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# Regional and International Activities

Isidoro Zanotti

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## REGIONAL AND INTERNATIONAL ACTIVITIES

ISIDORO ZANOTTI\*

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#### ORGANIZATION OF AMERICAN STATES (OAS)

##### I. NEW SECRETARY GENERAL OF THE OAS

During a special session on March 12, 1984, the General Assembly of the Organization of American States (OAS) unanimously elected Ambassador João Clemente Baena Soares, a distinguished Brazilian career diplomat, as the new OAS Secretary General. On June 20, 1984 he assumed his office at a special session of the OAS Permanent Council.

On assuming his office, Ambassador Baena Soares delivered an address of particular importance to the OAS and to inter-American relations. The English translation of his address was distributed by the OAS Office of Public Information. Excerpts of such text follow.

Ambassador Baena Soares accepted the mandate "with a sense of resolve and composure, confident of the invaluable support of the member states." He would serve "with perseverance and an open mind, with enthusiasm and, at the same time, a sense of realism—steadfast in the belief that the fundamental values of inter-American relations will endure." He conveyed to the Permanent Representatives his "sincere belief that by working together and on the basis of our specific prerogatives and powers, we shall be able to live up to the expectations ushered in by this new era within the Organization of American States."

He expressed that the primary vehicle for achieving his goals would be a sincere and open dialogue in the General Assembly, with the Councils and with the other organs of the OAS. To achieve the goals, he plans "to visit the member countries and lis-

ten to their governments' proposals and suggestions."

He noted that "now, more than ever, our people look for renewed allegiance to the enduring values that guide us along our way: the juridical equality of states, peaceful settlement of disputes, self-determination and non-intervention in the internal and external affairs of others, cooperation for development, hemispheric solidarity and promotion of human rights."

Ambassador Baena Soares observed that "regional relations pose many challenges," and that they are "the product of the many facets of the Hemisphere, where countries with different levels and rates of development, each with its own political and social tempo, coexist and interact," and "if we so desire, we in the Americas have all means to give to the world models of peaceful and friendly cooperation."

He stressed that "[T]he times are such that we must make a thoughtful and careful analysis of inter-American relations and plan how they should progress. With the frankness that brotherhood allows and encourages, we must make an objective assessment of the contradictions, the contingencies and the vicissitudes of the inter-American system. We have already done this on numerous occasions in the past and we were always able to single out the proper course of action for renewal. We ought not to overlook here the fact that the degree of understanding achieved, the measure of peace preserved, the amount of cooperation gained and the extent to which the principles of hemispheric coexistence are observed, leave much to be desired and much to be done."

On the question of the foreign debt of some countries in the region, he stated that "[t]he foreign debt of the Latin American and Caribbean countries is not a problem that can be measured in monetary terms. The severity of the crisis, the damaging effects of recessionist policies, the heightening social tensions, the resulting difficulties for the evolution of political institutions and democracy in the Hemisphere, make for a situation that economic measures alone cannot correct." The issue, he said, "calls for a comprehensive approach. What is in play is the very fate of our societies and the hope of our peoples. In the face of today's crisis, understanding and imaginative cooperation are essential and imperative. Initiatives and proposals within and outside the OAS context have given added thrust to the discussion of the subject. . . . The Organization of American States will not be remiss. As an organization of synthesis, it provides opportunities for discussion among countries

of differing levels of development. With the political support of the governments, which is essential, the Organization, too, will be able to cooperate usefully and effectively in examining the alternative means to deal with the crisis and thereby help to plow under the unbearable road to Latin American and Caribbean impoverishment."

In his outlook concerning the Organization of American States, the Ambassador emphasized that the OAS has the potential to realize the highest ideals of multilateralism and "it will know how to find the proper means to strengthen its political structures, to expand the economic debate and the area of juridical innovation, in a manner that is fair and equitable, as the principles and objectives of the Charter teach us. I look to the future of the Organization of American States with a sense of calm and confidence, because I am aware of the important contributions that it has made. I would even go so far as to say that the tools of dialogue that the Organization provides are one of the reasons why recourse to violence as a means to settle conflicts has occurred less in the Americas than in other regions of the world. We will know how to use the lessons of the past when the challenges of the present demand renewal. Salient among the lessons that we must work on is the importance of law as a mainstay of regional relations. The history of the inter-American system is in large part the history of the evolution of the norms that govern relations among the states of the region. There are memorable moments, such as the struggle to establish the rule of non-intervention and to establish methods to settle conflicts peacefully. These are pillars of inter-American life. They are remarkable milestones in the history of hemispheric relations. . . ."

He pointed out that "the development of international law and observance of the law have become so important in the Americas that it was even thought that there was a law unique to the Hemisphere. The enormous and varied contributions the Americas have made is in the realm of ideas, finding new areas to be codified, and in bold and imaginative thesis. One of its most important contributions, however, has been a truly dynamic understanding of international juridical innovation, which must make allowance for the complexity of situations and at the same time have a solid grasp of what is just and equitable."

Ambassador Baena Soares added that "[T]he Americas have made a meaningful contribution to the field of codification, which

included groundbreaking work in this area. It ought to be encouraged and have the full support of the member states. It is essential for the health of the system. It has left its imprint on our history and on our best projects. If we move ahead in this endeavour, we will strengthen the foundation for even more solid and sound hemispheric cooperation.”

The Ambassador recalled that the governments have expressed their desire to see a renaissance within the Organization, to make it active and effective “. . . the Secretary General’s is a political function, because this is a political forum. The Secretary General has the duty to make his views known to the governments that elected him. With the diplomatic potential of his position, he may help prevent crises, pave the way for solutions and reconcile interests, always acting within the objectives and principles to which the member states subscribe and which all accept.”

For Baena Soares, “the Secretary General has an obligation to be a good administrator. It is his responsibility to establish and sustain the conditions necessary to guarantee that the Organization will operate smoothly and that the Secretariat’s functions will be carried out free of encumbrance. . . . Maintaining contacts with sectors of society that can contribute to the success of the work and help publicize it are essential tools for a functioning and effective administration. . . . An administration should work smoothly. . . . Its duty is to provide reliable service to the member states, service of a high professional caliber, with clear-cut objectives and action. The Secretariat’s objectives are the very objectives spelled out in the Charter for the other organs. There is, therefore, every reason for joint and integrated effort, wherein each performs his role harmoniously.”

In the final part of his address, the new Secretary General recalled that “it is customary to regard our region as the Hemisphere of the future. It is often said that the future belongs to us. . . . I myself would prefer to regard our destiny as an affirmation of the present. The solution of the problems that afflict us can no longer be deferred. . . . One of the first and decisive moments for change is when we become aware of the present. Our people feel a sense of urgency. They want to find fulfillment in peace, justice and progress. The Organization of American States will never overlook those expectations and will undertake the demands of the present with a sense of resolve. . . .”

## II. NEW INTER-AMERICAN CONVENTIONS ON PRIVATE INTERNATIONAL LAW

The Third Inter-American Specialized Conference on Private International Law, which had been convened by the OAS, was held in La Paz, Bolivia, May 15-24, 1984. Three conventions and a Protocol on different topics of private international law were approved. A summary of the instruments follows.

### A. *Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors*

This Convention shall apply to the adoption of minors whether in the form of full adoption, adoptive legitimation or other similar institutions that confer on the adoptee a legally-established filiation, but only when the domicile of the person or persons adopting the minor and the habitual residence of the adoptee are in two different convention states. When signing, ratifying, or acceding to this Convention, any state party may declare that it also applies to any other form of international adoption of minors.

It is also provided that the law of the habitual residence of the minor shall govern capacity, consent, and other requirements for adoption, as well as those procedures and formalities that are necessary for creating the relationship. The law of the domicile of the adopter shall govern the capacity to be an adoptee; the age and marital status requirements to be met by an adopter; the consent of an adopter's spouse, if required; and the other requirements for being an adopter. If, however, the requirements of the law of the adopter are manifestly less strict than those of the law of the adoptee's habitual residence, the law of the adoptee shall govern.

According to other rules of this Convention, the requirements of publication and registration of adoption shall be subject to the law of the state in which they are to be satisfied. In most cases, the adoption shall be kept confidential. Whenever possible, however, medical background information on the minor and on the natural parents, if known, shall be communicated to the legally appropriate person. Such information will omit names or other data that might identify the natural parent. In adoptions governed by this Convention, the authorities granting the adoption may require the adopters to provide evidence of their physical, moral, psychological, and economic capacity, through public or private institutions.

The relations between adopter and adoptee, including support relations, and the relations between the adoptee and the family of the adopter, shall be governed by the same law that would govern the relations between the adopter and his/her legitimate family. Ties between the adoptee and his/her family of origin shall be considered dissolved. The rights of succession of the adoptee or the adopter shall be governed by the rules applicable to the respective successions.

Annulment of an adoption shall be governed by the law under which it was granted. An annulment shall be decreed only by judicial authorities, and the interests of the minor shall be protected. The courts of the adoptee's state of habitual residence, at the time the adoption was granted, shall be competent to decide on any annulment or revocation of the adoption. The courts of the adopter's state of domicile shall be competent to rule on matters concerning the relations between the adoptee and the adopter and his family until the adoptee has a domicile of his own. The authorities of a state party may refuse to apply the law declared applicable under this Convention when that law is manifestly contrary to its public policy.

*B. Inter-American Convention on Personality and Capacity of Juridical Persons in Private International Law*

In accordance with this Convention, the existence, operation, dissolution, and merger of private juridical persons, as well as the capacity to have their rights and obligations adjudicated are governed by the law of the place of its organization. "The law of the place of its organization" means the law of the state party in which the formal and substantive requirements for the organization of such person are satisfied.

A private juridical person duly organized in one state party shall be recognized by operation of law in the other state parties. Recognition by operation of law does not exclude the right of a state to require proof of the existence of a juridical person in accordance with the law of the place of its organization. The capacity accorded to a private juridical person organized in one state party may in no case exceed that which the recognizing state party grants to juridical persons organized under its law.

With respect to the performance of acts within the purposes for which a private juridical person was organized, the law of the



state party in which such acts are performed shall govern.

A private juridical person organized in one state party that intends to establish its actual administrative headquarters in another state party may be required to satisfy the requirements stipulated in the legislation of that other state. If a private juridical person acts through a representative in a state party other than that in which it was organized, by operation of law, such representative shall be deemed able to respond to any claims or suits against it arising from such acts.

State parties and other juridical persons organized under the public law of such state shall enjoy the status of a private juridical person by operation of law. They may acquire rights and undertake obligations in the territory of the other state parties, subject to the home state's own laws and the laws of the other state parties, especially those regarding property rights. Jurisdictional immunity remains available as a defense where appropriate.

An international juridical person, organized under either an international agreement between state parties or a resolution of an international organization, shall be governed by the provisions of the agreement or resolution that established such person. The international juridical person shall be recognized by operation of law in all the state parties in the same way as private juridical persons, without prejudice to invoke immunity from jurisdiction as a defense where appropriate.

The law declared applicable by this Convention may not be applied in the territory of a state party that considers it manifestly contrary to its public policy.

C. *Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments*

This Convention provides in article 1, that for the purpose of the extraterritorial validity of foreign judgments, the requirement of jurisdiction in the international sphere is deemed to be satisfied when the judicial or other adjudicatory authority of the state party that rendered the judgment would have had jurisdiction in accordance with any of the following provisions:

- A. In an action *in persona* for a money judgment, any of the following basis for jurisdiction that are provided for in section D of this article (article 1), shall be satisfied when at

the time the action is initiated:

1. The defendant, if a natural person, had his domicile or habitual residence in the territory of the state party in which judgment was rendered, or when a juridical person, had its principal place of business in that territory.
  2. In an action against a private non-commercial or business enterprise, the state party in which judgment was rendered was the place in which the defendant was organized or had its principal place of business.
  3. In an action against a branch, agency, or affiliate of a private non-commercial or business enterprise, the activities that gave rise to such action took place in the state party in which judgment was rendered; or
  4. In the case of non-exclusive fora permitting a submission to other fora, the defendant consented in writing to the jurisdiction of the judicial or other adjudicatory authority that rendered the judgment, or failed to submit a timely challenge to the jurisdiction of that authority.
- B. In an action involving rights relating to tangible movable property, either of the following basis for jurisdiction shall be satisfied when at the time the action was initiated:
1. The property was located in the territory of the state party in which the judgment was rendered; or
  2. Any of the bases provided for in section A of this article (article 1) is satisfied.
- C. In an action involving property rights relating to immovable property, the property shall have been located, at the time the action was initiated, in the territory of the state party in which the judgment was rendered.
- D. In an action arising from an international business contract, the parties agreed in writing to submit to the jurisdiction of the state party in which the judgment was rendered, provided that such jurisdiction was not established in an abusive manner and had a reasonable connection with the subject matter.

In accordance with other provisions of this Convention, the requirements for jurisdiction in the international sphere shall also be deemed satisfied if, in the opinion of the judicial or other adjudicatory authority of the state party in which the judgment is to be given effect, the judicial authority that rendered the judgment assumed jurisdiction in order to avoid a denial of justice because of the absence of a competent judicial authority.

The extraterritorial validity of the judgment may be denied, if the judgment will infringe on the exclusive jurisdiction of the state party in which it will be enforced. Foreign judgments shall not have extraterritorial validity, unless they are entitled to recognition and execution throughout the territory of the state in which they were rendered. Foreign judgments are final and non-appealable.

This Convention shall not apply to the following subjects: a) personal status and capacity of natural persons; b) divorce, annulment, and marital property; c) child support and alimony; d) decedents' estates (testate or intestate); e) bankruptcy, insolvency proceedings, composition with creditors, or other similar proceedings; f) liquidation of business enterprises; g) labor matters; h) social security; i) arbitration; j) torts; k) maritime and aviation matters.

*D. General Information About the Three Above-Mentioned Conventions*

These three conventions shall be open for signature and ratification by the member states of the Organization of American States. These Conventions shall also remain open for accession by any other state. The instruments of ratification or accession shall be deposited with the General Secretariat of the Organization of American States.

Each of the three conventions shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification. For each state ratifying or acceding to the Convention after the deposit of the second instrument of ratification, each of the three conventions shall enter into force on the thirtieth day after deposit by such state of its instrument of ratification or accession.

*E. Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad*

This Additional Protocol was also adopted by the Third Inter-American Specialized Conference on Private International Law (CIDIP-III) held in La Paz, Bolivia, May 15-24, 1984.

The Inter-American Convention on the Taking of Evidence Abroad was adopted by CIDIP-I held in Panama in 1975. The Additional Protocol approved by CIDIP-III is intended to strengthen

and facilitate international cooperation in judicial procedures as provided for in the said Convention.

A seven part summary of some of the provisions of the Additional Protocol follows: I—Central Authority, II—Preparation of Letters Rogatory Requesting the Taking of Evidence; III—Transmission and Processing of Letters Rogatory Requesting the Taking of Evidence; IV—Costs and Expenses; V—The Taking of Evidence by Diplomatic or Consular Agents; VI—General Provisions; VII—Final Provisions. An Appendix to the Protocol contains Forms A and B, for transmission and processing letters rogatory.

As provided in the Protocol, each state party shall designate a central authority that shall perform the functions assigned to it in the Inter-American Convention on the Taking of Evidence Abroad and in this Protocol. At the time of deposit of its instrument of ratification or accession to the Protocol, each state party shall communicate its designation to the General Secretariat of the Organization of American States, which shall distribute to the states parties to the Convention a list containing the designations received. A state party that is also party to the Additional Protocol to the Inter-American Convention on Letters Rogatory, of 1975, shall designate the same central authority for the purposes indicated in the two Protocols. Letters rogatory requesting the taking of evidence shall be prepared in accordance with Forms A and B of the Appendix to the Additional Protocol.

Upon receipt of a letter rogatory from the central authority of another state party, the central authority of a state party shall transmit the letter rogatory to the appropriate judicial or other adjudicatory authority for processing in accordance with applicable local law. The central authority of the state of destination shall certify the execution of the letter rogatory, or the reasons that prevented it from executing the letter rogatory, to the central authority of the state party of origin, on a form conforming to Form B of the Appendix to the Protocol, which shall not require legalization.

In processing letters rogatory pursuant to the above-mentioned Convention and this Protocol, the judicial or other adjudicatory authority of the state of destination shall apply the appropriate measures of compulsion provided for in its legislation when the requirements set forth in that legislation for the application of such measures in domestic proceedings have been met.

The processing of letters rogatory by the central authority of

the state party of destination and by its judicial or other adjudicatory authority shall be free of charge. This state party, however, may seek payment by the party requesting the evidence or information of those services which in accordance with its local law, are required to be paid directly by that party. The party requesting the evidence or information shall either select and indicate in the letter rogatory the person who is responsible in the state of destination for the cost of the above-mentioned services or attach to the letter rogatory a check for the fixed amount that will cover the cost of such services or a document proving that such amount has been transferred by some other means to the central authority of the state of destination. The fact that the cost of such services exceeds the amount sent shall not delay or prevent the processing or execution of the letter rogatory by the central authority or the judicial authority of the state of destination. Should the cost exceed the amount sent, the central authority of the state of destination may, when returning the executed letter rogatory, seek payment of the outstanding amount due from the party requesting execution of the letter rogatory.

At the time of deposit of its instrument of ratification or accession to the Protocol with the General Secretariat of the OAS, each state party shall attach a schedule of services, itemizing the pertinent costs and expenses that, in accordance with its local law, shall be paid directly by the party requesting the evidence or information. In addition, each state party shall specify in the said schedule the single amount that it considers will reasonably cover the cost of such services. The OAS General Secretariat shall distribute the information received to the states party to the Protocol.

The Protocol shall be open for signature and ratification or accession by those member states of the OAS that have signed, ratified or acceded to the Inter-American Convention on the Taking of Evidence Abroad signed in Panama on January 30, 1975. The Protocol shall also remain open for accession by any other state that accedes or has acceded to the 1975 Convention.

#### *F. Resolutions and Recommendations Approved by CIDIP-III*

The Third Inter-American Specialized Conference on Private International Law (CIDIP-III), held in La Paz, Bolivia, in May 1984, also approved some resolutions and recommendations con-

cerning future studies and development of Private International Law in the Western Hemisphere.

One resolution dealt with the continued protection of minors in international adoptions. Because some minors have been subjected to mistreatment, exploitation and trafficking, strict control of the fate of adopted children may be necessary. A recommendation was made to the OAS General Secretariat that it conduct a study in cooperation with the Inter-American Children's Institute to find appropriate responses to these problems.

CIDIP-III asked the OAS General Secretariat to consider the desirability of calling a meeting of the Central Authorities to evaluate the experience acquired thus far. The designation of Central Authorities for specific tasks is provided for by the Inter-American Convention on Letters Rogatory of 1975, the respective Additional Protocol of 1979, the Inter-American Convention on the Taking of Evidence Abroad of 1975, and the respective Additional Protocol of 1984 adopted by CIDIP-III.

In another resolution, CIDIP-III urged the governments of the OAS member states to promote domestic legislation which would make it a serious crime to act as an intermediary in international adoption for profit, and to perform acts of a commercial or other nature, aimed at promoting such criminal activity.

CIDIP-III also requested the OAS General Assembly to convene the Fourth Inter-American Specialized Conference on Private International Law (CIDIP-IV), and that the following topics, among others, be included on the agenda of CIDIP-IV: international contracts, extracontractual liability, international carriage by road, kidnapping and return of minors, support obligations, divorce, personality and capacity of natural persons. In the same resolution, CIDIP-III recommended that the OAS General Secretariat convene meetings of experts in private international law to consider problems that require the expertise of specialists in the field, and that the results of such meetings be submitted to the Inter-American Juridical Committee and to the governments of the member states.

### III. INTER-ACTION COUNCIL

The Inter-Action Council held its second session on the Island of Brioni, Yugoslavia, May 22-24, 1984. The Council is comprised of 26 distinguished members who have held the highest offices in

the governments of their countries. The Chairman of this session was Kurt Waldheim, former Secretary General of the United Nations. Other members are former Presidents or former Prime Ministers of several countries such as Japan, Australia, Argentina, Colombia, Cameroon, Morocco, Swiss Confederation, Romania, Nigeria, Portugal, Yugoslavia, Federal Republic of Germany and Sweden. The members from France, Italy, Lebanon, Tunisia and Venezuela could not be present and sent their special messages to the participants in Brioni. Experts from Argentina, United States, Japan, Saudi Arabia, Senegal and United Kingdom also participated in this session.

At the conclusion of the session, the Inter-Action Council adopted a Final Statement dealing with the following major topics: external debt crisis and management, development, trade and protectionism, coordination of policy and institutions, international monetary reform, peace, security and disarmament.<sup>1</sup>

*A. Summary of selected parts of the Final Statement.*

The Statement initially notes that the Inter-Action Council is “. . . gravely concerned about a number of world issues affecting world peace and development. This concern already expressed at its first session in Vienna in November 1983 has been deepened by events and trends of the past six months.” Reference was made to the fact that an escalating arms race and the conflicts among developing countries drain large amounts of resources urgently required for development. A vacuum has also developed in relations between developing and developed countries, endangering the prospects for prosperity and development. “The stability of worldwide monetary and financial arrangements is now in question, particularly in view of the heavy debt burden of developing countries which is exacerbated by high deficits in industrial countries leading to high interest rates. . . . Decisive and imaginative leadership is required from the governments of all countries, from international groups and organizations, from the private sector, and from individuals.”

The Council reaffirmed its conviction that the United Nations Organization should play an inherently important role in the ex-

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1. Text published in OAS Permanent Council; CP/INF.2171/84, OAS Permanent Council, Washington, D.C. (June 7, 1984).

amination and solution of the major issues confronting humanity which are peace, disarmament, and world development. "Current problems of peace and development cannot be solved simply by *ad hoc* measures in response to crises as they emerge. Restoration of world prosperity on a sustainable basis will require responsible and concerted action by all: North and South, market and socialist economies, oil-exporting and oil-importing countries, debtor and creditor countries, least-developed and other developing countries, governments, international organizations, private sectors, and banks in particular."

The Council also noted that the debt problem was jointly created by the actions of all parties, and it is thus, a joint responsibility of all to seek solutions. Debtor countries should pursue realistic programs agreed in good time with the International Monetary Fund, as they pursue development programs with the World Bank. Such programs need to combine a sustained improvement in the balance of payments with a resumption of economic growth and development. "At present, the essential, even if unpopular, role of the IMF is that of negotiating adjustment programs with countries confronting balance of payment or debt-servicing problems. There must be conditionality, otherwise fresh credits will not flow. . . . The conditions applied in the future should not so seriously affect the economic, social and political fabric of the country, the living conditions of its people, or the availability of critical development inputs. . . ."

Countries should create favorable conditions for the return of flight capital, which has reached substantial dimensions in a number of countries in recent years and which contributes significantly to the debt problem. "On the other hand it is politically intolerable that as a result of fluctuations in interest of exchange rates, debtor countries cannot predict the maximum debt service payments that they will have to make in dollars for the year ahead. This uncertainty has a devastating effect on national planning and development. . . . The contribution of the commercial banks should be to provide fresh money and interest relief in instances where a debtor country is making a good faith commitment to adhere to an IMF program."

On the question of development, the statement stresses that the developing countries at all levels of development have the principal responsibility for their own development. "The experience of a number of East Asian countries has demonstrated the beneficial



effects of policies emphasizing human resource development, population planning, exploitation of the possibilities offered by international trade, and encouraging direct private investment, which is the most efficient way of transferring technology, compatible with the objectives, values and conditions of each country. . . . The particular problems of the least developed countries require urgent and sustained attention through intensified assistance from the wider world community."

In order to promote a dramatic increase in resources for the deprived peoples of these countries, the Inter-Action Council intends to institute a major publicity campaign. This campaign will proceed with the support of the advertising industry, and the media in order to strengthen public opinion throughout the world. Organizations of the private sector, in particular, corporations and banks, should also be actively involved in the campaign.

With reference to the topic of policy and institutions coordination, the statement notes that the present mechanisms for effective coordination of the economic policies of the major industrialized countries, including summit meetings, have recently proved ineffective. "Clearly, there is an urgent need to achieve more reliable and responsive inter-governmental coordination of economic policies. To help accomplish this goal, the Inter-Action Council will seek to convey to present government leaders the merits and urgency of such systematic coordination and especially the prompt adoption of responsible fiscal policies by all major powers."

The Statement draws the attention to certain frustrations, indicating that international cooperation is frustrated by institutional rigidities. For example, while there is an intimate interaction between the world trade and financial problems, there is little serious effort to deal with the totality of the present crisis in a comprehensive manner.

Special attention is also called to the international monetary problems. It is observed that the present monetary arrangements, embodying as they do volatile relationships, have not proved generally satisfactory. Discussions of reform are in progress in many fora.

No one, however, has an overview of the thrust of these discussions. There is, as yet, no sign of the emergence of a new consensus among the major economic powers. "The Inter-Action Council will continue to work for a consensus on monetary

reform.”

It is indicated in the final statement that the Council is fully aware of the importance attached by many concerned parties to the convening of an international conference of monetary, financial and debt issues. The Council recognizes the need for both immediate measures in response to the present crisis, and for fundamental measures to re-establish the world systems of money and finance on a sound basis, sustainable over the long term; short-term and long-term measures must be mutually reinforcing.

Finally, the Inter-Action Council “. . .stresses the clear need for continuing study of all the issues so as to clarify the possibilities for constructive changes and for international agreement on interim and longer term measures. The Council intends to review this matter thoroughly at its third session. In the long run, a greater degree of exchange rate stability and much greater discipline of governments in orienting their monetary and fiscal policies in relation to their balance of payments situation is clearly indispensable.”

#### IV. ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD)

##### A. *Decision of the Council of OECD on Transfrontier Movements of Hazardous Waste, Adopted on February 1, 1984*<sup>2</sup>

In accordance with this Decision, the member countries of OECD should control the trans-frontier movements of hazardous waste and, for this purpose, should ensure that the competent authorities of the countries concerned are provided with adequate and timely information concerning such movements. The Council recommended that the countries apply the principles approved and attached to said Decision.

The principles are designed to facilitate the development of harmonized policies concerning trans-frontier movements of hazardous waste. They do not prejudice the implementation of more favorable measures, for the protection of the environment, that are now in force or that may be adopted.

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2. 23 I.L.M. 214-217 (1984).

*B. Summary of Selected Principles.*

The countries should ensure that hazardous waste situated within the limits of their jurisdiction is managed in such a way as to protect man and the environment. For this purpose, countries should promote the establishment of appropriate disposal installations and should adopt all necessary measures to enable their authorities to control the activities related to generation, transport, and disposal of hazardous waste.

With reference to the management of hazardous waste that is subject to trans-frontier movements, countries should require that the entities concerned abstain from participation in trans-frontier movements which do not comply with the laws and regulations applicable in the countries concerned. The entities involved in transport or disposal should be authorized for this purpose. In addition, the countries should require that the generator of the waste: a) take all practical steps to ensure that the transport and disposal of its waste be undertaken in accordance with the laws and regulations applicable in the countries concerned; b) obtain assurances, that all entities concerned with the trans-frontier movement or the disposal of its waste have the necessary authorizations to perform their activities in accordance with the laws and regulations applicable in the countries concerned; c) reassume responsibility for the proper management of its waste. Countries should apply their laws and regulations on control of hazardous waste movements as stringently in the case of waste intended for export as in the case of waste managed domestically.

The Decision also contains rules concerning international pre-notification and cooperation. Countries should cooperate in the control, from the place of generation to the place of disposal, of all hazardous waste that is subject to trans-frontier movements. For this purpose, countries should take the measures necessary to ensure that within their jurisdiction they provide, directly or indirectly, the authorities of exporting, importing and transit countries with adequate and timely information. This information should specify the origin, nature, composition, and quantities of waste intended to be exported, the conditions of carriage, the nature of environment risks involved, the type of disposal, and the identity of all entities concerned with trans-frontier movement or disposal of waste.

The countries should adopt measures necessary to enable their

authorities to object to or, if necessary, prohibit the entrance of a consignment of hazardous waste into their territory, for either disposal or transit, if the information provided is insufficient or inaccurate or the arrangements made for transport or disposal are not in conformity with their legislation. Countries should also take all practical steps to ensure that a projected trans-frontier movement of hazardous waste is not initiated if one of the countries concerned has decided, in conformity with its legislation, to oppose the import or transit of the waste and has so informed the entities or authorities concerned in the exporting country.

For the purpose of these principles, "hazardous waste" means any waste, other than radioactive waste, considered as hazardous, or legally defined as hazardous, by the country where it is situated or to which it is conveyed. "Trans-frontier movement of hazardous waste" means any shipment of waste from one country to another. "Entity" means the waste generator and any natural or legal public or private person, acting on his own behalf or as a contractor or sub-contractor.

#### V. UNITED STATES OF AMERICA—PEOPLE'S REPUBLIC OF CHINA

*An Accord on industrial and technological cooperation between the United States of America and the People's Republic of China was signed on January 12, 1984, at Washington, D.C.*<sup>3</sup>

As provided in the Accord, both parties shall take all appropriate steps to create favorable conditions for strengthening industrial and technological cooperation between the two countries in order to strive for a balance in their economic interests and the attainment of the harmonious development of such cooperation. These steps may include consultations to help identify and study proposals for industrial and technological cooperation projects, facilitation of contacts between potential participants in industrial and technological cooperation projects, assistance in arranging feasibility studies for industrial and technical cooperation, and other forms of cooperation as may be mutually agreed upon.

The Accord, on the other hand, states that industrial and technological cooperation shall be based on contracts or other arrangements between firms, companies, and economic organizations of the two countries, in accordance with the respective applicable

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3. 23 I.L.M. 144-147 (1984).

laws and regulations of the two countries. The parties shall encourage such cooperation according to the needs and capabilities of the two countries, and on the basis of mutual benefits between firms, companies, and economic organizations of the two countries. This cooperation may include: construction of new industrial facilities and expansion and modernization of existing facilities in both countries; production, purchase, sale and leasing of machinery and equipment and high technology products; purchase and sale of industrial and agricultural materials and consumer goods; purchase, sale, license, or commercial exchange of intellectual property rights, technical information or know-how, as well as provision of technical services; co-production and co-marketing, including cooperation in using the technology and equipment of the other party so as to foster the mutual expansion of the reciprocal trade between the two countries.

For the purpose of implementing the Accord, the United States Government nominated the Department of Commerce as its coordinating agency. The Chinese Government nominated the Ministry of Foreign Economic Relations and Trade as its coordinating agency.

The US-China Joint Commission on Commerce and Trade may, when the parties deem it necessary, designate for a special purpose an *ad hoc* group to assist it in its task. It is also provided that the Accord will be interpreted so as not to interfere with industrial and technological cooperation that might be conducted outside the Accord. This Accord is to remain in force until January 31, 1986. It may be extended for successive terms of three years if neither party notifies the other of its intent to terminate at least thirty days before the end of a term.