32 departments of Colombia, a fundamental unity within Colombia's territory. Moreover, it grants a special regime to the Archipelago in matters affected by the ICJ judgment, such as the environment. The constituent could have continued considering it as an intendancy, but via article 309 ranked it as a Department, along with the other intendancies of the national territory. These norms assert the importance of the archipelago for the Colombian territory and its status as a unity of Colombia's political division, including its maritime areas.

3.3 The national jurisprudence has required that treaties which affect the maritime boundaries of Colombia respect the provisions of the Constitution that constitutionalized the Esguerra - Bárcenas Treaty with is Exchange of Notes, which is are part of the block of constitutionality.

Two treaties on boundaries have been submitted for previous and automatic constitutional control: the treaty signed in 1993 with Jamaica (Law 90 of 1993, Judgment C-045 of 1994) and the treaty signed in 1986 with Honduras (Law 539 of 1999, Judgment C-1022 of 1999).

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[22] Constitutional Gazette, No. 42.

In Judgment C-045 of 1994, the Court declared constitutional the treaty with Jamaica. Among the important aspects of this Judgment, it is worth highlighting three: (i) the Court specifically verified that such treaty respected the sovereignty of Colombia over the Archipelago. (ii) The Court considered that the rights of Colombia over the Archipelago fall not only over the insular formations but also over the "corresponding maritime areas". (iii) The Court underlined that the rights over the maritime areas "are not transferable" to third states.

The Court confirmed that

> "Another important and novel aspect of the treaty is the one contained in article 3 which establishes a Joint Regime Area delimited by a polygonal. This procedure has been used in several opportunities by other States. In the cited Area both countries agree to establish a zone of joint administration, control, exploration and exploitation of the living and non-living resources. The rights recognized there are not transferable to third States or to International Organizations.
>
> From the Joint Regime Area described above it is excluded the 12 miles of territorial sea which go around the Keys of Serranilla and Bajo Nuevo and that the Colombian State possesses in accordance with international law by reason of its natural condition of coastal State. Said miles, for all effects, are to be considered a prolongation of the territory and, in those, therefore, it exercises in full its sovereignty and jurisdiction. The measurement of the extension of the mentioned territorial sea is done from the Colombian lighthouses which are located in the cited keys."[23]

The Court declared constitutional the treaty because it was in accordance with articles 9 and 101 of the Constitution:

> "Besides, the National Government has acted in compliance with the provisions of article 9o. of the Political Constitution, in conducting the celebration of

[23] Judgment C-05 of 1994, Judge Hernando Herrera Vergara.

> the treaty under scrutiny based on equity and mutual reciprocity and by observing the national sovereignty over the insular adjacent zone and its respective maritime areas, composed of the Archipelago of San Andrés, Providencia and Santa Catalina and the keys of Roncador and Quitasueño."

It also considered that the Treaty was constitutional because:

> "The examination of the preambular and operative part of the Treaty subject to constitutional revision, as well as the considerations already explained, lead the Court to conclude that the referred Treaty is fully in agreement with the Colombian rights of sovereignty and jurisdiction in the Caribbean. This Tribunal has verified that it is founded in the recognition of the historical and juridical rights by virtue of which Colombia exercises sovereignty over the Archipelago of San Andrés, Providencia and Santa Catalina as well as over its corresponding maritime areas." (underlines added).

From the foregoing it can be inferred that a parameter of constitutionality of the treaties on boundaries is the respect of those to the Colombian sovereignty over the Archipelago "as well as over its corresponding maritime areas." This is due to the decision of the Constituent Assembly of constitutionalizing the treaties of boundaries prior to 1991 and of declaring that the Archipelago and its respective maritime areas belong to Colombia. This reaffirms that a judgment by the International Court of Justice cannot be automatically incorporated into the Colombian legal system. If such judgment changes the boundaries established before 1991 and affects the maritime areas of the Archipelago, accepting its effects ipso facto implies accepting that the Constitution itself was modified by a judgment, which would be a clear violation of article 374 of the Constitution, that only admits three constitutional reform mechanisms, among which the judgments of the International Court of Justice are not found.

In Judgment C-191 of 1998 (Judge Eduardo Cifuentes Muñoz) the Court upheld that treaties on boundaries belong to the block of constitutionality *lato sensu*. This means that, even though

they do not have constitutional status, they cannot be modified by means of laws and are a parameter for the control of constitutionality:

> "By way of an express remission made by article 101 of the Constitution to those, the treaties which define boundaries of the Colombian territory are part to the **block of constitutionality lato sensu**, and, therefore, the rules enacted by public authorities cannot contravene them because of the risk of being declared unconstitutional for violating article 101 of the Superior Statute. Nonetheless, it is worth clarifying that, even when these become a parameter to effectuate the control of constitutionality of laws, the treaties on boundaries do not have constitutional status but a normative level similar to the organic and statutory laws, that is, they hold an intermediate hierarchy among the Constitution and ordinary laws. In this sense, the laws enacted by the Congress of the Republic cannot modify what is stated in the above-mentioned international agreements, whose content can only be altered by the signing of another treaty which expressly modifies them, as can be deduced of what is contained in article 101 paragraph second of the Charter."

Amongst those treaties the Court considered that there are two types: (i) the bilateral treaties on delimitation and (ii) the multilateral treaties which establish general rules to carry out delimitations. The Court said:

> "Certainly, in public international law it is possible to distinguish between two types of conventional instruments related to the territorial boundaries of States. On one hand, is possible to find those treaties which, in a specific way, establish the geographical boundaries which separate one particular country of those others with which it has boundaries or those which specifically define the marine and submarine areas of each State. On the other hand, it is possible to identify those international instruments, usually of a multilateral character, by means of which the international community establishes the general rules that must guide

> the setting of specific limits to the state sovereignty in certain spaces. Among this last category it is worth highlighting those international conventions which regulate the law of the sea, that is, those treaties in which the rights of States in their internal waters, their territorial sea, continental shelf, exclusive economic zone and high seas, are set, as well as the rules according to which it is possible to proceed with the delimitation of those maritime spaces. Likewise, it is possible to include in this type of treaties those which refer to the rights that states have over their air and outer space."

For the Court, both types of treaties are considered in article 101 of the Constitution. In the specific case, the Court carried out the control of constitutionality over a legal provision, with regard to the definition of the rights of States over their continental platform, in accordance with the Geneva Convention of 1958 on the Continental Shelf, ratified by Colombia.

Therefore, international agreements ratified by Colombia related to maritime delimitation are applicable as a parameter for the control of constitutionality.

That is how in Judgment C-1022 of 1999 the Court declared constitutional the treaty with Honduras, holding that in it "Colombia has not transferred undisputed territorial rights".

The Court said this because of five reasons. The *first reason* was that, at the moment, there was no treaty in force by means of which Colombia had already delimited is maritime boundary in that area, "therefore, before signing the present agreement, there was a reasonable uncertainty about the scope of the Colombian rights in such space".

The *second reason* was the recognition of the sovereignty of Colombia over the keys of Seranilla and Bajo Nuevo and over its territorial sea: "the line recognizes the Colombian sovereignty over the keys of Seranilla and Bajo Nuevo and, likewise, as several interveners in the process have emphasized, establishes a semicircle between points 4 and 5 in the drawing (see map in this judgment), which circles the Seranilla key, with

the aim of protecting the territorial sea to which this key has a right to".

The *third reason* was that the treaty "endorses internationally the incontrovertible rights of Colombia over the San Andrés, Providencia and Santa Catalina Archipelago, and the islands, islets and keys which compose it, as well as the maritime jurisdiction which they generate".

The *fourth reason* was that, although the treaty had not been ratified, it had been implemented by the parties: "the boundaries set forth in the present treaty, even though they had not been consolidated before international law, due to the fact that the agreement had not been ratified, were nonetheless being applied in reality, without the Constituent Assembly objecting at all to the development of this agreement". The *fifth reason* was that "the process of demarcation in itself was carried out based on equitable principles".

For these reasons, the Court concluded that "the maritime demarcation provided in article 1° of the treaty does not ignore the established territorial rights of Colombia". Among those established territorial rights, the Court specifically included (a) the territory of the keys and the territorial sea. It also referred, in general terms, to (b) "the maritime jurisdiction they generate". The Court further considered that (c) within the keys that are part of the archipelago, as a unity, are Seranilla and Bajo Nuevo and, therefore, a treaty cannot disregard the sovereignty of Colombia over those maritime formations without disregarding article 101 of the Constitution.

3.3 Summary of the doctrine prohibiting automatic incorporation of judgments that modify territorial or maritime boundaries of Colombia.

In summary, the doctrine prohibiting automatic incorporation of judgments that modify territorial or maritime boundaries of Colombia is supported on the following jurisprudential articles and sub-rules:

- The second paragraph of article 101 of the Constitution does not contemplate judgments as instruments capable

of constitutionally modifying the boundaries of the country. Only treaties and arbitral awards can modify them because they are the result of the sovereign will of the State when negotiating the treaty or appointing the arbitrators and defining the concrete object of the controversy.

- Treaties on boundaries can relate to the delimitation of uncertain rights or to the assignment of certain rights. In the first case, the treaty can be approved by means of a law of the Republic. In the second, the treaty must be approved through a constitutional reform. This has been upheld by the Constitutional Court in the abovementioned judgments.

- Within the boundaries contained in the first paragraph of article 101 is meridian 82[24], which was part of the "master image" that the Constituent Assembly had, as deduced from the Gazettes of the Assembly and confirmed by the constitutional jurisprudence.

- The Archipelago of San Andrés, Providencia and Santa Catalina, is a unit which must be respected by any treaty and the rights of Colombia, included those exercised over "its corresponding maritime areas", cannot be transferred to third states, as stated in article 101 of the Charter, in accordance with article 310, and upheld by the Constitutional Court.

- Neither the Constituent Assembly nor the Court have made a distinction between *territory* and *maritime zones*.

[24] The Exchange of Notes of the Esguerra-Barcenas Treaty was also given a constitutional rank by the 1991 Constitution. This is integral part of the treaty and, besides, it was taken into account by the Constituent Assembly as part of the "master image" of the national territory. The limit fixed by the Exchange of Notes changed with the 2007 and 2012 judgments of the International Court of Justice, and there is a contradiction between the "master image" constitutionalized in 1991 through article 101 and the text of the Exchange of Notes. There is a direct contradiction between both judgments and the Exchange of Notes. Where the Exchange of Notes establishes that the western boundary of the Archipelago is the Meridian 82, the judgments sustain that (i) this not a maritime limit (2007 judgment) and (ii) there is another limit (2012 judgment).

> They did not separate, either, the islands in the archipelagic sea. Besides, they impede the transfer of "rights" over the maritime areas corresponding to the Archipelago. Therefore, a reduction in the rights over the continental shelf and the exclusive economic zone is, for the Colombian constitutional law, a reduction of the constitutionally protected space or, a transfer of rights in a way excluded by the Constitution.

These conclusions have enormous significance. It is not a theoretical issue about the meaning of the Constitution. As it is of public domain, the International Court of Justice issued two judgments[25] about the dispute between Nicaragua and Colombia which produce a contradiction with the Constitution, as a minimum with regard to three elements: (i) they do not recognize the boundary at the meridian 82 and, therefore, constitute a modification of the boundaries of Colombia in a way prohibited by the Charter; (ii) they transfer to Nicaragua rights of Colombia over maritime areas which only Colombia can regulate by means of a treaty based on reciprocity and equity; and (ii) they draw a new maritime boundary between the two States without the consent of the Colombian people through their representatives in exercise of their sovereignty and right to self-determination.

This modification to the maritime boundaries of the Colombian State, with the subsequent reduction of the rights of Colombia and the affectation of its maritime areas in the Archipelago, without following the procedure provided in the Constitution to modify the existing boundaries, is prohibited by article 101 of the Constitution, in accordance with articles 3 and 9 of the Charter.

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[25] The judgment of 19 November 2012 of the International Court of Justice referred to the dispute between Colombia and Nicaragua with regard to the sovereignty over the Archipelago of San Andrés, Providencia and Santa Catalina and to the maritime boundary between continental shelves and exclusive economic zones of both States. The judgment of 13 December 2007 of the same Court advised that the Esguerra-Barcenas Treaty and its Exchange of Notes had no fixed a maritime boundary between both countries and that meridian 82 was only a criterion for assignment of the island.

Nonetheless, both of the provisions of the Pact of Bogotá under legal scrutiny, approved by Law 37 of 1961, permit that to happen. Hence, those provisions oppose the Constitution.

In effect, although the boundaries of Colombia with other States cannot be altered by means of a judgment rendered by the International Court of Justice, which does not represent the people of Colombia, does not constitute an expression of self-determination of the Colombians, nor is it one of the means set forth in article 101 to fix or modify the boundaries of Colombia, the challenged provisions allow this to occur.

Articles XXI and L of the *American Treaty on Pacific Settlement (Pact of Bogotá),* incorporated to the domestic legal system through Law 37 of 1961, allow the boundaries of Colombia to be modified by the International Court of Justice as a result of the effect that both provisions produce over the States parties. The first one makes it compulsory for States to submit *ipso facto* to the jurisdiction of said Court to decide any issue of international law, which include the controversies about boundaries. The second obliges States to comply with the judgment without resorting to any additional procedure, even if the judgment modifies the boundaries agreed on in a treaty.

Article XXI provides that "*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*: *b) Any question of international law*. Therefore, the controversies about land and maritime boundaries belong to the jurisdiction of the International Court of Justice over Colombia. That is, this article allows the land and maritime boundaries to be fixed, in the event of a controversy between Colombia and another State party to the Pact of Bogotá, by a judgment of said Court.

After the judgment, which modifies the boundaries of Colombia, was delivered by the International Court of Justice, the Pact of Bogotá does not comprise any mechanism for solving the

situation created by the change of boundaries between states. It does not permit the States, for example, to sign a treaty to solve their differences after the judgment.

Article L orders that the sentence of the International Court of Justice be automatically fulfilled because it establishes that "*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 fulfilment of the judicial decision or arbitral award*."

Hence, the contradiction between constitutional provisions and those articles of the Pact of Bogotá incorporated by Law 37 of 1961 is evident. While the latter allow the International Court of Justice to modify the land and maritime boundaries of Colombia, article 101 of the Constitution clearly states that "*the boundaries identified in the form provided for by this Constitution may only be modified by treaties approved by the Congress, duly ratified by the President of the Republic*".

The contradiction is aggravated in the event that a treaty in force in 1991 had fixed a land or maritime boundary. Such boundary was constitutionalized by the Constituent Assembly, as the Constitutional Court has reiterated. Therefore, the automatic incorporation of a judgment modifying such boundary or affecting the waters corresponding to the Colombian territory, would imply a modification in fact to the Constitution outside of the procedure established therein.

The boundaries of Colombia and its rights over the maritime areas can only be modified by means of a treaty. They cannot be modified by any other means. The challenged articles allow it to happen through a judgment of the International Court of Justice. Consequently, they are unconstitutional because they permit what the Constitution prohibits.

This contradiction emerged with the enactment of the Constitution of 1991. This is a "supervening

unconstitutionality". Thus, it is asked that the Constitutional Court declares their unconstitutionality.

4. After the International Court of Justice renders a judgment, States have decided to resolve their differences by means of international treaties.

In accordance with public international law States are free to enter into negotiations with regard to the fulfilment of a judgment rendered by the International Court of Justice (hereafter referred to, in this section of the complaint, as the "ICJ"). As has been recognized by the jurisprudence of the ICJ, such negotiations are not legally restricted to what is decided in the judgment, because the litigating parties have the freedom to agree on a different solution to their dispute from what the ICJ postulated. In fact, in the context of the application for revision of the judgment in the case concerning the continental shelf between Tunisia and Libya, the ICJ upheld that states could *"still reach mutual agreement upon a delimitation that does not correspond to that decision* [of the ICJ]"[26]. By virtue thereof, important jurists consider that *res judicata* of an ICJ judgment "*is a contractual relationship between two countries*"[27], thus States can sign treaties, that is, to create new contractual obligations, which do not correspond to the judgment. As will be seen below, the practice of States in the fulfilment of the judgments of the ICJ in contentious cases supports this conclusion.

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[26] *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/ Libyan Arab Jamahiriya), Judgment, I.CJ. Reports 1985*, p. 192, paragraph 48: "[…] While the parties requested the Court to indicate "what principles and rules of international law may be applied for the delimitation of the area of the continental shelf", they may of course still reach mutual agreement upon a delimitation that does not correspond to that decision. Nevertheless, it must be understood that in such circumstances their accord will constitute an instrument superseding their Special Agreement. What should be emphasized is that, failing such mutual agreement, the terms of the Court's Judgment are definitive and binding. In any event moreover, they stand, not as something proposed to the Parties by the Court but as something established by the Court".

[27] Shabtai Rosenne, *The Law and Practice of the International Court, 1920-2005,* (Martinus Nijhoff, 4th edition, 2006), p. 1606.

Nonetheless, beyond being a mere power available to States, there are instances in which the signing of a treaty or the commencement of negotiations between the parties are necessary mechanisms to be able to apply or execute a judgment of the ICJ in a contentious case. In the field of delimitation of maritime and land boundaries between States, this has occurred in two types of cases.

A first type of cases are those in which the parties do not ask the ICJ to define a boundary between the States as such, but simply request that it indicates the principles and rules applicable for said delimitation. In these cases, it is evident that the Parties must resort to negotiation after the judgment in order to apply it, following the principles and rules indicated by the ICJ. This was the case in the judgments concerning the continental shelf in the North Sea between Germany, Denmark and The Netherlands (rendered in 1969)[28], as well as in the judgments concerning the delimitation of the continental shelf between Tunisia and Libya –rendered in 1982-[29] and between Libya and Malta - rendered in 1985-[30]. In all these cases, the parties had to sign subsequent treaties to agree on the delimitation of the boundary between the States. Hence, Germany signed treaties with The Netherlands and Denmark on 28 January 1971, to delimit their respective continental shelves, while Tunisia and Libya did the same on 8 August 1988, and Libya and Malta on 10 November 1986.

A second type of cases are those in which the ICJ has defined the precise boundary between the parties to a contentious case, but the application of such judgments has demanded in any case the signing of treaties or other kinds of interstate agreements. As will be seen further below, the signing of treaties or other kinds of interstate agreements in order to apply an ICJ judgment which defines boundaries becomes necessary when practical difficulties for the implementation persist notwithstanding the judgment and it is common practice when there are other interests of the States that are affected by the judgment and that

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[28] *North Sea Continental Shelf Cases (Germany v. Denmark) (Germany v. The Netherlands). Judgment, I.C.J. Reports 1969.*

[29] *Continental Shelf (Tunisia/Libya). Judgment, I.C.J. Reports 1982.*

[30] *Continental Shelf (Libyan Arab Jamahiriya / Malta). Judgment, I.C.J. Reports 1985.*

usually refer to the well-being of its citizens and the respect for their rights.

For the purposes of this complaint, it is relevant to refer to four particular cases in which the ICJ defined an international boundary, and the litigating parties subsequently signed treaties or other kinds of agreements without which it would have been difficult or impossible to apply the respective ICJ judgment.

In the first place, in the case of the *Arbitral Award issued by the King of Spain on 23 December 1906*[31] between Honduras and Nicaragua -rendered in 1960- the ICJ pronounced itself on the validity of an arbitral award in which a territory in dispute between both States had been attributed to Honduras. Although the judgment upheld that the award was valid and, therefore, it settled the frontier dispute between both States, its execution faced serious practical difficulties because it implied the demarcation of the boundaries, the withdrawal of the Nicaraguan authorities from a territory that had been occupied by them for several decades, and it supposed difficulties for the inhabitants of the territory in question who did not want to be subject to the jurisdiction of Honduras and whose private property rights could be compromised due to the change of sovereignty. By reason of these difficulties, Nicaragua asked the assistance of the Inter-American Peace Committee to resolve the practical difficulties arising from the application of the ICJ judgment. On 12 March 1961, both States accepted the proposal drafted by the Committee on the basis of an arrangement and, grounded on it, carried out a gradual process, which led to the execution of the ICJ judgment. Even though in this case the parties did not sign a treaty as such, the precedent is relevant to demonstrate that whenever the application of an ICJ judgment brings about difficulties, the litigating States can reach a new agreement allowing them to define how and in what terms the judgment will be applied.

[31] *Arbitral award made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua). Judgment, I.C.J. Reports 1960.*

In second place, in the case concerning the *Land, Island and Maritime Frontier*[32] between El Salvador and Honduras, rendered in 1992, the parties affected by the judgment later signed a treaty. In this case, both parties submitted to the decision of the ICJ the precise delimitation of their maritime, island and land frontiers where they had not been able to reach a bilateral agreement. In its judgment the ICJ assigned part of the territory in dispute to El Salvador and another part to Honduras. However, after the judgment was rendered, difficulties persisted in two aspects. Firstly, there were problems regarding the demarcation of the frontier and, secondly, serious questions arose about the rights of the citizens of both States that due to the change of boundaries were now subject to the jurisdiction of a different State than their own. As a result of these drawbacks, both States signed two treaties on 19 January 1998. The object of the first one was the execution of the program for the demarcation of the boundary and the second was an agreement to regulate the nationality and the rights acquired by the populations affected by the change of boundaries.

A third relevant example is the case concerning the *Territorial Dispute*[33] between Libya and Chad, rendered in 1994. In this case, the ICJ ruled that the area in dispute between both States and currently occupied by Libya belonged to the territory of Chad, and defined the existing boundaries between the two States. However, serious difficulties in the implementation of the judgment led the parties to sign a treaty on 4 April 1994. This treaty defined the rules for the withdrawal of the civilian authorities and military forces of Libya from the territory assigned to Chad, the removal of anti-personnel mines from the territory, the definition of the crossing points for people and properties along the boundary, the joint monitoring of the frontier and its demarcation, among other issues. As is evident, the ICJ judgment had not addressed several topics of enormous relevance for the protection of the rights of the inhabitants of Libya and Chad, hence it was necessary to sign a treaty which resolved this matters, instead of automatically executing the

[32] *Land, Island and Maritime Frontier Dispute (El Salvador / Honduras). Judgment, I.C.J. Reports 1992.*

[33] *Territorial Dispute (Libyan Arab Jamahiriya / Chad). Judgment, I.C.J. Reports 1994.*

judgment without assessing the situation of the inhabitants in the area affected by the judgment.

Finally, reference should be made to the case concerning the *Maritime delimitation in the area between Greenland and Jan Mayen*[34] between Norway and Denmark, decided by the ICJ in 1993. In this case, the dispute was brought before the ICJ by means of an unilateral application filled by one of the parties in dispute. There, Denmark requested the ICJ to recognize its claims with regard to the extension of its exclusive fishery zone and continental shelf, asking the court to draw the delimitation line between both States. In this respect, the judgment is very similar to the one rendered with regard to the dispute between Nicaragua and Colombia, since there Nicaragua also requested the ICJ to unilaterally define the maritime boundary between both States. In its 1993 judgment, the ICJ in effect defined the boundary between both States in dispute. Once the judgment was rendered, the parties signed a treaty for the regulation of the rights in the area affected by the judgment. Later on, on 18 December 1995, Norway and Denmark signed a treaty in which they agreed on the delimitation of the definitive maritime boundary.

In relation to this point it is very important to note that although the treaty between Norway and Denmark specifically referred to the judgment as the basis of the agreement, the coordinates of the boundary in the final agreement did not coincide with the coordinates indicated by the ICJ in its judgment. Nonetheless, none of the parties alleged non-compliance with the judgment by reason of such change neither did the ICJ considered such conduct a violation of the same. This shows that, as indicated above, the *res judicata* in the judgments rendered by the ICJ does not bind parties in dispute in the event that they opt for a contractual solution different from the one set forth by the ICJ in its judgment.

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[34] *Maritime delimitation in the area between Greenland and Jan Mayen (Denmark v. Norway). Judgment, I.C.J. Reports 1993.*

Finally, it is important to allude to the case concerning the *Land and maritime boundary between Cameroon and Nigeria*[35] decided in 2002. Here, the Court adjudicated sovereignty over the peninsula under dispute (Bakassi) to Cameroon and fixed boundaries between both countries, even though such peninsula appeared as part of the Nigerian territory in the Constitution of that State. Moreover, the judgment supposed great difficulties in its implementation due to the need to dismantle an administrative system and replace it with another one and because the change in the sovereignty for the population in the peninsula created great political and legal tensions and affected the rights of the inhabitants of the peninsula and their relatives. Although Nigeria initially rejected the judgment, the mediation of the United Nations made it possible for both parties to initiate a gradual process to transfer the territory, which finally concluded with the signing of a treaty on 12 June 2006. In this treaty it was contemplated the transfer of sovereignty over the territory, the total withdrawal of Nigerian troops from the same and it create an special legal system for the Nigerians who lived in the territory transferred to Cameroon in order to protect their rights.

The foregoing cases are cited to simply illustrate the possibility, allowed by international law, to sign treaties to address those matters adjudged or related to the rulings in ICJ judgments. These cases show that when the enforcement of an ICJ judgment, which has modified land or maritime boundaries, presupposes legal and practical difficulties, international law allows the litigating parties to reach agreements in order to regulate their rights, protect their inhabitants and delimit their boundaries after the judgment under the form of an international treaty. Likewise, whenever the judgment affects the interests of the population and the exercise of the rights of the inhabitants of the respective States, the parties in different continents, instead of automatically complying with the judgment, have reached agreements which permit them to safeguard the rights of their inhabitants and promote the interests of their nationals. In some cases the treaty has established boundaries different from those drawn by the ICJ, which is acceptable under international law.

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[35] *Land and Maritime Boundary between Cameroon and Nigeria (Nigeria v. Cameroon). Judgment, I.C.J. Reports 2002.*

In conclusion, the provisions of article 101 of the Constitution are compatible with international law and practice. States can sign treaties after the ICJ judgment without it being considered non-recognition of international obligations by the respective countries. On the contrary, treaties constitute the exercise of the sovereignty of each State in order to guarantee the respect of the rights of its inhabitants, regulate its relations and even fixing boundaries different to those set forth in the judgment, in accordance with international law.

5. The necessity to expel from the legal system the provisions that allow a judgment to modify the boundaries of Colombia with other States.

Articles XXXI and L of the Pact of Bogotá, and the corresponding Law 31 of 1961 which approved them, are unconstitutional for the reasons set forth in this complaint, especially because they allow a change in the boundaries without following the constitutional procedures, that is, without signing an international treaty that is approved by Congress and later on having both the treaty and the approving act reviewed by the Constitutional Court, before the final ratification by the President of the Republic.

The Court is requested to declare unconstitutional the challenged provisions because they violate articles 3, 9 and 101 of the Political Constitution.

This request is based on the fact that the challenged provisions are unconstitutional in abstract. The references to judgments rendered by the ICJ only seek to illustrate that what the text of the challenged provisions says and allows has had an interpretation with clear, present and very serious legal effects for Colombia.

This petition is filed with full knowledge that the Pact of Bogotá is a multilateral treaty and that the Constitution states that in the event any part of these kinds of treaties is contrary to the Charter, the State must formulate the respective reservation. Article 241, number 10, says in its final sentence:

> *"Should the Court declare them constitutional, the government may engage in a diplomatic exchange of notes; on the contrary, they will not be ratified. When one or several provisions of a multilateral treaty are declared unconstitutional by the Constitutional Court, the President of the Republic may only express his consent by formulating the corresponding reservation."*

Since the Pact of Bogotá was already ratified by Colombia several decades ago, it is not possible to apply the rule according to which *"the President of the Republic may only express his consent by formulating the corresponding reservation."* This rule does not apply simply because it regulates a different situation, that is, the previous constitutional control.

The foregoing does not prevent the Constitutional Court to declare the challenged provisions unconstitutional. One thing is the procedure to be followed after the unconstitutionality judgment and a very different one is the exercise of the competence of the Constitutional Court as guardian of the supremacy of the Constitution. This competence can be fully exercised. It will correspond to the Executive to resort to diplomatic channels to fulfil the judgement of the Constitutional Court.

However, if the Constitutional Court decides that the declaration of unconstitutionality must produce immediate internal legal effects for the national organs it can indicate so. In this order of ideas, with the deepest respect it is suggested that the Court, additionally to indicating the unconstitutionality of the challenged provisions, specifies the effects of its judgment warning that if a judgment from the International Court of Justice affects the land of maritime boundaries recognized by the Constitution by virtue of treaties in force, a new treaty must be concluded which has to be approved by means of a legislative act modifying article 101 of the Constitution.

6. Notifications

I will receive notification at Carrera 8ª No. 7 -26, Nariño Palace.

Respectfully,

[*Signed*]
JUAN MANUEL SANTOS

C.C. 19123402

CONSTITUTIONAL COURT
SECRETARY GENERAL

Santafe de Bogotá, D.C., 12 Sept. 13
The foregoing *(illegible)* was personally filled by: Juan Manuel Santos who identified himself with I.D. No. 19123402 issued in *(illegible)*

Annex 3

PRESIDENTIAL DECREE NO. 1946 OF 2013, TERRITORIAL SEA, CONTIGUOUS ZONE AND CONTINENTAL SHELF OF THE COLOMBIAN ISLANDS TERRITORIES IN THE WESTERN CARIBBEAN, 9 SEPTEMBER 2013

(Available at: http://wsp.presidencia.gov.co/Normativa/Decretos/2013/Documents/SEPTIEMBRE/09/DECRETO%201946%20DEL%2009%20DE%20SEPTIEMBRE%20DE%202013.pdf (last visited 15 Dec. 2013))

PRESIDENCY OF THE REPUBLIC

DECREE NUMBER 1946 OF 2013

(9 SEPTEMBER 2013)

Regulating Articles 1, 2, 3, 4, 5, 6 and 9 of Law 10/1978 and Articles 2 and 3 of Law 47/1993, concerning territorial seas, the contiguous zone, certain aspects of the continental shelf of the Colombian island territories in the Western Caribbean, and the integrity of the Department of the archipelago of San Andrés, Providencia and Santa Catalina.

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA

in exercise of his powers under the Constitution of the role, in particular those conferred by section 189.11 Constitution, and further to the terms of tools 10/1978 and 47/1993

WHEREAS

Article 101 of the Constitution states that "in addition to the mainland territory, the Archipelago of San Andrés, Providencia and Santa Catalina and Malpelo, and the islands, islets, cays, shoals and banks which belong to it form part of Colombia"

The same Article states that "The subsoil, territorial seas, the contiguous seven, the continental shelf, the exclusive economic zone, the segment of the geostationary orbit, the electromagnetic spectrum and the space in which it acts are also part of Colombia, in accordance with international law or with Colombian law in the absence of international law".

Article 309 of the Constitution made the Intendancy of "the Archipelago of San Andrés, Providencia and Santa Catalina" a Department, establishing that "the goods and rights which belong belonged on any title to the intendancies and commissaries will continue to be the property of the respective Departments".

Article 310 of the Constitution states that "the Department Archipelago of San Andrés, Providencia and Santa Catalina will also be governed by the rules provided in the Constitution and the law for other Departments, by special rules in matters of administration, immigration, fiscal management, foreign trade, exchange, finance and economic development as established in the Law."

Law 47/1993 establishes [Article 3] that the territory of the Department Archipelago of San Andrés, Providencia and Santa Catalina is formed by the islands of San Andrés, Providencia and Santa Catalina, and the cays of Albuquerque, East Southeast, Roncador, Serrana, Quitasueño, Bajo Nuevo and the Banks of Serranilla and Alicia and other islands, islets, cays, shoals, banks and reefs which form the former Special Intendancy of San Andrés and Providencia.

Article 2 of Law 47/1993 recognizes the territorial, cultural, administrative, economic and political unity of the Archipelago, stating that "the Department Archipelago of San Andrés, Providencia and Santa Catalina is a territorial entity created by the Constitution, and as such, enjoys autonomy for the management of its interests within the limits of the Constitution and the law, with the right to govern itself through its own authorities; to exercise the competencies related to that, to participate in national revenues, to manage its resources and to establish such taxation as may be necessary for it to perform its functions".

Law 10/1978, Article 9 establishes that the Government will proceed to indicate lines based on which the various maritime spaces of which the Colombian nation exercises sovereignty in the Department Archipelago of San Andrés, Providencia, and other island territories, including sovereign rights and jurisdiction in accordance with international common law, and orders that these be published in the official maritime charts, in accordance with international norms on the matter.

In furtherance of the terms of Article 101 of the Constitution and Law 10/1978, seen in the light of the terms of the Constitution, it is the duty of the State to establish the extent of territorial seas and the contiguous zone that are generated that is generated by

the islands which form Colombian island territories in the Western Caribbean, and the scope of related maritime jurisdiction, in order to facilitate the profit that proper administration, the orderly management of the seas, and the exercise of the sovereign rights of Colombia.

In accordance with international common law, in the contiguous zone, States exercise sovereign rights and jurisdiction and control in matters of security, control of the trafficking in drugs and illicit substances, the protection of the environment, fiscal and customs matters, immigration, health, and other matters.

The extent of the contiguous zone of the island territories forming the Western Caribbean needs to be determined, specifically, those territories which formed the archipelago of San Andrés, Providencia and Santa Catalina, such that an orderly management of the Archipelago of and its maritime areas can be guaranteed, in order to secure the protection of the environment and resources, and the maintenance of comprehensive security and public order.

The Colombian State is committed to the preservation of the ecosystems of the Archipelago, which are fundamental to the ecological balance of the zone, and to preserve historical, traditional, ancestral, environmental and cultural rights, and the rights of survival of the inhabitants.

DECREES

Article 1. **THE ISLAND TERRITORIES OF COLOMBIA IN THE WESTERN CARIBBEAN SEA**

1. The island territories of Colombia in the Western Caribbean Sea are formed by the Department Archipelago of San Andrés, Providencia and Santa Catalina, and other islands, islets, cays, shoals and banks which belong to them.

2. The Department Archipelago of San Andrés, Providencia and Santa Catalina is formed by the following islands:

[A] San Andrés
[B] Providencia
[C] Santa Catalina
[D] Cays of Albuquerque
[E] Cays of Southeast
[F] Cays of Roncador
[G] Cays of Serrana
[H] Cays of Quitasueño
[I] Cays of Serranilla
[J] Cays of Bajo Nuevo
[K] Other islands, islets, cays, shoals, banks, elevations at low tide, shallows and reefs adjacent to each of these islands, and which form the Department Archipelago of San Andrés and Providencia.

3. The Republic of Colombia exercises sovereignty over the island territories, and exercises jurisdiction and sovereign rights over the maritime spaces generated by them, in the terms prescribed by international law, by the Constitution, by Article 10/1978, and by this Decree Law.

Article 2**. MARITIME SPACES GENERATED BY THE ISLAND TERRITORIES OF COLOMBIA IN THE WESTERN CARIBBEAN SEA**

In accordance with Article 101 of the Constitution, international common law and Law 10/1978 and Law 47/1993, the territorial seas, the contiguous zone, the continental shelf and the exclusive economic zone generated by the island territories in the Western Caribbean Sea are part of Colombia.

The continental shelf in the exclusive economic zone generated to the east by the island territories of Colombia in the Caribbean Sea are superimposed on the continental shelf and the exclusive economic zone generated to the northwest by the Colombian Atlantic Coast.

Article 3. **BASELINES ON THE ISLAND TERRITORIES IN THE WESTERN CARIBBEAN SEA**

1. In furtherance of the terms of Law 10/1978, the Government will indicate the points and baselines for which the width of

territorial seas will be measured, along with the contiguous zone and the various maritime spaces generated by the islands formed by the island territories of Colombia in the Western Caribbean Sea.

2. These lines will be drawn in accordance with criteria recognized by international common law, including those related to the islands situated on atolls or islands surrounded by reefs, in which the baseline for measuring the width of territorial seas is the low tide line on the seaward side of the reef.

3. Straight baselines may be used in the events provided for in Article 4 of Law 10/1978

4. Waters situated between the baselines and the island territories will be considered as interior waters.

Article 4. **TERRITORIAL SEAS OF THE ISLAND TERRITORIES IN THE WESTERN CARIBBEAN SEA**

1.. The territorial seas of the island territories of Colombia in the Western Caribbean Sea over which the Republic of Colombia exercises full sovereignty, extend from the territory of each of the islands mentioned in Article 1 and its interior waters, to the distance established in Section .2 of this Article

2. The outer limit of the territorial sea will be formed by a line on which points are marked at a distance equal to 12 nautical miles from the baseline.

3. National sovereignty are also exercised over the airspace situated over the territorial seas, the seabed and the subsoil of that sea.

4. The vessels of any State enjoy the right of innocent passage through the territorial sea, in accordance with the norms of international common l law and other peaceful uses recognized in it.

The passage of warships, submarines, nuclear-propelled vessels and other naval artefacts which carry nuclear substances or other substances helpful or potentially hazardous to the environment

through its territorial sea will be subject to prior authorization of the competent authorities of the Republic of Colombia.

PARAGRAPH. For the purposes of this Decree and in accordance with the terms of Article 1 of Law 10/1978, it will be understood that he nautical mile is equal to 1.852 km.

Article 5. **THE CONTIGUOUS ZONE OF THE ISLAND TERRITORIES IN THE WESTERN CARIBBEAN SEA.**

1. Without prejudice to the terms of Section 2 of this Article, the Contiguous Zone of the island territories of Colombia in the Western Caribbean Sea extends up to a distance of 24 nautical miles measured from the baselines referred to in Article 3 above.

2. The Contiguous Zones adjacent to the territorial sea or the islands which form the island territories of Colombia in the Western Caribbean Sea, except for the islands Serranilla and Bajo Nuevo, where they intersect, generate an uninterrupted Contiguous Zone, across the whole of the Department of the Archipelago of San Andrés, Providencia and Santa Catalina, over which the competent national authorities will exercise the powers recognized by international law and Colombian laws mentioned in set Section 3 of this Article.

In order to secure the proper administration and orderly management of the entire Archipelago of San Andrés, Providencia and Santa Catalina, and of their islands, cays and other formations and their maritime areas and resources, and in order to avoid the existence of irregular figures or contours which would make practical application difficult, the lines indicated for the outer limits of the Contiguous Zones will be joined to each other through geodesic lines. In the same, these will be linked to the contiguous zone of the island of Serranilla by geodesic lines which conserve the direction of the parallel 14° 59′ 08”N, and, to Meridian 79° 56′ 00” W, and thence to the North, thus forming an Integral Contiguous Zone of the Department Archipelago of San Andrés, Providencia and Santa Catalina.

3. In furtherance of terms of the preceding Paragraph, in the Integral Contiguous Zone established in this Article, the

Colombian State will exercise its sovereign authority and powers of implementation and control as necessary in order to:

a) Prevent and control of violations of laws and regulations related to the comprehensive security of the State, including piracy, and the trafficking in drugs and psychotropic substances, and forms of conduct which threaten safety at sea and national maritime interests, customs and fiscal matters, matters of immigration and health, committed within the island territories or in the territorial seas of the same. Likewise, there will be prevention and control over violations of laws and regulations related to the preservation of the environment, cultural heritage, and the exercise of historical fishing rights held in the name of the Colombian State.

b) Punish violations of laws and regulations related to the matters indicated in section a) above, committed in its island territories or in the territorial sea of the same.

Article 6. **PREPARATION OF CARTOGRAPHY**

The points and baselines referred to in Article 3 of this Decree will be published in the official nautical cartography of the Republic of Colombia, prepared by the shipping directorate DI;MAR which will be completed within three months following the issue of this Decree. The relevant material will be sent to the geographical Institute IGAC, to act accordingly. The charts will be given due publicity.

The Integral Contiguous Zone established by this Article will be represented by an official nautical chart of the Republic of Colombia to be prepared by the shipping directorate DIMAR to be completed within two months following the publication of the charts referred to in Article 3 of this Decree. Related material will be sent to the geographical Institute IGAC for it to act accordingly. These charts will receive due publicity.

Once the points and baselines have been determined, along with other spaces referred to in this decree, a Government decree will be issued to establish them.

Article 7. **THE RIGHTS OF THIRD STATES**

None of the content of this Decree will be understood to affect or limit the rights and obligations derived from the "Treaty on maritime delimitation between the Republic of Colombia and Jamaica" signed between the States on the 12 November 1993, nor will it affect or limit the rights of other states.

ARTICLE 8. **EFFECTIVE DATE**

This Decree will take effect from the date of its issue, and repeals all norms and regulations contrary to it

BE THIS PUBLISHED, COMMUNICATED AND OBEYED

Given in Bogotá on 9 September 2013

[Signed]

FERNANDO CARRILLLO-FLOREZ
Minister of Interior

MARIA ANGELA HOLGIUÍN CUELLAR
Minister of Foreign Affairs

MAURICIO CÁRDENAS SANTAMARÍA
Minister of Finance

JUAN CARLOS PINZÓN BUENO
Minister of Defence

ALEJANDRO GAVIRIA URIBE
Minister of Health and Social Protection

JUAN GABRIEL URIBE VEGALARA
Minister of Environment and Sustainable Development

Annex 4

JUDGMENT C-269/14, *ACTIO POPULARIS* OF UNCONSTITUTIONALITY AGAINST ARTICLES II (PARTIALLY), V (PARTIALLY), XXXI AND L OF THE LAW NO. 37 OF 1961, "WHEREBY THE AMERICAN TREATY ON PACIFIC SETTLEMENT (PACT OF BOGOTÁ) IS APPROVED, 2 MAY 2014

(Available at: http://www.corteconstitucional.gov.co/relatoria/2014/c-269-14.htm (last visited 15 Dec. 2014))

CONSTITUTIONAL COURT OF COLOMBIA

Judgment C-269/14
(Bogotá D.C., 2 May 2014)

***Actio Popularis* of Unconstitutionality** against Articles XXXI and L of the Law 37 of 1961, "Whereby the American Treaty on Pacific Settlement (Pact of Bogotá) is approved.
Applicant: Juan Manuel Santos Calderon –President of the Republic of Colombia–.
Reference: File D-9907.

***Actio Popularis* of Unconstitutionality** against Articles II and V (partially) of the Law 37 of 1961, "Whereby the American Treaty on Pacific Settlement (Pact of Bogotá) is approved.
Applicants: Juan Carlos Moncada Zapata, Jéssica Alejandra Mancipe González y Carlos Eduardo Borrero González.
Reference: File D-9852

***Actio Popularis* of Unconstitutionality** against Articles XXXI (partially) and L of the Law 37 of 1961, "Whereby the American Treaty on Pacific Settlement (Pact of Bogotá) is approved.
Applicant: Oscar Fernando Vanegas Ávila.
Reference: File D-9886.

Judge: MAURICIO GONZALEZ CUERVO.

(…)

III. GENERAL CONCLUSION

(…)

8. The national territory and Article 101 of the Constitution

8.1 The territory is a prerequisite of the existence of the State in the sense that it constitutes (i) the material substratum in which all inhabitants materialize their vital interests, (ii) the space that determines the exercise of the competences by the public

authorities, (iii) a space safeguarded against any unauthorized external interference y (iv) the frameworks that delimits the exercise of sovereignty.

8.2 Such importance manifests itself in the fact that Article 101 of the Constitution clearly defines the elements comprised by the territory. According to Article 101 the Republic of Colombia is composed by the continental territory, the overseas territories (referring to the Archipelago of San Andrés, Providencia, Santa Catalina and the Islands of Malpelo, together with the islands, islets, cays and banks that belong to the State) and a group of spaces where the Colombian State exercises sovereignty, jurisdiction and/or economic exploitation, these are: the subsoil, the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone, the air space, the segment in the geo-stationary orbit, the electromagnetic spectrum and the space where its performs.

8.3 It is an essential goal of the State to maintain the territorial integrity (Art. 2), as well as the obligation of its authorities to guarantee the inviolability of the territory, extended, in the light of the applicable rules, to each of its components.

8.4. The constitutional norms that define the integrating elements of the territory or establish rules related with its delimitation, have a special normative force due to their essential character in the conformation of the political and legal order of the Nation. Such normative relevance has consequences: (i) the possibility to assign *general supremacy* to the constitutional norms referred to the territory with respect any other type of norms; (ii) the *presumption of unconstitutionality* of any restriction, limitation, affectation or incidents in the mandates or prohibitions established in Article 101 – general clause of territorial definition-. The establishment of a general supremacy and a presumption of unconstitutionality in this matter, bears correspondence with the jurisprudential practice of the Court which is oriented towards the definition of stricter parameters of interpretation whenever the examination lies over norms that may affect significant and essential constitutional interests.

8.5 Constitutional rules are derived from article 101 of the Constitution of 1991. (i) paragraph 1 establishes the general situation of the territory of the Colombian State, through the specific sources of delimitation mentioned therein; thus, to identify the territorial terms, exclusive referral must be made to treaties approved by Congress and ratified by the President or the arbitral awards in which the Nation have been a party to. (ii) From the latter, the second paragraph of Article 101 regulates those events of alteration of the general situation existing in 1991, either through the fixing of a boundary not previously established, the modification of the boundaries already fixed in treaties or arbitral awards at the time the Constitution of 1991 was approved, or the modification of any other boundary fixed in a treaty after the Constitution of 1991,being such alteration possible only through a treaty of boundaries, approved by the Congress of the Republic and ratified by the President of the Republic with the previous judicial control of the Constitutional Court. In sum, the first paragraph of Article 101 establishes a rule for the identification of the general situation of the Colombian territory; and any modification of such extension of the territory, through the alteration of the boundaries status, must be carried out with due regard to the following rule provided for in the second paragraph of Article 101 of the Constitution.

8.6 Another rule derives from paragraph 3 of Article 101 of the Constitution: (iii) the fixing or modification of boundaries can in no case imply disregarding the declaration of the integration of the Colombian territory by the continental territory and the overseas territory, as a consequence of the constitutional prohibition of entering into any treaty that has as its object or as its effect the territorial dismembering or disintegration, the territorial separation; accordingly, the competence of the authorities in charge of concluding and approving the international instruments is constitutionally limited. (iv) Finally, the final paragraph of the constitutional norm enshrines, as integral parts of the national territory, the areas in which the spatial projection of the Colombian State is made, in the terms provided for by international law, or in the alternative, by national laws.

8.5 Boundary treaties, as rules that fix or modify the territorial terms of Colombia, enjoy a preeminent position in the domestic system of legal sources, in harmony with norms and principles of international law. In this sense, frontier treaties cannot be modified by a constitutional norm or other norm of Colombian domestic law, and in that sense, would lack validity and effect.

8.6 The procedure for the domestic approval of an international treaty of boundaries is provided for in Article 150.16 of the Political Constitution. The allegation that there is an aggravated procedure for the approval of treaties that modify boundaries -and due to their "constitutionalization" a Legislative Act modifying the Constitution is needed-, lacks any basis. What has been in fact the object of direct constitutional prescription are the formal sources of the current boundaries – treaties and arbitral awards- and the instrument to modify the general situation of the territory – treaties-, not the boundary itself, whose fixing and process of review must be made through an international instrument approved by the Legislative power and completed by the national Executive.

9. Response to Charge 1°: harmonization of Article XXXI of the Pact of Bogotá and Article 101 of the Constitution

9.1 The American Treaty on Pacific Settlement – Pact of Bogotá, it must reiterated, is not a treaty of boundaries just for the fact that it recognized the jurisdiction of an international tribunal to pronounce about such a matter, as the joint challenge so insists. It would result contrary to the Constitution, inasmuch as it disregards not only the scope of Article 101 of the Constitution but also rules and doctrines of international law.

9.2 It must be noticed, preliminarily, that the recognition by Colombia of the jurisdiction of the International Court of Justice does not oppose, on a general manner, the Political Constitution. On the contrary, the jurisprudence of this Tribunal – the Constitutional Court- has highlighted the importance of the procedures of judicial settlement of disputes, by declaring the constitutionality of international instruments in this regard. The Court has also considered that in exercising its sovereignty, Colombia is entitled to attribute to some international

jurisdictional organs the settlement of affairs that, in principle, would be subject to the direct decision of its authorities.

9.3 The recognition of the jurisdiction of the International Court of Justice, understood together with the provisions providing for the binding character of its decision, as well as the procedure that can be followed for its implementation, derive in the existence of an international obligation to acknowledge and comply with the decision of said Court regarding boundaries. This obligation would face the second paragraph of Article 101 of the Constitution in which it is established that any variation of the general state of the territory at the time the Constitution of 1991 was promulgated, must be carried out through a procedure different to the approval of a treaty by Congress and its subsequent ratification by the President of the Republic. The contradiction emerges, in synthesis, because of the emergence of an obligation to comply with what is provided for in an instrument different to Article 101 – a Judgment- and, consequently, because of the imposition of an obligation to accept the variation of limits and of acting in conformity with it –the Judgment- notwithstanding the existence, in the constitutional order, of specific provisions requiring to exhaust specified procedures.

9.4 In light of the constitutional provisions in force, it is not possible to admit an interpretation of Article XXXI of the Pact that: (i) implies the recognition of a mechanism for the modification of the general state of the territory in force at the time the Constitution of 1991 was in force, with complete disregard of the rule of modification through a treaty approved by Congress and ratified by the President. (ii) imposes an obligation to comply with a decision that fixes or modifies the boundaries, in a manner different than the one provided for in the constitutional norm referred to above; o (iii) leads to ignoring the elements that constitute the Colombian territory. As was stated, Article 101 of the Constitution is a provision with a constitutional force in the sense that, in defining the conformation and configuration of the territory, is regulating an essential prerequisite of the existence of the State; it is vested with a general supremacy with respect to any norm or legal order and triggers a presumption of unconstitutionality of any

provision that may restrict, limit, affect or hinder in the scope of its mandate.

9.5 The rule defined in Decision C-400 of 1998, suggests as alternatives to the normative conflict, either the modification of the international instrument in a manner that does not oppose the Constitution –through corresponding legal procedures-, or the adoption of the measures of domestic law that make possible to overcome the contradiction. In each situation, it corresponds to the competent political authorities –and not the Constitutional Court- to determine the procedure to follow. In any case, the exclusion from the domestic legal order of those international norms that are contrary to the former, are incapable of directly impacting the content of the international obligation or the international nexus.

9.6 The constitutional duty to harmonize the challenged conventional international clauses with Article 101 of the Constitution emerges from: (i) the constitutional status both of the principle *pact sunt servanda* and the duty or prevalent application of the Constitution; (ii) the reservation made by Colombia to article 27.1 of the Vienna Convention on the Law of Treaties of 1986, in response to an order of the Constitutional Court, which allows to make compatible the international principle with the constitutional review of treaties in force, as it was decided in Decision C-400/98 and C-27/93, of this Tribunal; (iii) and from the hermeneutic principle, consolidated in the jurisprudence, requiring optimization or concrete harmonization to the maximum extent possible. In other words, from the intention of the Constituent Assembly in 1991, the juridical tradition of Colombia of respect to international law, and from the constitutional recognition of the two principles in conflict – both equally protected by the rules of supremacy enshrined in Article 4 of the Constitution- a duty emanates to harmonize, which is opposed to the unconditional precedence of one or the other and requires the fulfilment of both principles to the maximum extent possible.

9.7 The duty of preeminent application of the constitutional provisions derives directly from the content of Article 4 of the Constitution, according to which, "The Constitution is the norm of norms. In every case of incompatibility between the

Constitution and a law or any order legal norm, the constitutional provisions will apply"; this provision derives from the concept of popular sovereignty, from which the public powers and mainly, the constituent power emanates. Also, in Article 9 the Constitution grants *fundamental* character to some principles over which the foreign relations of the State are built upon, among them, "*the recognition of the principles of international law accepted by Colombia*": particularly, the *pact sunt servanda* principle – the obligation to comply with treaties validly entered into- and the *bona fides* principle or –duty to act in good faith in the performance of the international obligations-. The constitutionalization of this principles of international law implies that the recognition of the binding force of the treaties to which Colombia is a Party and the good faith in the performance of its obligations, are sovereign mandates of the Constituent Power and an expression of the supremacy of the Constitution. From that perspective, the tension that may arise between specific constitutional norms and the obligation to comply with the provisions of international treaties, cannot be qualified as irreconcilable, since they are enshrined in the constitutional order with the hierarchy of fundamental principles. It corresponds to the interpreter of the Constitution to procure its harmonization.

9.8 It deserves special consideration what is provided for in Decision C-400 of 1998, by virtue of which the Constitutional Court reviewed the *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations* and its approbatory law. With respect to the acceptance by Colombia of the *pact sunt servanda* and *bona fide* principles, it must be noticed that, on the basis of the dictum of this Court in Decision C-400 of 1998 Colombia made, in perfecting the international nexus with respect to the *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, an interpretative declaration according to which "With respect to article 27, paragraph 1, Colombia specifies that it accepts that a State may not invoke the provisions of its internal law as justification for its failure to perform the treaty, **on the understanding that this rule does not exclude judicial control of the constitutionality of laws adopting treaties**". The reservations and the interpretative declarations just

mentioned were transmitted by Colombia to the Secretary General of the United Nations, which, in turn, transmitted them to the States and inter-State organizations signatories of said Convention. Considering that there is no record by the Depositary – General Secretariat of the United Nations – giving account of the express objection by the State Parties against the reservations and interpretative declarations made by the Republic of Colombia, it can be affirmed that the international society has not issued, until present date, an objection to the restrictive or limited acceptance of Colombia with respect to the *pacta sunt servanda principle*.

9.9. To maximize the constitutional interests in conflict, this is, the obligation to harmonize the duty to apply the constitutional provisions and the duty to comply in good faith with the international commitments, requires to recognize that Article 101 triggers the imperative that the incorporation of the decisions regarding the modification of boundaries be made by entering into, approving and ratifying a treaty of boundaries.

9.10 The settlement of the disputes mentioned allows, in this opportunity, to make compatible the obligation to comply with international obligations assumed by Colombia, as an expression of the principles of international law recognized by Colombia, with the mandate to respect the minimum contents of Article 101, in securing the supremacy of the Constitution. And its leads to the harmonization of the confronted duties: (i) on one side, it recognizes the validity of the challenged clauses of the Pact of Bogotá approved by Law 37 of 1961 and whose effects are unquestionable by virtue of the *pacta sunt servanda principle* during the time the Pact was in force for Colombia; (ii) it follows that the decisions rendered by the International Court of Justice, on the basis of the jurisdiction recognized by Colombia through Article XXXI of the Pact, cannot be disregarded, in conformity with what is prescribed in Article 94 of the Charter of the United Nations, that provides that each Member of the United Nations is committed to comply with the decision of the International Court of Justice in any case to which it is a party. And, in any case, (iii) said interpretation guarantees the respect for the constitutional rule provided for in Article 101 of the Constitution according to which, any modification of the general situation of territorial boundaries in force in 1991, shall be

carried out according to what is set forth in the second paragraph of said provision.

9.11 It is then confirmed the validity of the challenged clauses of the Pact of Bogotá, approved by Law 37 of 1961 and whose effects are unquestionable by virtue of the *pacta sunt servanda principle* during the time the Pact was in force for Colombia, especially since this Decision could not grant retroactive effects to none of its operative provisions. In consequence, the decisions rendered by the International Court of Justice, on the basis of the jurisdiction recognized by Colombia through Article XXXI of the Pact, cannot be disregarded either, in conformity with what is prescribed in Article 94 of the Charter of the United Nations. This conclusion does not deprive any of the constitutional mandates of their basic content, while at same time: (i) recognizes the binding character of the decisions adopted by an international court in the performance of treaties previously entered into, approved and ratified by Colombia, and at the same time; (ii) updates the duty of incorporation of the boundary modifications into the domestic legal order, in charge of the executive and legislative authority, following what is established in Article 101 of the Constitution.

9.12 In this sense, the authorities of Colombia have the obligation to comply with Article 101, paragraph 2, in the manner in which it has been interpreted by this Tribunal, seeking recognition of the effectiveness of the constitutional provision in a way that is consistent with the duty of fulfilment of the international obligations.

9.13 As the constitutional jurisprudence has noticed, by virtue of the democratic principle and the connected principle of conservation of law, when there are two possible interpretations of the same normative statement, the declaration of constitutionality of the norm must be preferred, while indicating the conditions under which it must be interpreted, excluding the unconstitutional scope and preserving the meaning compatible with the Constitution.

9. 14 Therefore, the Corporation declared the constitutionality of Article XXXI of Law 37 of 1961, approving the Pact of Bogotá, as recognition of the jurisdictional authority accepted by the

Colombian State as of October 14, 1968 for the judicial settlement of disputes on international affairs, under the understanding that the decisions of the International Court of Justice, adopted in relation to boundary disputes, must be incorporated into domestic law by a duly approved and ratified treaty, under the terms of Article 101 of the Constitution.

9.15. Consequently, in conformity with what is expressed, Articles II (partial), V (partial), XXXII to XXXVII and XXXVIII to XLIX, will be declared constitutional.

10. Response to the remaining charges: breach of Articles 59T, 2, 3, 9, 79, 329, 330 of the Constitution

10.1. Article XXXI of the American Treaty on Pacific Settlement (i) does not disregard Transitory Article 59 of the Constitution since this constitutional norm, in establishing the prohibition of jurisdictional review of the Constitution, only comprises the judicial examination of the legal order that has the capacity to expel or exclude unconstitutional norms directly off the legal order. (ii) It does not violate articles 2, 3, 79, 329 and 330 of the Constitution either, since the recognition of jurisdiction established therein does not contravene the right of citizens to participate in the decision that affect them nor the right of prior consultation of the ethnic communities, matters that in any case would arise as duties for the national authorities and would not be internationally opposable.

10.2. Article XXXI of the Pact does not violate (i) the principles of sovereignty and self-determination established in Article 9° of the Constitution, nor (ii) Article 189.6, considering that the free assumption of a commitment by the State is one of the most important manifestation of sovereignty and self-determination in the international society, not being possible to allege its violation when the State has autonomously and willingly the State has decided to be obliged by the provisions of a treaty – Article 226 of the Constitution-. (iii) Finally, neither does it disregard the constitutional obligation to develop the internationalization process on the basis of convenience: the judgment of convenience must respect the margin of appreciation the political authorities enjoy to assess the usefulness and benefit in entering into a treaty, and the

establishment of a hetero-composite mechanism for the peaceful settlement of dispute with other States cannot be judged in itself as inconvenient nor is it inconvenient just for the results to which it leads.

10.3. With respect to Article "L" of Law 37 of 1961, approbatory of the Pact of Bogotá, it can be affirmed that it does not exclude nor does it impose a mechanism, form or means for the compliance with the decisions of the International Court of justice. That has as its effect that the adoption of a measure that would oblige the State to act contrary to the Constitution is merely hypothetical, and does not derive from the normative content of Article L of the Pact. Thus, the consequence that may derive for a State as a consequence of not complying with a judicial decision, do not unequivocally derive in a result contrary to the Constitution, since the authorities enjoy the faculty, authorization or permission – under international law- and the obligation – under the domestic law- to employ all means, mechanisms, forms or measures to comply with the judgments, provided for in the Political Constitution. In consequence, the compatibility of Article L with the Constitution will be declared.

10.4. What is provided for in Article L does not proscribe nor prevents the Parties, in any sense whatsoever, of the faculty they have, as subjects of international with capacity to act in the international society, to dispose of their own rights – granted, recognized or assigned through a decision of an international tribunal-, with the purpose of modifying, by mutual agreement, the terms and scope of the latter, subsequent to the rendering of a judicial decision. It is pertinent to refer, as matter of example, the decision in the case of the "*Maritime delimitation in the area between Greenland and Jan Mayen (Denmark v. Norway)*" of 1993. The Kingdom of Denmark requested the Court, through a unilateral application, the recognition of the extension of its "*fishing exclusive economic zone and continental shelf"* through the fixing of maritime delimitation line *vis-à-vis* the Kingdom of Norway. In its decision the Tribunal fixed the maritime frontier between the two States. Notwithstanding, after the Judgment was rendered, the Kingdom of Denmark and the Kingdom of Norway signed a treaty to regulate the rights of the parties in the area affected by the decision. Although the treaty expressly

invoked the decision of the international tribunal, the coordinates of the maritime frontier between the States fixed in the treaty, did not coincide with the coordinate of the maritime frontier set forth by the International Court of Justice. None of the States alleged noncompliance with the Judgment nor was the action considered a violation of the latter.

10.5. The remaining provisions challenged presuppose the existence of the clause on the recognition of the jurisdiction of the International Court of Justice by the States Parties to the Pact of Bogotá. Hence, the decision about the constitutionality of Articles XXXII to XXXVII will be in the sense of constitutionality decided with respect to the previous article, without the need of any conditioning whatsoever. The Court will proceed in the same fashion with regard to the obligation to make use of the procedures established in the American Treaty on Pacific Settlement, and specially the judicial procedure already seen- Article II of the Pact-, and with respect to the jurisdiction of the International Court of Justice to define whether the controversy submitted to it deals with a matter within the domestic jurisdiction of the States – Article V of the Pact-. In the same fashion, with respect to Articles XXXVIII to XLIX.

11. Final consideration: constitutional affirmation of the international principles on the prohibition of the use of force for the settlement of disputes and on the peaceful settlement of disputes

11.1. The Political Constitution establishes, faithful to the constituent purpose, not just that the peace is one of the purpose of the Constitution (Preamble) and one of the goals of the State (Art. 2) but also, that it is a right and a duty of mandatory compliance (Art. 22).

11.2. The practice of the Republic of Colombia, in its condition as subject of international law, shows throughout its existence, a vigorous and uninterrupted defence and submission to that principle. The principle of pacific settlement of international disputes, complementary to the principle on the prohibition of the use of force for the settlement of international disputes, binds the country both constitutionally and internationally.

11.3. The conditioned constitutionality of Article XXXI of the "American Treaty on Pacific Settlement (Pact of Bogotá)" does not invalidate nor affect the international obligation contained in the constituting treaties of the United Nations Organization or the Organization of American States, in relation to the peaceful settlement of disputes, through the pertinent mechanisms and procedures.

IV. DECISION

The Constitutional Court of the Republic of Colombia, administering justice on behalf of the People and by mandate of the Constitution,

DECIDES

First: To declare Article XXXI of Law 37 of 1961 *"approving the American Treaty on Pacific Settlement (Pact of Bogotá)"***CONSTITUTIONAL,** in the understanding that the decisions of the International Court of Justice apropos of boundary disputes must be incorporated into domestic law by a treaty duly ratified and approved under the terms of Article 101 of the Constitution.

Second: To declare Articles II (partial), V (partial), XXXII to XXXVII, XXXVIII to XLIX and L of Law 37 of 1961 *"approving the American Treaty on Pacific Settlement (Pact of Bogotá)"***CONSTITUTIONAL.**

(…)

Annex 5

PRESIDENTIAL DECREE NO. 1119 OF 2014, AMENDMENT TO THE PRESIDENTIAL DECREE NO. 1946 OF 2013, TERRITORIAL SEA, CONTIGUOUS ZONE AND CONTINENTAL SHELF OF THE COLOMBIAN ISLANDS TERRITORIES IN THE WESTERN CARIBBEAN, 17 JUNE 2014

(Available at: http://wsp.presidencia.gov.co/Normativa/Decretos/2014/Documents/JUNIO/17/DECRETO%201119%20DEL%2017%20DE%20JUNIO%20DE%202014.pdf (last visited 15 Dec. 2014))

Ministry of Foreign Affairs

Republic of Colombia

DECREE NUMBER 1119 OF
17 JUNE 2014

By which Decree Number 1946 of 9 September 2013 is modified and amended

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,
In exercise of his legal and constitutional faculties, in special, those provided for in Article 189 (11) of the Political Constitution and in development of what is established in laws 10 of 1978 and 47 of 1993

CONSIDERING:

That the publication of the thematic nautical charts issued by the General Maritime Office under Resolution No. 613 of 9 December 2013 only proceeds after the Decree establishing the points and base lines referred to in Article 3 of said Decree are issued;

That the Republic of Colombia exercises all the rights over its maritime spaces in conformity with International Law

That in the merits of what has been referred to above,

DECREES

ARTICLE ONE. To modify Article 1 (3) of Decree 1946 of 9 September 2013 which now reads as follows:

> *"3. The Republic of Colombia exercises full sovereignty over its insular territories and territorial sea; jurisdiction and sovereign rights over the rest of the maritime spaces*

generated by its insular territories in the terms prescribed by international law, the Political Constitution, Law 10 of 1978, Decree 1946 of 2013 and by the present Decree, in what corresponds to each of them. In those spaces Colombia exercises historic rights in conformity with international law.

ARTICLE TWO. To modify Article 5 (3) and (3.a) of Decree 1946 of 9 September 2013 which now reads as follows:

"[…]

3. In developing what has been provided for in the previous numeral, with the purpose of protecting the sovereignty in its territory and territorial sea, in the integrated contiguous zone established in this Article Colombia exercises the faculties of enforcement and control necessary to:

a) *Prevent and control the infraction to the laws and regulations related with the integral security of the State, including piracy and trafficking of drugs and psychotropic substances, as well as conduct contrary to the security in the sea and the national maritime interests, the customs, fiscal, migration and sanitary matters which take place in its insular territories or in their territorial sea. In the same manner, violations against the laws and regulations related with the preservation of the maritime environment and the cultural heritage will be prevented and controlled".*

ARTICLE THREE. To add the following paragraph to Article 5º of Decree 1946 of 9 September 2013:

"[…]

Paragraph. *The application of this paragraph will be carried out in conformity with international law and Article 7 of the present Decree."*

ARTICLE FOUR. To modify Article 6 of Decree 1946 of 9 September 2013, which now reads as follows:

"***Article 6°. BUILDING OF THE CARTOGRAPHY***

The points and base lines referred to in Article 3 of the present Decree, will be published in official thematic maps of the Republic of Colombia built by the General Maritime Office. The corresponding maps will be sent to the Agustin Codazzi Geographic Institute for matters within its competence. Said maps will be given due publicity.

The Integral Contiguous Zone established by virtue of this Article will be represented in official thematic maps of the Republic of Colombia built by the General Maritime Office. The corresponding maps will be sent to the Agustin Codazzi Geographic Institute for matters within its competence. Said maps will be given due publicity.

Once the points and base lines have been determined, as well as the remaining spaces to which the present Decree refers to, they shall be established through a Decree issued by the National Government.

Paragraph: *The publication of the corresponding official thematic maps will be made once the National Government has published the Decree by which are established the points and base lines from which the breadth of the territorial sea, the contiguous zone and the diverse maritime spaces generated by the islands conforming the insular*

territories of Colombia in the Caribbean Sea, are measured."

ARTICLE FIVE. The present Decree enters into force since its publication and amends and modifies in the pertinent paragraphs Decree 1946 of 9 September 2013.

[Signed]
AURELIO IRAGORRI
Minister of Interior

MARIA ANGELA HOLGIUÍN-CUELLAR
Minister of Foreign Affairs

MAURICIO CÁRDENAS-SANTAMARÍA
Minister of Finance

JUAN CARLOS PINZÓN-BUENO
Minister of Defence

ALEJANDRO GAVIRIA-URIBE,
Minister of Health and Social Protection

LUZ HELENA SARMIENTO
Minister of Environment and Sustainable Development

Annex 6

DECLARATION OF THE PRESIDENT OF THE REPUBLIC OF COLOMBIA, 19 NOVEMBER 2012

(Available at: http://wsp.presidencia.gov.co/Prensa/2012/Noviembre/Paginas/20121119_02.aspx (last visited 15 Dec. 2014))

President Juan Manuel Santos speaks on the judgment of the International Court of Justice

Bogotá, 19 November 2012 [SIG]

"My fellow Colombians

The International Court of Justice, in a decision issued a few hours ago, has decided on Nicaragua's claims against Colombia.

On three occasions, Nicaragua has attempted to appropriate the Colombian archipelago for itself; in 1913, when it claimed it for the first time in history; in 1980, when in an event without precedent, it declared the Esguerra-Barcenas treaty null, and void, and finally, in 2001, when it presented its claims against our country before the International Court of Justice.

Today, this Court rejected Nicaragua´s claims on our archipelago.

This is a final decision on this issue, and there is no appeal against it

Colombia's position has been a State policy, held uninterrupted by different governments, with independence of their political affiliation.

Since 1969, the dispute with Nicaragua was revived, and since that moment, eleven successive governments of Colombia have consistently defended our position on this matter.

There have been few such occasions in which our country has acted in such a concerted and uniform manner over so many years, and we, since we came to office, have maintained that same course of legal argument.

Some 15 sessions of the Foreign Relations Advisory Commission have been held on this matter. The Commission has been constantly informed and consulted.
Today, I have heard its opinions and wise counsel

It is an instance which, naturally, we shall continue to consult.

Further, hundreds of meetings have been held with the active political forces of this country and of the archipelago, and with distinguished lawyers of great experience and world renown.

What is it that Nicaragua claimed?

Initially, Nicaragua claimed sovereignty over the archipelago of San Andrés, Providencia and Santa Catalina, including all their islands and cays

Today, the Court found for Colombia, and did not accede to Nicaragua´s claims, ratifying Colombia's sovereignty over the entire archipelago.

And more than this: the Court clarified that all the cays of archipelago--. I repeat, absolutely all the cays - that is, Roncador, Serrana, Quitasueño, Serranilla, Bajo Nuevo, Este Sureste and Albuquerque belong to Colombia.

Nicaragua also claimed that the Esguerra-Barcenas treaty of 1928 - through which that country recognized Colombia's sovereignty over the Archipelago - should be declared invalid.

Today, the Court ratified that the treaty is valid in force.

Further, Nicaragua claimed that it should be declared that Colombia had failed to comply with the treaty, and requested for our country to be declared responsible for that. The Court rejected this claim too.

Nicaragua, in 2009, alleged the existence of an extended continental shelf.
It claimed that the Court should recognize it 350 miles of shelf, 150 miles more than that which is normally granted to States.

Further, Nicaragua asked for recognition of a maritime boundary to the east of the islands of San Andrés, Providencia and Santa Catalina - which would remain totally enclosed by Nicaraguan waters-a boundary which would be only 100 miles from the coast of Cartagena.

The Court did not accede to these claims either.

It made a partial grant of 200 miles in certain areas to the north and south of the Archipelago, invoking the rules of the new Law of the Sea. Nonetheless, it rejected the Nicaraguan position that the Archipelago of San Andrés should be enclosed, or that a maritime delimitation line should be drawn between the Archipelago and the Colombian Caribbean coast.

With this claim, Nicaragua sought to cut the link between our islands and the mainland, but, by good fortune, this did not occur.

In summary, the Court ratified Colombia's sovereignty over the Archipelago of San Andrés, Providencia and Santa Catalina, and the validity and enforceability of the 1928 treaty between Colombia and Nicaragua, which Nicaragua purported to ignore
.

Second, it recognized that all the cays of the Archipelago -all of them – are Colombia´s, as we argued, and contrary to Nicaragua´s claims.

Third, it recognized territorial sea to cays such as Serrana and Quitasueño;

Fourth, it recognized that the Archipelago is entitled to a continental shelf and exclusive economic zone.

Fifth, the link between the Archipelago and the Colombian mainland is maintained, and Nicaragua did not succeed in isolating the Archipelago from mainland Colombia.

The Court also addressed another issue, that of the maritime delimitation between Nicaragua and Colombia.

As you will recall, in 2007 the Court decided that Meridian 82 - which we in Colombia had for long considered to be the maritime boundary between Nicaragua and Colombia - was in effect not a maritime limit, but a line of reference, and therefore declared itself competent to establish the maritime delimitation between the two countries.

In its Judgment of today, the Court draws a line which begins from the west of the Archipelago, between our islands and the coast of Nicaragua. While this is positive for Colombia, the Court, when drawing the maritime delimitation line committed serious mistakes which I must highlight, and which have negative effects on us.

The Court, instead of limiting itself to drawing a line in the area regulated by the Esguerra-Barcenas treaty, mistakenly decided to extend the line to the north and south of the Archipelago.

We disagree that the Court had gone beyond the scope of the treaty, which the Court itself has declared to be valid and in force.

Further, the Court extended the maritime delimitation line to the east, as far as 200 miles from the Nicaraguan coast.

This means a reduction in Colombia's rights of jurisdiction over maritime areas.

Further, and contrary to an historical doctrine of international law, in establishing the boundary to the east of the Archipelago, the Court disregarded other treaties of delimitation signed by Colombia.

The result of this has been the creation of a series of complexities between countries in the Caribbean, which obliges us to work with our neighbouring States who are also affected, in order to resolves those complexities

Further, no account was taken of circumstances to which weight should have been given - such as considerations of security and equitable access to natural resources.

Inexplicably-and after recognizing Colombia's sovereignty over the entire Archipelago, and after holding that, as a unit, the Archipelago generated rights of continental shelf and exclusive economic zone, the Court adjusted the line of delimitation, separating the cays of Serrana, Serranilla, Quitasueño and Bajo Nuevo from the rest of the Archipelago.

This is inconsistent with what the Court itself has recognized, and is not compatible with the geographical conception of what an archipelago is.

All of these are in effect omissions, errors, excesses, and inconsistencies which we cannot accept.

In the light of this, Colombia - represented by its Head of State - emphatically rejects this aspect of the decision issued today.

Therefore, we will not discard any recourse or mechanism available to us in international law, to defend our rights.

The Government respects the law, but considers that the Court has made some serious mistakes on this issue.

You elected me, first and foremost, to defend and enforce the Constitution of Colombia, and to that I pledged my oath.

Among these constitutional duties is to protect and guarantee the rights of Colombians, and to honour the treaties which Colombia has signed with other countries in the Caribbean.

Article 101 of our Constitution says that "the boundaries fixed in the manner set forth in this Constitution may only be modified by virtue of laws approved by Congress, and duly ratified by the President of the Republic".

The Constitutional Court has said that these treaties - that is, those which refer to Colombia's frontiers and boundaries - must be approved through a reform to the Constitution.

As President, I have the obligation to respect that mandate of the Constitution, what was decided by the Constituent Assembly in 1991, and what the Constitutional Court has stated.

From the foregoing, there are a number of obstacles which make some aspects of the maritime delimitation drawn today by the decision of the Court of The Hague complex and difficult to apply.

It is evident that there is a contradiction between this decision and our Constitution, and a number of international treaties in force.

As Head of State, I shall lead the defence of the interests and rights of Colombians, and in particular, of the inhabitants of the Archipelago.

In order to achieve this, we need the concurrence of all public powers as provided for in the Constitution.

I am the first to recognize the repercussions which this new maritime delimitation has for this country and for its people, and in particular, for the inhabitants of San Andrés and the fishermen of the islands.

To me as a Colombian, these repercussions caused deep pain.

The inhabitants of San Andrés may be sure that we shall defend the rights of the people of the islands and of all our fellow-countrymen with absolute firmness.

This we have done it not only during these 11 years of litigation, but also over the centuries of the history of our country.

It is true that maritime rights are different from rights of sovereignty.

We should note that when drawing the boundary, the Court advised that the new line of delimitation awarded only "specific rights instead of sovereignty", to Nicaragua.

Since the specific rights are limited, the Court also emphasized that this "does not affect rights of navigation" of Colombians.

For example, the inhabitants of San Andrés will have the right of free passage to Quitasueño, Serrana, Serranilla and Bajo Nuevo, and vice versa, and to derive their living from fishing within the area recognized by the Court.

Today, I wish to tell the people of San Andrés that we are committed to find mechanisms and specific strategies, and to

produce results-including the negotiation of treaties as may be necessary-so that their rights may at no time be disregarded.

And we will work the inhabitants of the Archipelago, since we are conscious of their realities and their fishing activities.

This very same night, I shall sleep in San Andrés, and tomorrow I shall meet leaders and representatives of the community, in order to evaluate not only this situation, but also progress with other commitments which the Colombian government has made to this, our overseas department.

With the Council of Ministers, which held sessions in San Andrés some months ago, we established a complete plan for the Department with the authorities of the Archipelago, and we are moving forward with that, and we are committed to its progress.

Today, a period of work and consultation has begun between the public powers to analyse the effects of the judgment, particularly with regard to our Constitution, and to act in consequence.

As Head of State, I shall lead this process in a spirit of harmony and collaboration between those powers.

The legal team which represented us at the Court of The Hague, and the working groups in the Foreign Ministry, during the various governments concerned, have worked for the interests of Colombia with a high sense of duty and effort, and we must recognize this fact.

My fellow countrymen,

You may be sure that we shall act with respect for the law - as has been our tradition - but we shall also defend the rights of all Colombians with firmness and determination.

Good evening"

Annex 7

PRESS CONFERENCE OF THE MINISTER OF FOREIGN AFFAIRS OF COLOMBIA, 20 NOVEMBER 2012

(Available at: http://www.cancilleria.gov.co/newsroom/news/2012-11-20/4651 (last visited 15 Dec. 2014))

Press conference of Minister of Foreign Affairs, Holguín, in San Andrés about the judgment of The International Court of Justice.

San Andrés (Nov. 20/12). "We are here in San Andrés with the President and several Ministers, we arrived yesterday's evening, we gathered with a group of native islanders and Mrs. Governor.

Today we will meet with the community of San Andrés, a meeting of about three hours, we want to hear the people from San Andrés, we come to express our sadness, our support in that sadness of all the people of San Andrés because of the judgment of the Court.

We are saddened and wanted to say it here to the *sanadresanos*, to the authorities of San Andrés.

We will also have a meeting with the fishermen, apart from the rest, and the President will gather again with the native islanders, a meeting in the early afternoon.

Basically we came to accompany the people of San Andrés in this tough, difficult time and we would like to look with them the actions that the government should take as soon as possible."

PRESS CONFERENCE

Question

What are real legal possibilities that Colombia has against the judgment? How *solomonic* is the judgment? What can you say about the words of the President of Nicaragua, Daniel Ortega?

Foreign Minister María Ángela Holguín:

First of all it is a very complicated, very complex judgment. We just hear yesterday the reading of 6, 8 pages by the President of the Court, but it is a judgment that the government of Colombia has to study thoroughly, in depth, something that the legal advisers of the Government are already doing, also the team in the Hague is working on that and, until is not studied it thoroughly, the Government will not make a statement.

The President has said yesterday, and we reaffirm it. We reject parts of the judgment where there are inconsistencies, there are omissions, there is a lack of recognition, of justice, and we are reiterating it, but as I say, it is a transcendental decision, very important for the country and we will make it calmly, studying in depth the repercussions.

We see, for example, that the judgment has an impact that makes it difficult to implement it; the case of the treaties with neighbours, there is a need to look exactly what will happen with it, and in that we have to do a serious job, very sensible, of the study of the judgment before releasing a major statement.

On whether it is *solomonic* or not, you see, I always thought that *solomonic* was something fair, and I would say that this is not fair.

I will not comment on the words of President Ortega. Also what we know, and this is a request that the *sanandresanos* did, not from now but from some time ago; we have to have a relationship with the government of Nicaragua. I spoke with the Minister of Foreign Affairs of Nicaragua at the summit of Cadiz in Spain, this weekend. We were looking at the possibility of having a meeting soon; there are many issues that we have to work on, work on fishing related themes, work on security issues, fighting drug trafficking, and most likely we will have a meeting, but for now we are concentrating in the judgment and in this study that we are doing of the judgment in depth.

Question

There are six warships of the Colombian Navy in the area of the cays, they were waiting for the decision of The Hague and accompanying infants that are doing presence and sovereignty in this area of the country. What is the position on these warships? Are they in a Colombian area? In what part are they? What will be their future? What action will the Government take on that? And Minister, people are calling for heads to roll by this decision, to hold someone responsible, what is the answer of the Government?

Minister María Ángela Holguín:

It is important to highlight an issue, and it is that the sovereignty over the cays was ratified by the Court. We have full sovereignty in all cays and the position in which those frigates are is precisely accompanying that sovereignty in the different cays of the archipelago.

Any decision will be taken later, a decision on where they will be is not a decision that we will make for now, but they are indeed accompanying that sovereignty, accompanying these marines that are in the cays in which we have sovereignty, where the Court yesterday ratified that sovereignty.

On the subject of rolling heads, I think that in difficult times through which a country passes, as is the case that is happening to us today, it is a very difficult time for the country, the country should unite. Get together because in what we have to think is in San Andrés, rather than keeping the discussions about who is sacrificed and who is crucified and whose fault is it, it is more important to think about what San Andrés needs, what the fishermen from San Andrés need, how we can help this Caribbean pearl to arise and arise in an optimistic way and not on whose fault it is or whose fault it isn't.

If we are to find someone to blame, I say two things: first, we have to look for it since 1969, since then everything that had to do with the advisory committees, presidents, former ministers of foreign affairs, absolutely everyone. But I tell you one thing that goes beyond, if for example with my resignation I would solve the *sanadresanos'* life, where do I need to sign?

Question (...)

Minister María Ángela Holguín:

Look, I think the defence was a very good defence, legally we have first-level lawyers.

If you look at similar or alike cases where the Court delimited in opposing coasts, it had never made a decision as the one it took

yesterday. So we are also very confused, because part of what the defence does is to study the Court's previous judgments, and there is none that resembles the decision taken yesterday, ignoring obvious things like the exclusive economic zone and the continental shelf of Providencia, which reached Quitasueño or went even beyond that.

So, that we had never seen, that is why we are seeing inconsistencies, or for example in the south side how it completely ignores the economic zone and the continental shelf of San Andrés to the south. I mean, there are lacks of awareness of the Court in the judgments that have been studied.

We have 11 years in this, 11 years working, 11 years with two teams: one, the legal team which was here between 2001 and 2007 and, the second, from 2007 until now. At the time, one of the lawyers died and one was very old, but it was never contemplated, in all the studies that were done, that the Court could ignore something as important as the continental shelf in the exclusive economic zone of San Andrés and Providencia.

I believe in the Colombian team, and in that I do repeat, congratulations to Ambassador Julio Londono, Dr. Guillermo Fernández de Soto and the team, they were a dedicated team for all these 11 years, where they studied absolutely all the possibilities.

We recognize that this was never envisioned, as I say, the Court made decisions that are completely new in these cases.

I do want to reiterate, and I will not blame anyone, I think this was a job in the past 11 years, a dedication of the Ministry of Foreign Affairs, of the former ministers, the presidents, the Advisory Commission. Everything went through the Advisory Commission. Now we cannot come to say that it was not consulted; it was consulted, everyone agreed and we did a study in depth of the case. Now it is easier, as they say, being a historian than a prophet, but we really did what we could.

Question (...)

Minister María Ángela Holguín:

Look, we are here and the meetings we are having, both last night and today, are just to see how we can help those fishermen to find solutions.

I had a conversation with the Minister of Foreign Affairs of Nicaragua, we will look at fisheries agreements. We need to agree on some fisheries agreements so the islanders can continue fishing in places where they have done so, especially artisanal fishing.

The Government's commitment is to find alternatives and solutions for the fishermen of the islands.

Question (...)

Minister María Ángela Holguín:

We are studying. The President heard the former presidents yesterday, he spoke with former President Uribe repeatedly, spoke with President Samper who was not in Colombia. In the Advisory Committee, Presidents Gaviria, Betancur and Pastrana were present. We talked about the different possibilities, but the most important, and I think that was something where President Pastrana was very repetitive and he is absolutely right, is that the judgment must be studied, it should be explored in depth, the judgment is not just those words we saw yesterday in an hour, but much deeper, and that is what we want to do, our lawyers are working on it and we will take a decision soon.

Question:

There is a version, shared by several specialists, according to which you already knew what could happen because the initial position of Colombia involved the loss, the position of the median line, involved loss to the country. You knew that? And, ultimately, are you going to comply with the judgment or not?

Minister María Ángela Holguín:

If the judgment will be complied with or not, is a decision that must be studied thoroughly. Once the Government studies and listens to its advisors and the team that has been at the forefront of this process over the past 11 years, the President has also heard the Advisory Commission, the formers presidents, a decision will be taken.

On the knowledge, look, in 2008, when the Court in 2007 said in its judgment that it has jurisdiction to determine the maritime boundary between Colombia and Nicaragua and here we are facing a situation where the Court says to you that the meridian 82 is not the boundary, the possibility already existed for the line was moved.

In 2008, when the government presents to The Hague its stance, its position, the median line was the line used in most cases. The median line and the adjusted median line, when the coasts are facing, that is what the Court has traditionally had. The median line is adjusted, one of the reasons being the length of its coastlines, i.e., the length, the proportionality of the coasts.

The argument presented by the Court yesterday is that we were eight to one against the Nicaraguan coast and how the median line was adjusted. We do not agree with this adjustment. Of course we knew that, surely, they would make an adjustment to the median line, but obviously not to that point. For me, personally, I go back and repeat, in all the possibilities, from all possible scenarios that we reviewed with our attorneys, we never had this scenario, ever. We had the scenario obviously with a tight median line. From the line in the Mosquitia coast and Quitasueño, and the median line entered into the meridian 82 and we thought that when being adjusted it would come a little to the side of the islands. But that we knew, we never, never imagined that.

Question (...)

Minister María Ángela Holguín:

We are not exploring the possibility of complying or not with the judgment. What we want to do before taking a decision is to have absolutely clarity about the judgment. I believe that Colombia, the Government, would not be responsible if we do not know the judgment entirely. Here we are dealing with treaties, facing legal inconsistencies, we are before the need to couple a decision just rendered by the Court with the Colombian Constitution.

This is not to say that we will not comply, we are exploring some possibilities, some legal resources that the same Court provides. But as I say, first of all we want to be thoughtful and serious in studying the judgment.

Question (...)

Minister María Ángela Holguín:

It's not at all what the President said. We reject some aspects of the judgment, where there are inconsistencies, some omissions, what the president said about the continental shelf from both Providencia and San Andrés and these are the aspects of the judgment that we are rejecting.

That has nothing else to do with what we are saying, that we are studying thoroughly to make a decision. We are, as I was saying, planning to come and speak on the first day with San Andrés, with its fishermen, its governor and its authorities and to look at the economic and social consequences of the judgment, and that is why we are right here, to analyse which policies and decisions must the Government of Colombia take to support San Andrés, because that is why we came. We will make the impossible so this judgment does not harm in any way the *sanAndrésanos'* lives, the lives of the fishermen, and that is what the National Government came to do.

I will talk, we will talk with the Government of Nicaragua, because the reality is that we must ensure that fishermen do not have problems with the Nicaraguan authorities and that is what the Ministry of Foreign Affairs will do these days.

Annex 8

DECLARATION OF THE PRESIDENT OF THE REPUBLIC OF COLOMBIA, 28 NOVEMBER 2012

(Available at: http://wsp.presidencia.gov.co/Prensa/2012/Noviembre/Paginas/20121128_04.aspx (last visited 15 Dec. 2014))

Statement by President Juan Manuel Santos on the denunciation of the Pact of Bogotá

Bogotá, 28 November 2012 [SIG]

"First and foremost, many thanks Dr. Luis Genaro Muñoz, Manager of the Coffee Growers Federation – FEDERACAFE -, and all coffee growers, for the support which you have expressed at this time for the Government in the situation that has arisen from the decision of the Court of The Hague.

This is the moment for national unity. These are moments when this country must unite.

And before entering into matters of the coffee industry, I would like to make a statement on this issue in particular.

I have decided that the highest national interest demands that territorial and maritime delimitations should be fixed through treaties, as has been Colombia´s tradition in law, and not in decisions issued by the International Court of Justice.

The Court sets those delimitation's based on indeterminate criteria of equity, applied in an uncertain manner, to the prejudice off the rights of States and peoples.

Therefore, Colombia yesterday denounced the Pact of Bogotá. The notice of that denunciation was delivered to the Secretary-General of the Organization of American States. And it will take effect with regard to proceedings initiated after the transmission of that notice.

Never again, never again shall we experience what happened with the decision of the International Court of Justice on 19 November.

It is evident that that decision led to a result which was manifestly contrary to equity.

Further, as has already been said, it leads to a serious detriment of the national interest, and to the rights of Colombians who live in the archipelago, the protection of the Seaflower Biosphere

Reserve, and the possibility of access to natural resources.

At the same time, it has affected treaties on delimitation signed by Colombia with other States in the Caribbean.

This denunciation forms part of the measures which we have been studying. It does not prevent Colombia from resorting to the mechanisms and recourses available to us under international law in order to defend our interests and protect the rights of Colombians.

The decision taken is due to a fundamental principle: the boundaries between States must be fixed by the States themselves. Land frontiers and maritime boundaries between States should not be in the hands of a court, but should be fixed by mutual agreement between the States through treaties.

This essential principle is shared by countries in different continents of this world, who have taken the same position which Colombia adopts today. Those countries have restricted the scope of jurisdiction of the International Court of Justice.

Those States are respectful of international law, as Colombia has been and continues to be. They are also States which have decided to exclude from the jurisdiction of the International Court of Justice matters which compromise their sovereignty, their frontiers and their maritime boundaries.

These countries include Norway, Canada, Australia and New Zealand

With this denunciation, Colombia does not pretend to separate itself from the peaceful solution of disputes. On the contrary, Colombia reiterates its commitment always to resort to peaceful procedures.

Later today, the Minister of Foreign Affairs will hold a press conference to explain the reasons and scope of this decision which we have taken.

Annex 9

DECLARATION OF THE PRESIDENT OF THE REPUBLIC OF COLOMBIA, 1 DECEMBER 2012

(Available at http://wsp.presidencia.gov.co/Prensa/2012/Diciembre/Paginas/20121201_02.aspx (last visited 15 Dec. 2014))

Declaration by President Juan Manuel Santos after meeting with his homologous of Nicaragua, Daniel Ortega

Mexico City, 1 Dec. … "We – the Minister of Foreign Affairs and I – gathered with President Ortega. We explained in the clearest way our position: we want the Colombian rights, -those of the raizales, not only with respect to the rights of the artisanal fishermen but other rights, to be re-established and guaranteed. He understood.

"We expressed that we should handle this situation with cold head, in an amicable and diplomatic fashion, as this type of matters must be dealt with to avoid incidents. He also understood.

"We agreed to establish channels of communications to address all these points. I believe this is the most important. I believe that meeting was positive".

(…)

Question: The President of Nicaragua has discounted a warlike confrontation, and says that Nicaragua recognizes the historic rights of the Sanandresanos.

President Santos: "Of course nobody wants a warlike confrontation. This is the last recourse. The way to settle this type of situations is through dialogue. A reasonable dialogue where the positions are clearly established and expressed, just as we expressed to President Ortega the Colombian position.

"We will keep looking for the mechanism that both the International Court of The Hague and the international diplomacy have at their disposal to re-establish the rights infringed by the Judgment. That does not exclude these channels of communication with Nicaragua. I believe that those channels of communication are an important complement.

"In this sense we will continue – and we said this clearly to President Ortega- looking for the reestablishment of the rights that this Judgment breached in a grave matter for the

Colombians. But I believe that it is an important step to handle this situation in a diplomatic, amicable fashion, as it must be handle.

(…)

We keep exploring all the recourses at our disposal to defend the rights of the Colombians".

Annex 10

DECLARATION OF THE PRESIDENT OF THE REPUBLIC OF COLOMBIA, 18 FEBRUARY 2013

(Available at: http://wsp.presidencia.gov.co/Prensa/2013/Febrero/Paginas/20130218_09.aspx (last visited 15 Dec. 2014))

Declaration of President Juan Manuel Santos during the Summit of Governors in San Andrés, 18 February 2013

President Juan Manuel Santos at the Governors Summit in San Andrés

San Andrés, 18 February 2013 [SIG]

(…)

Instructions to the Navy

And on this point, on commitments, and on the judgment, we continue with the lawyer who was indeed here, and is here at this moment studying alternatives which are available to us in legal terms.

We are engaged in conversations, and we are pursuing work with the lawyers who we contracted here in Colombia. This is one of the best legal teams in the country, and all alternatives are open. What I wish to reiterate to you –Governor–, because I have heard that some people have complained that there have been problems with certain Nicaraguan authorities, which threaten them, or that they say they have to ask permission to be able to fish here or not.

On this point, I will say the following so that it will be absolutely and totally clear: I have given peremptory and precise instructions to the Navy; the historical rights of fishermen will be made respected, whatever happens. Nobody will have to ask permission from anybody to go fishing where they had been fishing before.

This type of incident should not occur again, and the Navy indeed will increase its presence or the number of vessels that it has, so that no such incident will occur again.

Colombian fishermen will be able to exercise - and we have said this clearly - their historical fishing rights in all places where they have been fishing before. And we will see that they do so.

Now, what we have said is that we will guarantee those rights,

those historical rights of Colombians, rights in the area of security, rights in the area of environment, so that the daily lives of our fishermen, of the people of San Andrés and of all Colombia in general, will not be in any way affected.

(…)

Annex 11

DECLARATION OF THE PRESIDENT OF THE REPUBLIC OF NICARAGUA, 14 AUGUST 2013

(Available at: http://www.el19digital.com/articulos/ver/titulo:12213-33-aniversario-de-la-fuerza-naval- (last visited 15 Dec. 2014))

SPEECHES

33RD Anniversary of the Naval Force

Wednesdays, 14th August 2013. Communication and Citizenship Council

(…)

Speech of Daniel [President of the Republic of Nicaragua]

(…)

Since then [the 2012 judgment] we have been practicing normal duties which are exercised in the waters that belong to a state, in this case the Nicaraguan State. Immediately after the Judgment we began to navigate with whom? With the Navy, accompanied by whom? The Air Force…

(…)

We need to fight against drug trafficking and organized crime, because that is the main threat to the security of our countries; that is the biggest threat. And there is the conviction that we need to join our efforts, what we have been doing first here in our Central American sub-region, in the Caribbean and also coordinating activities with our sister Republic of Colombia.

(…)

Our greetings to all the Bothers of the Diplomatic Corps; to the Delegation of the Russian Federation… And speaking to our Colleagues, and with this I am concluding, speaking to the Colleagues of the Central American Navies, and this I extend to the Colombian Navy too, I make a recognition to the Colombian Navy; because, despite that the Government of President Santos has not yet pronounced itself on the Judgment of the Court, we had the opportunity to meet in Mexico with the occasion of the Inauguration of President Peña Nieto.

And there we agreed to seek a dialogue, for what? There is a Judgment, well, how we need to work for, starting from what the Judgment says onward we are going to continue

coordinating our work. But unfortunately in Colombia there are radical sectors, extremists, that want Colombia to disregard the Judgment, and that they claim, that Colombia disregards the Judgment, and amongst them the most salient one is President Alvaro Uribe, who wants to be President, so he thinks that with a message of this type he is going to win votes… I don't think so! I believe that the Colombian People want Peace.

And we recognize that in the middle of such a heated environment, because every day we listen to declarations coming from Colombia, incendiary declarations, confronting declarations, the Nicaraguan Naval Force has continued its work, the [Nicaraguan] Air Force has also continued patrolling in what corresponds to the new territories.

We have awarded exploration blocks in search for petroleum or gas in the territories, now defined by the Court as belonging to Nicaragua. At the time of defining the blocks we have respected the [Seaflower] Reserve zone… Reserve zone that already the Government of Colombia, I cannot say which Government, if it was that of President Uribe, had started to develop works of exploration in the Reserve Zone, when they had the dominion of the Reserve zone had started to make exploration works.

Nicaragua respects and is ready to work together with Colombia in protecting the [Seaflower] Reserve zone. We are ready to develop the dialogue, the negotiations between Colombia and Nicaragua that will finally enable us to overcome that situation so that we, Colombians and Nicaraguans, may work further for peace, for stability.

As I said, we must recognize that in the middle of all this media turbulence, the Naval Force of Colombia, which is very powerful, that certainly has a very large military power, has been careful, has been respectful and there has not been any kind of confrontation between the Colombian and Nicaraguan Navy, thank God, and God help us to continue working that way.

And I am convinced that, the one who has determined that pacific activity as it is called by the Chief of the Naval Force of Colombia, the one who has determined that pacific activity is

President Juan Manuel Santos. I am convinced, we hope that this will continue in the same manner until we can reach the dialogue, reach the negotiations so as to conclude the definitive agreements to apply the judgment rendered by the Court in the month of November of last year. We are totally so disposed.

(…)

Annex 12

DECLARATION OF THE PRESIDENT OF THE REPUBLIC OF COLOMBIA, 9 SEPTEMBER 2013

(Available at: http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130909_04-Palabras-Santos-Colombia-presenta-su-Estrategia-Integral-frente-al-fallo-de-La-Haya.aspx (last visited 15 Dec. 2014))

COLOMBIA PRESENTS ITS INTEGRAL STRATEGY ON THE JUDGEMENT OF THE HAGUE.

1. We have decided that the judgement is not applicable without a treaty.
2. We consolidate our Archipelago, through a declaration of an Integral Contiguous Zone.
3. We have moved forward in the environmental and social protection of the Seaflower reserve.
4. We have halted the expansionist ambitions of Nicaragua, by declaring the union of two continental shelves, which together extend from San Andrés to Cartagena.

Bogotá, September 9 2013 (SIG). The following is the speech by the President of Colombia, Juan Manuel Santos, on Colombia's comments of strategy to face the judgement of the International Court of Justice of The Hague.

"My fellow citizens.

All of us, as inhabitants of Colombia, are outraged with the judgement of the International Court of Justice.

Our Government, which inherited the management of a process which had already been in train for more than a decade, has had the responsibility of receiving that judgement, and taking measures to face up to the situation which it has caused.

And we have done so from the first very first moment, in a number of actions.

We have designed and implemented an ambitious investment plan to benefit the inhabitants of San Andrés, with programs in health, education, housing, technology, infrastructure, and energy; and we have strengthened our protection and support for the fishing community.

These investments have been decided upon jointly with the people of the islands, attending to their priorities: and they have more than doubled our historical annual investment in this Department. Those investments are very much a reality, and are being executed with all speed.

The objective is to make the Archipelago a sustainable region, providing opportunities for development to its people.

We have also denounced the Pact of Bogotá, that is, we have withdrawn from that treaty, which recognizes the jurisdiction of the Court of The Hague.

And we have dedicated ourselves, with all application, to the development of a legal and political strategy to reinforce and consolidate Colombia´s rights over the Archipelago of San Andrés, Providencia and Santa Catalina.

In this, we have the support of renowned Colombian and foreign lawyers, and we have evaluated and weighted the range of opinions, arguments and positions which we have used to design AN INTEGRAL STRATEGY.

Today, I would like to tell you what the strategy contains.

FIRST, and after analysing the studies and legal opinions, I ratify what I said that same afternoon that the judgement was issued.

I was elected to defend and to enforce the Constitution of Colombia.
That was my oath, which I cannot and will not betray.

Within my constitutional duties, I must protect and guarantee the rights of Colombians, defend our frontiers, and honour the treaties which Colombia has signed with other States.

Article 101 of our Constitution says that "The boundaries fixed in the manner set forth in this Constitution may only be changed by treaties approved by the Congress, duly ratified by the President of the Republic".

For its part, the Constitutional Court has clearly said that such treaties –that is, those that refer to Colombia's frontiers or boundaries - must always be approved by the Congress.

As President, I have an obligation to respect this mandate, our Constitution, and the decisions of the Constitutional Court.

Therefore, my position is clear and firm:

The decision of the International Court of Justice is not applicable - it is not and will not be applicable - until there is a treaty to protect the rights of Colombians, a treaty which must be approved in accordance with the terms of our Constitution.

I repeat the decision I have taken: without a treaty, the judgement of the International Court of Justice IS NOT APPLICABLE.

As Head of State, I will defend this position in such national and international instances as may be necessary.

Therefore, the Government will challenge the so-called “Pact of Bogotá” before the Constitutional Court. Why?

The Government will do this in order to reaffirm the position that Colombia's maritime limits cannot be automatically modified by a decision of the Court of The Hague.

And now, the SECOND DECISION.

I have today issued a very important decree, and I would like to explain its scope to you here.

Both our own laws and international law recognize to all our islands some fundamental maritime areas: the territorial sea and the contiguous zone.

These areas cannot be ignored, and we will not allow this to happen.

In this decree, therefore, and based on Colombian law, and taking account of clear principles of international law, we are establishing the rights of jurisdiction and control which are recognized by international law over those zones.

And we declare the existence of the Integral Contiguous Zone, which joins together the contiguous zones of all our islands and keys in the Western Caribbean Sea.

And we will be exercising full jurisdiction and control in that Zone

This integral area allows us to continue to provide appropriate administration to the Archipelago and its neighbouring waters - as an Archipelago, and not as unconnected territories - controlling security in the area, and protecting our resources and our environment.

The Integral Contiguous Zone that we have declared covers the areas of sea extending from south- the cays of Albuquerque and the South-Eastern islands - to north-Serranilla Cay.

And naturally, this includes the islands of San Andrés, Providencia and Santa Catalina, Quitasueño, Serrana and Roncador, and the other formations in the area.

I know these islands, islets and cays: I have visited them, not only when I was Minister of Defence, but also 45 years ago when I was a naval cadet, and we patrolled these waters in the Frigate ARC Antioquia.

So, today I want to reassure you that what I watched over as a Marine, and what I defended as a Minister, I will now protect, to the last consequences, as President.

We will be exercising jurisdiction and control of the Integral Contiguous Zone in all matters related to security, and the fight against crime, and in taxation, customs and the environment; and in immigration and health regulations amongst other matters.

This means that this country may rest assured that the Archipelago San Andrés, Providencia and Santa Catalina is, and will continue to be, a complete and integrated Archipelago, with the active presence of the State in all its maritime territories.

A THIRD DECISION is to resort to all legal and diplomatic means to reassert the protection of the Seaflower Reserve, where our fishermen have been at work for hundreds of years.

We are aware of the great ecological value of this area to the Archipelago and to the world, which UNESCO has declared as a

World Biosphere Reserve.

Nicaragua has claimed UNESCO to recognize it greater rights over the reserve. Colombia has opposed this.

We celebrate the recent pronouncement by UNESCO, that it is not part of its functions to intervene in disagreements between nations, contrary to Nicaragua's claims.

In internal terms, I have given instructions for us to move forward with all determination in the work of environmental and social protection, in order to prevent any adverse effects or damage to our fishermen, and to the waters surrounding the Archipelago.

And there is the FOURTH important – indeed, transcendental - FRONT on which we are also working, in efforts to contain Nicaragua's expansionism in the Caribbean.

We know that Nicaragua is thinking of requesting the International Court of Justice to recognize a continental platform that extends to the east of the Archipelago of San Andrés, as it had already done during the process leading up to the recent judgement.

This claim would attempt to deprive us of resources which are ours; and nothing could be more absurd than to extend Nicaraguan jurisdiction to just 100 miles off our coast at Cartagena.

This is completely unacceptable - and I want to make this absolutely clear – and we are not going to permit this to happen in any way, manner, form or circumstance.

Colombia faces, and will have to face, these expansionist claims inflexibly and with total determination.

And we are not alone in this decision.

With other countries, other neighbours of Nicaragua, which are also affected by its expansionist ambitions, such as Panama, Costa Rica and Jamaica, we will be signing a letter of protest

which I will personally be delivering this month to the General Secretary of the United Nations in New York, when I intervene before the General Assembly.

Indeed - and we should remember this - the judgement of The Hague completely ignores treaties of boundaries that we have in force with these countries and which we have a duty to observe.

This is another reason why we cannot apply the judgement of The Hague, a reason that forces us to resort to diplomatic channels.

For our part, the people of Colombia can be sure that we are going to put up a decisive opposition to the expansionist claims of Nicaragua in any and every international instance, with very solid technical and legal arguments which we have been ready for some time now, but which, as you will understand, I cannot reveal to you.

And I do not have the smallest doubt – not the very smallest - that we shall be successful in this effort.

In the Decree issued today, we are also making a legal re-assertion that the continental shelf of San Andrés extends east for 200 nautical miles, and unquestionably joins the continental shelf of the Colombian Caribbean coast, which extends north-west towards San Andrés, for at least 200 miles.

This means that we have a continuous and integrated continental shelf from San Andrés to Cartagena, over which Colombia has been exercising, and will continue to exercise the sovereign rights conferred upon us by international law.

So, clearly, conclusively, and overwhelmingly, we are closing the door to the expansionist aims of Nicaragua.

All the measures that we have taken - and those which I am announcing today - form part of this integral strategy, which has been most carefully designed to defend the interests of Colombia.

So, to develop that strategy, we have today taken four fundamental steps, which we can summarize as follows:

First: we have decided that The Hague judgement is not applicable without a treaty.

Second: we have consolidated our Archipelago through a declaration of an Integral Contiguous Zone.

Third: we have moved forward in the environmental and social protection of the Seaflower Reserve.

And fourth: we have halted the expansionist ambitions of Nicaragua, by declaring the union of the two continental shelves, which together extend from San Andrés to Cartagena.

Aside from these four measures, we have naturally reserved the right to resort to all the forms of recourse available before the International Court of Justice, and to take other actions.

And because we also have a responsibility for the peace and security of the Caribbean – none of this will be a bar to those who fish in the area from continuing to do so, as a means of subsistence for themselves and their families.

Fellow Colombians.

You may be sure that I, as your President and as a Colombian, will continue to protect our rights.

I will continue without rest, to protect our sovereignty, and every inch of our islands and our seas, and of all our nation´s territories.

And I will continue to observe our Constitution faithfully, as I have sworn to do before God and yourselves - with all the commitment, efforts and strength at my command.

Good night.

Annex 13

DECLARATION OF THE PRESIDENT OF THE REPUBLIC OF COLOMBIA, 18 SEPTEMBER 2013

(Available at: http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130918_09-Palabras-Presidente-Juan-Manuel-Santos-durante-ejercicio-soberania-que-cumplio-en-el-Mar-Caribe.aspx (last visited 15 Dec. 2014))

Declaration by President Juan Manuel Santos during the exercise of sovereignty the Caribbean Sea

San Andrés Islas, 18 September 2013 [SIG]

"Good afternoon. We are patrolling and exercising sovereignty over Colombian waters, as I did 45 years ago on board the frigate ARC Antioquia. On this occasion, we are on aboard the frigate ARC Almirante Padilla accompanied by frigate "20 de Julio", and this time I am not doing so with my fellows in Contingent 42 of the Naval Cadet Academy, but with the entire Colombian state.

This includes the Judiciary, represented by the President of the Supreme Court of Justice; the Legislature, represented by the President of the Chamber of Representatives, and the Presidents of Senate and Chamber Commissions II and Representative Jack Housni, member for San Andrés and Providencia, in the Chamber of Representatives.

I am also accompanied by the Minister of Justice and Law, the Minister of Defence, and the Commander in Chief of our armed forces and police.

After this patrol, I wish to reaffirm what I said on the 9th of this month, last Monday: Colombia considers that the judgment of The Hague is not applicable, and we are not going to apply it, as I said then and as I repeat today, until we have a new treaty. And we are not going to take any action in any direction until the Constitutional Court has made its pronouncement, after the application which I personally submit against the Pact of Bogotá.

I would also like to reaffirm that we will continue to protect the Seaflower Reserve, which UNESCO has considered as part of the World Heritage.

In this line of thought, and some time ago now, I asked Dr. Sandra Bessudo to collect up all the information available on the investigations which would be made by the various universities, and other institutions, the Navy itself and NGOs, all in relation to the scientific value, the value which this Reserve has, as

something which belongs to all mankind.

We now have that information. And we are going to make a scientific expedition at the end of this year, with the Navy, with a number of universities, with the academic world. A scientific expedition in which we are going to use the latest technology: a robot which will, for the first time, go down to film at 300 m deep. That depth has never been reached before.

Satellite telemetry exercises will be done, along with acoustic exercises on sharks, on fishing prospections, because this is a zone of great importance for our artisan fishermen, which will give us information to support our actions in the context of the International Whaling Commission. There will also be studies in oceanography, coastal erosion and climate change, all of this coordinated with UNESCO.

Finally, I would like to refer to the new claims made by Nicaragua against Colombia. We vehemently reject this new claim, which refers to the extended continental shelf, which the international Court of Justice of The Hague had already denied.

We consider that this claim is inadmissible, unfounded, unfriendly, reckless, and with no possibility of success.

Our shelf runs from San Andrés, where we are, across to Cartagena, Barranquilla and Santa Marta. This platform is not negotiable in any circumstances. And we shall defend it with full and overwhelming vigour, and because it is a shelf which belongs to us as Colombians.

So, here, on this frigate, I reaffirm that this new claim made by Nicaragua against Colombia will not be allowed to prosper. There is no legal basis and there is no technical argument for it, and therefore, I repeat, we shall defend it with full and overwhelming vigour.

And we shall continue to patrol, as we have been doing today. And we shall continue to exercise sovereignty over our territorial waters.

We are also accompanied here by the Governor of San Andrés

and Providencia. She knows that she has the full support of our Government. This is support we have given to her on many fronts, and will continue to give so that San Andrés, Providencia and Santa Catalina will have an ever better future.

Thank you very much"

Annex 14

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 (last visited 15 Dec. 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 15

DIPLOMATIC NOTE GACIJ NO. 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 Ministry of Foreign Affairs of Colombia)

REPUBLIC OF COLOMBIA
MINISTRY OF FOREIGN AFFAIRS

GACIJ No. 79357

Bogotá D.C., 27 November 2012

Excellency:

I have the honour 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 16

NOTE NO. OEA/2.2/109/12 FROM THE SECRETARIAT FOR LEGAL AFFAIRS OF THE DEPARTMENT OF INTERNATIONAL LAW OF THE ORGANIZATION OF AMERICAN STATES 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 Ministry of Foreign Affairs of Colombia)

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 17

NOTE VERBALE NO. MRE/VM-DGAJST/457/09/14 FROM THE MINISTRY OF FOREIGN AFFAIRS OF NICARAGUA TO THE MINISTRY OF FOREIGN AFFAIRS OF COLOMBIA, 13 SEPTEMBER 2014

(Archives of the Ministry of Foreign Affairs of Colombia)

[Seal Republic of Nicaragua]

Ministry of Foreign Affairs

Note No. MRE/VM-DGAJST/457/09/14

The Ministry of Foreign Affairs of the Government of Reconciliation and National Unity of the Republic of Nicaragua – General Office of Legal Affairs, Sovereignty and Territory – kindly greets the honourable Embassy of the Republic of Colombia, and has the honour of referring to the numerous facts and incidents, in which the Navy of the Republic of Colombia has been involved, which have taken place in the exclusive economic zone of Nicaragua as recognized in the Judgment of 19 November 2012.

These incidents have taken place during various months after the Judgment referred to above was pronounced, during which Nicaragua has exercised great prudence in handling them, and which that object the Naval Force of the Army of Nicaragua was instructed in order to avoid any confrontation. The prudence displayed by the Nicaraguan Naval Force is evident in the light of the facts illustrated in the non-exhaustive list attached to the present Note.

Additionally, and with the aim of not favouring the political manipulation of this sensitive topic in the face of the recent Colombian national elections, Nicaragua also considered prudent to avoid the sending of continuous notes of protest at the moment of occurrence of each incident. Notwithstanding, in view of the persistence of these actions which systematically have come to confirm a continuous threat to use force which have had as a direct consequence impeding and discouraging many fishermen and investors in general, of exploring and exploiting the resources in the zone, Nicaragua has considered necessary to point out some of the many incidents in which the Navy of Colombia, among other, has infringed upon the sovereign rights of Nicaragua and has resorted to the threat of the use of force.

In particular, the present list reflect the continuous harassment of the Colombian Navy against the naval units of Nicaragua and

vessels with fishing licenses issued by Nicaragua, harassment which has not only been carried out by Colombian frigates but also by official Colombian aircrafts. In particular, the Colombian frigates try to prevent the fishing activities in Nicaragua's exclusive economic zone and the exercise of the jurisdictional activities by the naval units of Nicaragua, under the argument that the Government of Colombia does not recognize nor applies the Judgment of the International Court of Justice of 19 November 2012.

In the same manner, the frigates of the Colombian Navy impose what they refer to as the "integral contiguous zone" of the Archipelago of San Andrés y Providencia, which usurp maritime spaces appertaining to Nicaragua's exclusive economic zone; for that, the Colombian Navy constantly makes recourse to the threat of the use of force against the naval units of Nicaragua, which have consistently handled the incidents with prudence and have opted for withdrawing in order to avoid a major incident.

Nicaragua reminds Colombia that the judgments of the International Court of Justice are definitive and of unavoidable compliance from the very same day they are issued, and for this reason all these facts constitute grave violations that contravene international law and customary international law, including the duty to refrain from the use or from the threat of the use of force, the obligation not to infringe upon the maritime zones of Nicaragua or to prevent it from the enjoyment of its sovereign rights, nor to authorize fishing or research activities in marine spaces under Nicaraguan jurisdiction.

In this sense, the Ministry of Foreign Affairs of Nicaragua presents the most energetic protest and requests Colombia to issue the corresponding instruction so that these [incidents] are not to be repeated.

The Ministry of Foreign Affairs of the Government of Reconciliation and National Unity of the Republic of Nicaragua - General Office of Legal Affairs, Sovereignty and Territory- avails of the occasion to reiterate to the Honourable Embassy of the Republic of Colombia the expression of its highest consideration.

Managua, 13 September 2014

[*Signature*]
TO THE HONOURABLE
EMBASSY OF THE REPUBLIC OF COLOMBIA
MANAGUA

Annex 18

NOTE VERBALE NO. S-GAMA-14-071982 FROM THE MINISTRY OF FOREIGN AFFAIRS OF COLOMBIA TO THE MINISTRY OF FOREIGN AFFAIRS OF NICARAGUA, 1 OCTOBER 2014

(Archives of the Ministry of Foreign Affairs of Colombia)

REPUBLIC OF COLOMBIA
MINISTRY OF FOREIGN AFFAIRS

S-GAMA-14-071982

The Ministry of Foreign Affairs – Office of Territorial Sovereignty and Frontier Development, presents its compliments to the Honourable Ministry of Foreign Affairs of Nicaragua – General Office of Legal Affairs, Sovereignty and Territory, and regarding its Note No. MRE/VM-DGAJST/457/09/14, dated 13 September 2014, received by our Embassy in Managua on 17 September 2014, would like to make the following remarks in the spirit of good neighbourliness that has always moved Colombia in our bilateral relations.

The Government of Colombia receives with surprise the list of alleged events occurred in the Western Caribbean. This is the first note from Nicaragua voicing itself on that regard, even though more than 85 per cent of the incidents supposedly occurred more than six months ago. Without prejudice to the position of Colombia in relation to the actual occurrence of said alleged events, Nicaragua's lateness in reporting them demonstrates that none was seen or understood by Nicaragua or Colombia as an incident.

Colombia does not understand the reasons adduced in your note for not referring to them, in that, even in the Colombian pre-electoral periods, there has always been fluid communication between the officials of both countries and the respective Ministries.

The Honourable
MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF NICARAGUA
General Office of Legal Affairs, Sovereignty and Territory
Managua

The Government of Colombia emphatically rejects the statements made in your Note of protest since the Republic of Colombia has never used force or threatened to do so against the Republic of Nicaragua, nor has it exercised pressure or harassment of any kind. The situation in the Caribbean as it relates to Nicaragua has remained calm at all times. This is confirmed from the declarations of Presidents Juan Manuel Santos and Daniel Ortega, as well as from those of high-ranking Army and Navy officials of both States, which reflect the cordial relations between our States. Evidence of this is found in the continual cooperation and positive communication between the two Navies, which has been frequent in the zone before and after November 2012. Furthermore, since November 2012, the Government of Colombia instructed its Navy to act with special prudence and caution in the area in order to prevent any incident, and also to avoid reacting to any provocation that could disrupt the harmony in the Caribbean.

In relation to our Integral Contiguous Zone, it should be noted that all of Colombia's decisions have been adopted and all its rights have been exercised in accordance with customary international law and with utmost respect for the rights of third States.

The Republic of Colombia reiterates its commitment to the peaceful settlement of disputes and the respect of international law.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Honourable Ministry of Foreign Affairs of the Republic of Nicaragua the assurances of its highest consideration.

Bogotá D.C., 1 October 2014

[Signature]
[Date]

Annex 19

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)

[p. 1]

TREATY OF COMPULSORY ARBITRATION,

Signed at the City of Mexico, January 29, 1902

(…)

[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.

(…)

[p. 5]

TREATY TO AVOID OR PREVENT CONFLICTS BETWEEN THE AMERICAN STATES

GONDRA TREATY

Signed at Santiago, May 3, 1923

(…)

[Excerpt transcribed from pp. 7 and 8]

(…)

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.

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.

(…)

[p. 10]

GENERAL CONVENTION OF INTER-AMERICAN CONCILIATION

Signed at Washington, January, 1929

(…)

[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.

(…)

[p. 15]

GENERAL TREATY OF INTER-AMERICAN ARBITRATION

Signed at Washington, January 5, 1929

(…)

[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.

(…)

[p. 22]

PROTOCOL OF PROGRESSIVE ARBITRATION

Signed at Washington, January 5, 1929

[There is not a Denunciation Clause]

(…)

[p. 24]

ANTI-WAR TREATY OF NON-AGGRESSION AND CONCILIATION

Signed at Rio de Janeiro, October 10, 1933

(…)

[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.

(…)

[p. 34]

ADDITIONAL PROTOCOL TO THE GENERAL CONVENTION OF INTER-AMERICAN CONCILIATION

Signed at Montevideo, December 26, 1933

[There is not a Denunciation Clause]

(…)

[p. 36]

CONVENTION ON MAINTENANCE, PRESERVATION AND REESTABLISHMENT OF PEACE

Signed at Buenos Aires, December 23, 1936

(…)

[Excerpt transcribed from pp. 37 and 38]

(…)

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

(…)

[p. 41]

ADDITIONAL PROTOCOL RELATIVE TO NON-INTERVENTION

Signed at Buenos Aires, December 23, 1936

(…)

[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.

(…)

[p. 45]

TREATY ON THE PREVENTION OF CONTROVERSIES

Signed at Buenos Aires, December 23, 1936

(…)

[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.

(…)

[p. 49]

INTER-AMERICAN TREATY ON GOOD OFFICES AND MEDIATION

Signed at Buenos Aires, December 23, 1936

(…)

[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.

(…)

[p. 53]

CONVENTION TO COORDINATE, EXTEND AND ASSURE THE FULFILLMENT OF THE EXISTING TREATIES BETWEEN THE AMERICAN STATES

Signed at Buenos Aires, December 23, 1936

(…)

[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 20

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

(The International Conferences of American States, First Supplement, 1933-1940, Division of International Law, Washington : Carnegie Endowment for International Peace, 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 21

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

(The International Conferences of American States, First Supplement, 1933-1940, Division of International Law, Washington : Carnegie Endowment for International Peace, 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 22

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)

[p. 1]

MEMORANDUM

For: The Under Secretary of State

From: Dr. Rowe

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

(…)

[Excerpt transcribed from p. 6]

(…)

My thought in presenting these observations to you is to raise the question of the desirability of reexamination of 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 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.

(…)

Annex 23

DELEGATION OF THE UNITED STATES OF AMERICA, *TOPIC 1: PERFECTING AND COORDINATION OF INTER-AMERICAN PEACE INSTRUMENTS, DRAFT ON CONSOLIDATION OF AMERICAN PEACE AGREEMENTS SUBMITTED TO THE FIRST COMMISSION*, EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, LIMA, PERU, 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, Peru, 15 Nov. 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 accredited

Article 3, Gondra Treaty.

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 shall — Article 7, Gondra Treaty.

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 24

DELEGATION OF THE UNITED STATES OF AMERICA, *TOPIC 1: PERFECTING AND COORDINATION OF INTER-AMERICAN PEACE INSTRUMENTS, FINAL DRAFT ON CONSOLIDATION OF AMERICAN PEACE AGREEMENTS SUBMITTED TO THE FIRST COMMISSION*, EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, LIMA, PERU, 16 DECEMBER 1938

("Report of the Delegation of the United States of America to the Eighth International Conference of American States, Lima, Peru, Dec. 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.

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

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, 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 25

DELEGATION OF THE UNITED STATES OF AMERICA, *REPORT OF THE MEETINGS OF SUB-COMMITTEE 1 OF COMMITTEE I, CONSOLIDATION OF AMERICAN PEACE INSTRUMENTS AND AGREEMENTS*, EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, 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)

[p. 1]

CHAPTER 1
ORGANIZATION OF PEACE

CONSOLIDATION OF AMERICAN PEACE INSTRUMENTS AND AGREEMENTS

(…)

[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 26

COMPARATIVE CHART OF DRAFTS PRESENTED BY AMERICAN STATES TO THE FIRST COMMISSION AT THE EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, LIMA, PERU, 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, Nov., 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 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.*

Annex 27

EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, *PERFECTION AND COORDINATION OF INTER-AMERICAN PEACE INSTRUMENTS, RESOLUTION XV*, 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)

APPENDIX "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 28

INTER-AMERICAN JURIDICAL COMMITTEE, *TEXT OF DOCUMENT A: DRAFT TREATY FOR THE COORDINATION OF INTER-AMERICAN PEACE AGREEMENTS, ARTICLE XXXII*; *TEXT OF DOCUMENT B: DRAFT OF AN ALTERNATIVE TREATY RELATING TO PEACEFUL PROCEDURES, ARTICLE XXVIII*; 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*, 6 MARCH 1944

(Inter-American Juridical Committee, Recommendations and Reports, Official Documents 1942-1944, Imprensa Nacional, Rio de Janeiro, Brasil, 1945, pp. 67, 78, 81-82)

[p. 53]

COORDINATION PF INTER-AMERICAN PEACE AGREEMENTS

(…)

TEXT OF DOCUMENT A (*)

DRAFT TREATY FOR THE COORDINATION OF INTER-AMERICAN PEACE AGREEMENT

(…)

[Excerpt transcribed from p. 67]

(…)

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.

(…)

[p. 69]

TEXT OF DOCUMENT B

DRAFT OF AN ALTERNATIVE TREATY RELATING TO PEACEFUL PROCEDURES

(…)

[Excerpt transcribed from p. 78]

(…)

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 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.

(…)

[Excerpt transcribed from pp. 81 and 82]

TEXT OF DOCUMENT C

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

(…)

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 of Prevent Conflicts between 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.

(…)

Annex 29

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., Oct. 1945, pp. 11-12, 22)

[p. 1]

INTER-AMERICAN JURIDICAL COMMITTEE

DRAFT
OF AN
"INTER-AMERICAN PEACE SYSTEM"

(…)

[Excerpt transcribed from pp. 11 and 12]

(…)

Article XXIX

This treaty shall come into effect between the High Contracting Parties in the order in which they deposit their ratification, 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 denunciation shall be transmitted by the Pan American Union to the other signatory governments. Denunciations shall not affect any pending proceedings instituted before notice of denunciation is given.

(…)

[Excerpt transcribed from p. 22]

(…)

Part VII of the Preliminary Draft of the Juridical Committee, entitled 'Final Provisions' follows the general lines already approved by the American States.

(…)

Annex 30

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

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

[p. 1]

INTER-AMERICAN PEACE SYSTEM

Definitive Project submitted by the Inter-American Juridical Committee to the consideration of the Ninth International Conference of American States at Bogota

(…)

[Excerpt transcribed from p. 9]

(…)

Article XXVI

This treaty shall come into effect between the High Contracting Parties in the order in which they deposit their ratification, 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 denunciation shall be transmitted by the Pan American Union to the other signatory governments. Denunciations shall not affect any pending proceedings instituted before notice of denunciation is given.

(…)

Annex 31

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

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

[Excerpt transcribed from p. 537]

(…)

Mr. PRESIDENT: …

(…)

Messrs. 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.

(…)

[Excerpt transcribed from 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 32

NINTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, *STYLE COMMISSION*, 29 APRIL 1948

(Ninth International Conference of American States, Bogotá, 30 Mar. - 2 May 1948, Minutes and Documents, Vol. II, Ministry of Foreign Affairs of Colombia, Bogotá, 1953, p. 591)

STYLE COMMISSION[1]

Explanatory Note of the activities of the Style Commission. – The Style Commission started its work on 29th April with the study of the texts submitted for its consideration by the Coordination Commission, in accordance with the Article 20 of the Statute of the Conference.

This Commission, given its nature, did not produce any document, and its decisions were not recorded on minutes or stenographic versions. It [the Commission] first reviewed the text of the Charter of the Organization of American States; then, the resolutions, recommendations, declarations, agreements, votes and motions that constitute the Final Act, in the four official languages of the Conference: Spanish, English, Portuguese and French.

The Style Commission also reviewed the texts of the others diplomatic instruments that were signed by the plenipotentiaries in the Closing Session of the Conference, i.e.: American Treaty on Pacific Settlement (Pact of Bogotá); Economic Agreement of Bogotá; Inter-American Convention on the Granting of Political Rights to Women; Inter-American Convention on the Granting of Civil Rights to Women. However, as agreed by the delegation, they signed the Economic Agreement only in the Spanish and English texts, and the other three solely in Spanish.

In its session of 8th June, 1948, the Council of the Organization of American States approved the texts of the Final Act and the five diplomatic instruments of the Ninth International Conference of American States, in the four official languages, making some modifications, mainly in the English and Portuguese versions, which have been taken into account in the texts contained in Volume VI of this compilation.

[1] References.–Statute of the Conference, Art. 12°: "There will be… a Style Commission that will be integrated with a representative of each one of the official languages of the Conference"; *id.,* Art. 20°: "The Style Commission shall be responsible of the final revision of the work made by the Coordination Commission, which only could make editorial modifications, that does not alter the substance of the matter, over the final texts approved by the Coordination Commission."

Annex 33

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

(Ninth International Conference of American States, Bogotá, 30 Mar. - 2 May 1948, "Actas y Documentos, Volumen VI, Conclusiones, Acta Final-Instrumentos Diplomáticos", Ministry of Foreign Affairs of Colombia, Bogotá, 1953, pp: 71-82 (Spanish); 84-94 (English);95-06 (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 settlement between the parties or governed by agreements and treaties in force, determine, in virtue of their objective and peremptory nature, the exclusion of these cases from the application of every procedure.

3. Reservation with regard to Article XXXV, in the sense that, before arbitration is resorted to, there may be, at the request of one of the parties, a meeting of the Organ of Consultation, as established in the Charter of the Organization of American States.

4. Reservation with regard to Article XLV, because it believes that arbitration set up without the participation of one of the parties is in contradiction with its constitutional provisions."

Nicaragua

"The Nicaraguan Delegation, on giving its approval to the American Treaty on Pacific Settlement (Pact of Bogotá), wishes to record expressly that no provisions contained in the said Treaty may prejudice any position assumed by the Government of Nicaragua with respect to arbitral decisions the validity of which it has contested on the basis of the principles of international law, which clearly permit arbitral decisions to be attacked when they are adjudged to be null or invalidated. Consequently, the signature of the Nicaraguan Delegation to the Treaty in question cannot be alleged as an acceptance of any arbitral decisions that Nicaragua has contested and the validity of which is not certain.

Hence the Nicaraguan Delegation reiterates the statement made on the 28th of 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.

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 2º do artigo 36º 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 40º de seu Estatuto. A jurisdição da Côrte ficará obrigatòriamente aberta, conforme o inciso 1º do artigo 36º 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 34

90 MINUTOS, *COLOMBIA SEEKS CONTACT WITH NICARAGUA AFTER JUDGMENT OF THE HAGUE*, 24 NOVEMBER 2012

(Available at: http://www.90minutos.co/content/colombia-busca-contacto-con-nicaragua-tras-el-fallo-de-la-haya#.VGNG-PnF-oO (last visited 15 Dec. 2014))

Colombia seeks contact with Nicaragua after Judgment of The Hague

Sat, 11/24/2012 - 15:27

After the judgment of The Hague, President of Colombia told the Minister of Foreign Affairs to initiate direct contact with the Nicaraguan government.

On Saturday, through his Twitter account, President Juan Manuel Santos referred to the judgment of the International Court of Justice in The Hague, in which a historically Colombian portion of sea was taken away and given to Nicaragua.

Through the social network, the president said, "I will ask the Minister of Foreign Affairs to enter into direct contact with the Government of Nicaragua to handle this dilemma with prudence and respect".

The contact search is initiated with Nicaragua after the Minister of Foreign Affairs reminded that "Colombia has not yet accepted" the judgment of the International Court and that the country does not rule out the possibility to withdraw from the Pact of Bogota.

In this regard, the Minister revealed that she has been holding talks with her counterpart of Nicaragua, Samuel Santos, on the possibility and the development terms of a "fishing agreement".

But the Nicaraguan president, Daniel Ortega, launched strong criticisms to the Colombian government for the comments on the judgment, assuring this Saturday that the only way that is left to Colombia is to recognize the decision of the high court.

According to president Ortega for Colombia there is no choice but to comply with the judgment of the Court, respecting the right of Nicaragua. "Colombia did many tricks to snare Nicaragua ... the speech of president Santos (after the judgment in The Hague) is troubling, it is a total disrespect for international law, this worries us", Ortega said.

The Court recognized the sovereignty of Colombia over the archipelago of San Andres, Providencia and Santa Catalina, and its seven islands in the waters of the Caribbean Sea, but gave portions of sea to Nicaragua, that up to now were in the hands of Bogota.

Authorities in Bogota have said that the judgment of the islets in Nicaraguan waters not only took away Colombian territory but also affected fishermen in the archipelago who had in that region their biggest bank of fishing.

Annex 35

TELE SUR, *ORTEGA AND SANTOS TALK IN MEXICO ABOUT DISPUTE*, 1 DECEMBER 2012

(Available at: https://www.youtube.com/watch?v=gGOEEpJ7XYU (last visited 15 Dec. 2014))

ORTEGA AND SANTOS TALK IN MEXICO ABOUT DISPUTE

(…)

President of Nicaragua, Daniel Ortega:

…to develop mechanisms of communication in all these areas that I have mentioned, what for? So we can guarantee security to everyone.

President of Colombia, Juan Manuel Santos:

…nobody wants a warlike confrontation. This is the last recourse. The way to settle this type of situations is through dialogue. A reasonable dialogue where the positions are clearly established and expressed, just as we expressed to President Ortega as the Colombian position.

We will keep looking for the mechanism that both the International Court of The Hague and international diplomacy have at their disposal to re-establish the rights infringed by the Judgment.

Annex 36

EL NUEVO DIARIO, *THE NAVIES ARE COMMUNICATING*, 5 DECEMBER 2012

(Available at: http://www.elnuevodiario.com.ni/nacionales/271274-militares-se-comunican (last visited 15 Dec. 2014))

The Navies are communicating

> The General Avilés and the Colombian Minister María Ángela Holguín confirmed the communication channel after the meeting between presidents Ortega and Santos in Mexico.

By: Alma Vidaurre Arias | Country

General Julio César Avilés, chief of Nicaragua's Army, confirmed yesterday that they are currently in communication with the Colombian Armed Forces, to cordially clarify, that the national institution is exercising sovereignty in this area and there is no reason for harassment.

"We are in communication with the Colombian authorities; there should not be any kind of harassment, there has been no boarding to fishing vessels. The declarations we heard from business fishermen are clearly saying that they have been going around but not boarding, which is serious", explained Nicaragua's chief of the Army.

He later added that he will contact the Colombian Navy Force to state that is Nicaragua who currently exercises the authority over this maritime area.

The conversations held between military members from both countries were also confirmed by Colombian Minister of Foreign Affairs, María Ángela Holguín, who assured this was the result of the encounter held during the past weekend in Mexico, by the President Juan Manuel Santos, from Colombia, and Daniel Ortega, from Nicaragua.

Yesterday, Avilés reiterated that Nicaragua continues exercising sovereignty over the maritime shelf in the Caribbean Sea granted by the International Court of Justice, ICJ, from The Hague and that, because of this, "there should not be any kind of harassment" against Nicaraguan fishing vessels.

"Nicaraguan people should have full certainty, full security, that Nicaragua is exercising sovereignty over these territorial or

maritime spaces, which have been reclaimed and returned by the International Court of Justice", the military Chief added.

Avilés pointed out that traditional and industrial fishermen are also carrying out a patriotic work in the zone when going out to fish, after the Nicaraguan Fishing and Agriculture Institute Inpesca, extended their permits.

First relays

General Avilés reminded that since last Sunday Nicaragua exercises "sovereignty" flying around with Air Force's pilots and navigating through the wide space granted by the international tribunal, until "the established boundaries".

In this sense he explained that they made already the first military relieves in the area.

"We are all clear that from the 19th (of November) when the International Court of Justice rendered its Judgment, those waters belong to our country, as it has been historically, the Court has just returned to Nicaragua those sovereign waters that have always been ours", the Senior Military Official emphasized.

According to Avilés, when Colombia says it navigates in its maritime spaces it is making reference "to the space given by the ICJ (to Colombia), which is "an enclave around the archipelago" of San Andrés, and not the waters given to Nicaragua.

"We are exercising the law, and not just the Army through the naval and air means, but other National Institutions like Inpesca, who must start validating the vessels' authorizations which used to go to another place, but now have to come here to Nicaragua", he pointed out.

Holguín: Avoid incidents

After returning from Mexico, the Colombian Minister of Foreign Affairs, María Ángela Holguín, gave an interview to "W Radio", from her country, in which she claimed that the

encounter between presidents Santos and Ortega was very cordial, and confirmed that a communication channel between both countries' navies was opened.

"It was a very good and cordial meeting. It was favourable that the first contact was fluent, and it was. I believe we opened a very important communication channel. What we do want to avoid by all means is an incident in the frontier and (to avoid) not to have communication between the two countries, and that was very clear", Holguín expressed.

"The Army Majors (from both countries) had a conversation. They had done it last week also but I read a Nicaraguan's newspaper report which said there were harassments held by the Colombian Army against Nicaraguan fishermen. He was called by Admiral García and it was very clearly stated that there has been nothing like that. They do not have any report", the Minister said.

She added that it was because of the Nicaraguan fishermen's fear when seeing the Colombian frigates in the area that this information spread.

"Admiral García told them they have clear instructions of doing absolutely nothing; they are navigating international waters and the Colombian territorial sea, but I believe this is going very well and Saturday's communication channel was very positive", the Minister Holguín specified.

"We are in communication with the Colombian authorities, there should not be any kind of harassment".
Julio César Avilés, Nicaraguan chief of army

"We want to avoid by all means an incident in the border and (to avoid) not to have communication between the two countries"
María Ángela Holguín, Colombian Minister

Annex 37

EL TIEMPO, PRESS INTERVIEW TO THE MINISTER OF FOREIGN AFFAIRS OF COLOMBIA, 13 JANUARY 2013

(Available at: http://www.eltiempo.com/archivo/documento/CMS-12510163 (last visited 15 Dec. 2014))

"Pastrana and Uribe harm the country to save themselves": Minister of Foreign Affairs

Holguín also said that, for the first time, Santos' Government can 'influence' the process with Nicaragua.

(…)

What has Colombia done after the Judgment of The Hague?

We have worked in different areas. The first one was to study the Judgment in depth with a group of national and international lawyers, to understand the scope of that Judgment and see the inconsistencies and vacuums it has. On the other side, we had a meeting with the President of Nicaragua (Daniel Ortega) in order to open a dialogue and a door to avoid any confrontation and to establish a communication channel. Moreover, we implemented the San Andrés Plan, to give a boost to the island.

(…)

Has there been any improvement in getting to an agreement with Nicaragua?

It was said that in the future we were going to focus on three main topics: fishing, security, and environment. It was said that both countries will work hand by hand, which we will do later. But today we have a fluent communication, the Navies are in constant contact and the communication channels are open.

(…)

Annex 38

BLU RADIO, *WATERS OF SAN ANDRÉS, MAIN CHALLENGE OF NEW COMMANDER OF THE NAVY*, 13 AUGUST 2013

(Available at: http://bluradio.com/38934/aguas-de-san-andres-principal-reto-del-nuevo-comandante-de-la-armada-nacional (last visited 15 Dec. 2014))

BLU radio

13 August 2013 - 6:30 a.m./duration 0:04:46 [audio]

Waters of San Andrés, the main challenge of the new Commander in chief of the Navy.

Vice admiral Hernando Wills will be the Commander in Chief of the Navy. He has served in training ship Gloria; he was the Commanding Officer of the Naval Force in the Pacific, and has been a Military Academy professor, amongst other things

In "BLU Mornings" this son of Cartagena tells us that he was outside Colombia when he discovered the news of his appointment by the President, and had to travel urgently to Bogotá to take over the position, and conduct the handover at the Ministry of Defense.

His main challenge, he confessed, will be to face up to the pressures of Nicaragua in the matter of territorial waters which Colombia lost in the international Court of The Hague and "to protect the fishermen in the areas where they have historically worked, and to maintain an ongoing presence."

Interview

Nestor Morales [NM]: Who is the new Commander in chief of Navy? He is Vice Admiral Hernando Wills, born in Cartagena in 1960, perhaps the youngest of the High Command.

Admiral Wills, good morning

Vice Admiral Hernando Wills [VFW]: Good morning, and a warm welcome to all our listeners, and I am very happy at this appointment by the Government.

And, well, with the best expectations and much enthusiasm to continue with such serious and unremitting work which the Navy and the Army have had in recent times.

NM: Admiral, they tell me in the Ministry of Defense, that you

were outside Colombia when they surprised you last night with the appointment?

VHW: Yes, I was away on training, but fortunately I could return as fast as possible, and have just arrived here in Bogotá, to meet up with everyone, with the whole handover of the situation, and awaiting direct instructions from the Minister of Defense.

NM: Admiral, did you arrive last night by chance, or did they make you come back early?

VHW: No, I came back of course because of the situation, as I told you, I have just landed here in Bogotá.

NM: Oh, so you weren't at the conference with President Santos last night?

VHW: No, I didn't make it, I am only just coming back now, and today, I will receive all the instructions and so on.

NM: And are you now disembarking?

VHW: Yes, I have just disembarked and I'm going to the High Command offices in the CAN to start working, and, well, to catch up with the entire situation of handover, to start now with all the work the Government has asked us for.

NM: Admiral, you obviously have one fundamental issue, you know what it is, didn't you?

VHW: Yes, well, all the issues are important

NM: No, but you know the one I am talking about, it's the big one which is waiting for your attention.

VHW: Yes, I suppose I guess what you are talking about.

NM: We are talking about San Andrés, you have to deal with the issue of Nicaragua, provocation, and patrols. Actually, your arrival coincides with the fact that this week the President will announce a new strategy, that is, an official reaction from

Colombia eight months after the judgment of The Hague which took a piece of territorial sea from us. What do you know or what have you done? How are you going to face up to the challenge to handle this big problem of San Andrés and Nicaragua?

VHW: Well, in fact the Navy has some very clear instructions from the President.

So far, my job has been as Head of Naval Operations, hence I have been working directly with the Commander in Chief of the Navy on the issues: and the instructions are very clear, we ought to protect our fishermen in the area where they have historically worked, and protect national sovereignty in the areas of the Archipelago, maintaining a permanent presence to guarantee all Colombians tranquility in the sense that international crimes do not take place, and the fight against drug trafficking, and also in search and rescue measures to safeguard human lives at sea. These are our main functions, they are very dear to us and we will continue to work alone in them under the direct instructions of the President.

NM: Yes, and I see from your CV, General, that you were the commanding officer of the ARC Gloria.

VHW: No, I was on the Gloria at some stage, on three cruises fortunately, but I was never the commanding officer. I am commanding one of the missile frigates of the Pacific Naval Force, where I spent more or less 2 years working together with the Army, the Air Force and the Police, and luckily we achieved some very important results against the drug-trafficking terrorist organizations.

NM: General… I mean Admiral, Admiral Wills, excuse my mistake

Admiral Wills, I wish you much luck in your command of our Navy at this moment, for which President Juan Manuel Santos has chosen you.
Many thanks.

VHW: Okay, many thanks to you, and a warm greeting.

Annex 39

W Radio, Radio Interview to the Minister of Foreign Affairs of Colombia, 10 September 2013

(Available at: http://www.wradio.com.co/escucha/archivo_de_audio/la-canciller-maria-angela-holguin-hablo-sobre-el-desacato-al-fallo-de-la-haya/20130910/oir/1967423.aspx (last visited 15 Dec. 2014))

The Minister of Foreign Affairs, María Ángela Holguín, talked about the lack of implementation of the Judgment of The Hague.

The Foreign Minister declared that the commitment is to keep working towards talks with Nicaragua, seeking an agreement about the waters in the Caribbean and that the lack of implementation of the ICJ judgment does not mean the rejection of it.

The W Radio | 10 September 2013

Interview W

Julio Sanchez Cristo (JSC): Dr. Maria Angela Holguin, Minister of Foreign Affairs.

Thanks for meeting with us, good morning.

Maria Angela Holguin (Foreign Minister): Good morning Julio, how are you?

JSC: Good, trying to understand the extent of what was said yesterday by the President, but in summary, you will correct me, Colombia will not implement the Judgment until there is a treaty, and in my analysis there is not going to be a treaty, is that right?

Minister: No Julio, I think there is going to be, also, there is a second part that has not been seen much, I do not quite know why: the President says that the Government will be ready to contest the Pact of Bogotá before the Constitutional Court, so the Court will say something about it and I believe that we will reach an agreement with Nicaragua.

(…)

JSC: Madame Minister, I insist in the same, because, if, thank God, Colombia is not going to put itself in the middle of a regional conflict, if we are not going to recover what we legally lost, if nothing changes to the fishermen, I insist as Claudia, what is new from last night? ...

Minister: …

What we want here, and on this we are going to use all diplomacy available is that we are not opposed to talk with Nicaragua. On the contrary, what we want is peace and tranquility in the Western Caribbean that the Judgment really altered.

(…)

Claudia Palacios: …

Do you consider it healthy to talk with Nicaragua right now?

Minister: …

As for the conversations, I think that the diplomatic channels are always open, always open to talk, what President Ortega proposed a few days ago to President Santos was a commission to implement the judgment, I think that the message is clear, here we can open a channel of communication for a treaty, and we hope, if it is not immediately, in the medium term to be able to establish contacts with Nicaragua. There are many agreements that both countries must develop, it is a relation that has been forgotten for decades, it should not be like that, we have excellent relations with all the countries in the Caribbean and in Central America, for example, the question of drug trafficking is a topic on which our countries must work together, so we hope in the medium term, and maybe in a short one, to be able to talk with Nicaragua.

(…)

Annex 40

SEMANA, *ORTEGA CALLS FOR RESPECT TO THE JUDGMENT OF THE COURT OF THE HAGUE*, 10 SEPTEMBER 2013

(Available at: http://www.semana.com/mundo/articulo/ortega-habla-de-fallo-de-la-haya-de-colombia/357198-3 (last visited 15 Dec. 2014))

Ortega calls for respect to the Judgement of The Court of The Hague.

Daniel Ortega, Nicaragua's President, said there is willingness to reach an agreement.

(…)

"We agree that you can open a dialogue between the Government of Nicaragua and the Government of Colombia, and that these negotiations may produce an agreement that allows us to make the transition in an orderly manner", Ortega said.

The "treaty" proposed by the Nicaraguan president to Colombia must include agreements for fishing, the environment, the fight against drug trafficking "and all that applies in this area, which has already been decided by the Court," the sandinista leader noted.

(…)

Annex 41

LA JORNADA, *ORTEGA SAYS THAT NICARAGUA IS READY TO CREATE A COMMISSION TO RATIFY THE JUDGMENT OF THE ICJ*, 13 SEPTEMBER 2013

(Available at: http://www.lajornadanet.com/diario/archivo/2013/septiembre/13/2.php (last visited 15 Dec. 2014))

Ortega says that Nicaragua is ready to create a commission to ratify the Judgment of the ICJ

In this treaty we, Colombia and Nicaragua, will proceed to comply with the Judgment, with the decision from the ICJ in The Hague

By Raúl Arévalo Alemán

The President of Nicaragua, Daniel Ortega Saavedra, called again for the creation of a commission between the governments of Nicaragua and Colombia in order to ratify the International Court of Justice's Judgment of 19 November 2012, in which Nicaragua recovered its access to 90 thousand kilometres from his territorial sea in the Atlantic.

Ortega said yesterday, during the acceptance of the freedom torch, which goes through the Central American countries on the occasion of the 192nd anniversary of the independence from the Spanish colonialism that: "We are ready, we are willing to create the corresponding commission to meet with a commission from our brother country Colombia, from the Colombian government, and that together we can work to make possible the implementation of the Court's Judgment, and this will be supported, ratified; because the Judgment has been delivered already, it is just about laying it down, so that it will be laid down in what will be a treaty between Colombia and Nicaragua", the head of state said.

"In that treaty, Colombia and Nicaragua will be proceeding with the judgment's compliance, with the ICJ's judgment. This is the Peace path, the Unity path, the Fraternity path", Ortega affirmed.

(…)

Annex 42

EL TIEMPO, *THE MINISTER OF FOREIGN AFFAIRS EXPLAINS IN DETAIL THE STRATEGY* VIS-A-VIS *NICARAGUA*, 15 SEPTEMBER 2013

(Available at: http://www.eltiempo.com/archivo/documento/CMS-13064198 (last visited 15 Dec. 2014))

The Minister of Foreign Affairs explains in detail the strategy *vis-a-vis* Nicaragua

María A. Holguín speaks about the four pillars for the defence of National sovereignty in the Caribbean.

The Minister of Foreign Affairs Maria Angela Holguín explained to EL TIEMPO the scope of the "integral strategy" to defend the Colombian sovereignty in the Caribbean Sea. She stated that the Government does not disregard the Court of The Hague's Judgment – in which this Tribunal recognized greater rights to Nicaragua over those waters-, but that the country "is facing a legal obstacle" to apply it.

(…)

How and when would you dialogue with Nicaragua to sign a border treaty?

Colombia is open to a dialogue with Nicaragua to sign a treaty that establishes the boundaries and a legal regime that contributes to the security and stability in the region. The Government has said that it awaits the decision of the Constitutional Court before initiating any action.

(…)

Annex 43

EL NUEVO DIARIO, *PATROLLING THE RECOVERED SEA*, 18 NOVEMBER 2013

(Available at: http://www.elnuevodiario.com.ni/nacionales/302266 (last visited 15 Dec. 2014))

Patrolling the recovered sea

> One year has passed since the International Court of Justice, ICJ, recognized in a judgment that the people from Nicaragua are owners of more than 90 thousand square kilometres of maritime territory in the Caribbean Sea, in detriment of Colombia, country that used to occupy that territory.

Leonor Álvarez | Country

The Admiral Marvin Elías Corrales Rodríguez, Chief of the Navy Forces of the Nicaraguan Army, expressed in this interview with El Nuevo Diario that the limited resources of the National Army never prevented that institution to exercise the rights that belongs to Nicaragua.

Currently, and since last year, Nicaragua maintains two Navy coastguards, and around four and five speed boats sailing over more than 50 thousand nautical miles in the returned waters and 1,600 troops of the Nicaraguan forces have been involved in the patrol, with the main objective of protecting Nicaragua's fishing fleets.

After one year of enforcement of the judgment of the International Court of Justice, what is the most remarkable thing about the forces' task?

The main objective that we have developed along this year has been to protect Nicaragua's fishing fleets, which is operating in those waters; it is noteworthy that two weeks after the judgment for the first time our fishermen started to go to those waters and since that moment they have counted with the protection of the Navy.

How is the Peace and Sovereignty operation "General Sandino" executed?

This Peace and Sovereignty operation "General Sandino" is a work that involves different forces of the army, from air to land forces, which cooperate to support the implementation of this important mission for the Nicaraguan nation.

What is the main job of the army in that maritime territory?

We provide protection, first of all, to the fishing fleets located there, around this time 16 of them are operating in those waters. We are always providing protection to those fleets, which is a fundamental element that we have.

The other element is the surveillance of our seas, the fight against drug trafficking, which is a task that we have implemented long time ago, and with the increase of these waters, it obviously means an effort for the Army in the achievement of this mission, and we are working on the surveillance to fight against drug trafficking.

What is the main responsibility?

Is responsibility of the Government of Nicaragua, in this case of the Army and Navy specifically, to increase the fight against drug trafficking in those waters, after the judgment of The Hague.

The commander in chief (General Julio César Avilés) said that we will have to make efforts to become the core assemble in the fight against drug trafficking in the Caribbean.

How is the coordination with other countries to do this job?

When we talk about seeking how to become the core assemble of the fight against drug trafficking in the Caribbean, which corresponds to us as a nation, we make efforts to coordinate essentially with Honduras, the United States of America, Costa Rica, Panama, and with the same Colombia.

Also with the Russian Federation, which have been there increasing the cooperation mostly with the information, because it is a joint effort of all in the Caribbean.

Nicaragua would not be able to make his job alone?

We do our part, as a nation, as a State, as an army, as a Navy, but of course it requires the participation of all nations, because it is a drug that transits from south to north, or even in other cases a drug that transits from Jamaica some times to the south, so all nations have to be involved.

Thus, what we have encouraged and where we are advancing is in the communication, to seek the coordination of all nations, as a joint effort, and in all this it is worth highlighting that the United States has an important role in terms of cooperation with all these nations.

Which has been the major challenge that the Army has faced in the fight and protection of the Caribbean Sea?

Obviously Nicaragua is a country struggling to emerge from poverty and the resources available to the Army of Nicaragua, which are known to be limited, but we still fulfil our mission with those resources.

What are those limitations?

To talk about limitations would be to enter into the surroundings of our own country and the reality of the army, but the most important thing is that we fulfil this with professionalism, quality, perseverance, and being present. We have reached already one year of accompanying our fishermen in those waters and I believe this is the most tangible result, we are obeying the President's order, the Commander in Chief, we have acted with caution, as we have been commanded to, trying to avoid any type of conflict and it is not going to be the Navy or the Army of Nicaragua the ones that are going to cause a conflict.

Have there been any conflicts?

There have not been any conflicts and that is why I want to highlight that in one year of being there we have not had any problems with the Colombian Navy.

When have you heard of Colombian boats in the zone?

We maintain a continuous communication with the Colombian Navy, as well as with the chiefs of the Navy.

Is it a rumor?

Yes, we have not had any conflicts in those waters. I even think our presence has strengthened the security stability for the fishing vessels, which if at the beginning were few, now are 16 fishing boats, and they are important for the economic interests of the country.

How is the role of the military in the returned zone?

Until this date, when a year has passed since the judgment, we have relieved more than 25 staff and navy resources, but always maintaining our presence there, that is why I was telling you that more than 1,600 staff members have been involved in one year. The replacements are done in a range between 22 and 25 days.

Economically, how much does the mobilization to the returned territory implies?

It implies a huge cost as a country.

Is it a big effort for an economically poor country?

No. It is a necessary effort. We have to comply with the country's modest resources in order to exercise sovereignty in the restored waters.

Annex 44

EL UNIVERSAL, *IN COLOMBIA A RUPTURE OF DIPLOMATIC RELATIONS WITH NICARAGUA IS EXCLUDED*, 24 DECEMBER 2013

(Available at: http://www.eluniversal.com/internacional/131224/en-colombia-desestiman-una-ruptura-diplomatica-con-nicaragua (last visited 15 Dec. 2014))

In Colombia a rupture of diplomatic relations with Nicaragua is excluded

For Bogotá the sovereignty over San Andrés is not in doubt.

EL UNIVERSAL
Tuesday 24 December 2013, 12:00 AM

Bogotá. The Colombian Minister of Foreign Affairs, Maria Angela Holguín, assured that even though there were tensions with Nicaragua due to the delimitation in the Caribbean Sea, this will not lead to rupture of the diplomatic relations between the two countries, according to an interview given to EL TIEMPO.

"It is not that big of a problem. The relations with Nicaragua will not be broken", Holguin said, after, by the end November, Managua filed a new application before the International Court of Justice (ICJ) in The Hague in the case concerning the maritime delimitation in the Caribbean archipelago of San Andrés and Bogotá called their Ambassador Luz Stella Jara for consultations, AFP quoted.

"We have called our Ambassador for consultations because sometimes you do not understand how they come to a decision as the last application which that country submitted in The Hague. I say this because you go to the Court when all the instances to solve a problem are exhausted, not when you have never talked about it. That is unfriendly", the Minister explained.

After knowing of the new application by Nicaragua, in which it accused Bogotá of violating its sovereignty in the maritime areas of San Andrés over which the ICJ gave custody to Nicaragua in the Judgment of November 2012, the President Juan Manuel Santos considered the Nicaraguan action "absurd".

The ICJ affirmed the sovereignty of Colombia over San Andrés, Providencia, Santa Catalina, islets and adjacent keys, but extended the continental shelf of Nicaragua more than 90.00 km^2, according to Managua, and 75.000 km^2, according to Bogotá.

Annex 45

EL COLOMBIANO, *COLOMBIA AND NICARAGUA WILL CONCLUDE AGREEMENTS ON THE JUDGMENT OF THE HAGUE: ORTEGA*, 29 JANUARY 2014

(Available at: http://www.elcolombiano.com/BancoConocimiento/C/colombia_y_nicaragua_suscribiran_nuevos_acuerdos_sobre_fallo_de_la_haya_ortega/colombia_y_nicaragua_suscribiran_nuevos_acuerdos_sobre_fallo_de_la_haya_ortega.asp (last visited 15 Dec. 2014))

Colombia and Nicaragua will conclude agreements on the Judgment of The Hague: Ortega

Colprensa | Havana, Cuba | Published on 29 January 2014

Nicaragua's President, Daniel Ortega, who participated in the II Summit of the Community of Latin American and Caribbean States, was kind and open to address two current subjects related to Colombia: the peace process and the boundary judgment of The Hague.

In relation to the Judgment of The Hague, Ortega sustained that his country will continue to claim everything of what they are entitled to in law, to claim and have the right to use the seabed, but said that they will respect the rights native islanders have to fish.

On another topic, Ortega initially expressed that this is a unique opportunity to achieve peace in Colombia, saying that now is the time to end the only remaining armed conflict in the region.

His opinion on why the way in which the Judgment of The Hague will apply has not been defined yet between his country and Colombia…

"International law is the instrument to resolve these disputes, through peace, through law. I had the opportunity to discuss the issue with President Santos in Mexico when Enrique Peña Nieto took office. We concluded that there will be a moment in which we will sign agreements between Colombia and Nicaragua in order to establish; properly, agreements to be ratified by the respective parliaments, these will refer to the boundaries established by the Court."

How have you progressed?

"Nicaragua's parliament is already proceeding. Last year, on a first vote, it approved the new delimitation defined by The Hague in the Caribbean Sea, and in these days it will be voted, for the second time, and the determined boundaries will be established in the Constitution.

Afterwards, we will have to wait until Colombia and Nicaragua discuss to reach an agreement that allows us to establish a way, especially and so I said to President Santos, to guarantee all the rights of the native population. We respect them and we share it and their population is closely linked with the Caribbean population."

(…)

Annex 46

EL ECONOMISTA, *NICARAGUA DENIES INTIMIDATION OF COLOMBIA IN SAN ANDRÉS*, 18 MARCH 2014

(Available at: http://eleconomista.com.mx/internacional/2014/03/18/nicaragua-descarta-intimidacion-colombia-san-Andrés (last visited 15 Dec. 2014))

Nicaragua denies intimidation of Colombia in San Andrés

Managua denies that a Colombian boat that appeared at the San Andrés Archipelago, in the new maritime boundary between the two countries, is intended as an intimidation on behalf of Colombia due to an international case in which Nicaragua ended as the winner.

Managua.- Nicaragua dismissed today that it was an intimidation the act of sending a patrolling vessel to the San Andrés archipelago in the Caribbean Sea, in the new maritime boundary defined by an international verdict in favor of this country.

The chief of the Nicaraguan army, General Julio Avilés, declared this Tuesday to journalists that Colombia has presence "aero-naval in its territory" located in the Caribbean Sea, in an area adjacent to the archipelago of San Andrés, "and we respect that".

He denied incidents in the maritime area of over 90,000 kilometres in the Caribbean, adjudicated to Nicaragua by the judgment of the International Court of Justice (ICJ) of The Hague, in November 2012.

According to the "permanent" communication between the heads of the Naval Forces of the two countries, the area remains without incidents, Avilés indicated, after the act of delivering the book with the Memoirs of the Army from 2013 to the Supreme Court of Justice.

"There are no incidents", the Colombian Navy "**is in their waters and we are in ours**, there is permanent communication between the (Nicaraguan) Navy and the chief of the Colombian Navy", the official said during the event in Managua.

He said that the tensions brought by the judgment of the international court have been reduced and highlighted the collaboration which has taken place in cases such as the search of four Nicaraguan sailors and a Colombian ship adrift.

On the eve, the Colombian president participated in an event to deliver a patrol vessel "ARC 7 of August" to the Navy of San Andrés, in order to "protect the national maritime interests and to safeguard sovereignty".

The Santos government has not accepted the ICJ judgment that **redefined its maritime boundary with Nicaragua**.

In the meanwhile, the Authorities of Nicaragua maintain that this country has only executed sovereignty in the restored water with naval and air missions since November 2013.

Annex 47

REUTERS, *COLOMBIA COURT BACKS SANTOS IN SEA BOUNDARY DISPUTE WITH NICARAGUA*, 2 MAY 2014

(Available at: http://www.reuters.com/article/2014/05/03/colombia-nicaragua-dispute-idUSL2N0NP03L20140503 (last visited 15 Dec. 2014))

Colombia Court Backs Santos in Sea Boundary Dispute with Nicaragua.

May 2 (Reuters) - Colombia's constitutional court ruled on Friday that applying a decision by the International Court of Justice (ICJ) that granted Nicaragua a disputed area of Caribbean waters could not take effect without a treaty between the countries.

The court's verdict upholds the position taken by Colombian President Juan Manuel Santos, who said the Hague-based ICJ's decision was not applicable according to Colombia's constitution without such a treaty, ratified by the Andean nation's congress.

The ICJ in November 2012 reduced the area of ocean that belonged to Colombia around its cluster of Caribbean islands, determining that a section of their maritime shelf belonged to Nicaragua.

Colombia has been angered by Nicaraguan President Daniel Ortega's plans to allow foreign companies to explore for oil in Caribbean seas that Colombia maintains are its own.

Santos, the front runner in a presidential election set for May 25 in which he will seek a second term, has never said that he flatly rejected the ICJ's ruling and stated in the past that Colombia would not go to war to resolve the dispute.

Nonetheless, he said last September that he would oppose any attempt by Nicaragua to extend its sea frontier toward Colombia and said then he had technical and judicial arguments ready to press the case, which he declined to reveal.

Santos said on Friday he would wait to receive details of the constitutional court's verdict before deciding what course of action to take.

Until now, Colombia has said that Nicaragua only has economic rights, such as to fish in the disputed waters, but not sovereignty over them. (Reporting by Monica Garcia; Writing by Peter Murphy; Editing by Robert Birsel).