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TO: Members of the Committee of Three

FROM: Acting Secretary General

The attached note on procedures for the pacific settlement of disputes within various international organizations, has been prepared by the International Staff in response to the Committee's request.\*

(Signed) A. BENTINCK

Palais de Chaillot,  
Paris, XVIe.

\* CT-R/1, paragraph 8. ✓

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NOTE ON PROCEDURES FOR THE PACIFIC SETTLEMENT OF  
DISPUTES WITHIN VARIOUS INTERNATIONAL ORGANIZATIONS

The procedures followed for the pacific settlement of international disputes are, as is well known, of three kinds: pre-judicial, semi-judicial and judicial; they include diplomatic negotiation, enquiry, good offices, conciliation, arbitration and recourse to the International Court of Justice. The question is whether they could be applied by an organization such as NATO. Other international organizations - the Organization of American States, the United Nations, the Western European Union - have adopted them.

A. THE ORGANIZATION OF AMERICAN STATES

2. The Organization of American States prescribes the following:

Pre-judicial procedures

In the first instance, it provides for pre-judicial procedures (American Treaty on Pacific Settlement - Pact of Bogota, 30th April, 1948).

1) In the event of failure of diplomatic negotiation, recourse is had to good offices. The good offices are not necessarily those of States but may also be supplied by eminent citizens, whose function is that of mediators, not judges. The mediators set a period of from 3 to 6 months for the Parties to reach a peaceful settlement of their differences; if they fail to do so, conciliation procedures are resorted to.

2) Conciliation procedures can assume various forms. The Commission of Investigation, consisting of five American members, is convened by the Council of the OAS and must submit a report within six months. The OAS Council may itself act as a conciliation panel (under the terms of the 1947 Treaty of Rio). It can act in this capacity in cases of violation of the territorial integrity, the sovereignty or independence of member States by one of themselves or by a non-member State.

The Inter-American Peace Committee is a little outside the orbit of the OAS (possibly through an oversight on the part of the drafters of the 1948 Pact of Bogota). Composed of five members, unlike the Council of the Organization itself it is vested with judicial powers.

It should be noted that certain American States consider that the Council, with its ability to act in the dual capacity of conciliator and organ of political consultation is in danger of becoming too powerful, while others consider that, with its membership of five, the Inter-American Peace Committee is not unlike an oligarchy/.

Semi-judicial procedures

3. Provision also exists for a semi-judicial procedure:  
ARBITRATION.

This procedure has often been adopted by the American States. The arbiter has sometimes been the head of a State, sometimes the Permanent Court of Arbitration of The Hague. The present arbitration procedure is that laid down in the Pact of Bogota (Chapter 5, Articles 38 et seq.).

Recourse to arbitration is optional but becomes compulsory when a dispute having been brought before the International Court of Justice of The Hague, the latter has declared itself to be without jurisdiction to hear the controversy (see paragraph 4 hereunder).

The Pact of Bogota specifies how the Arbitral Tribunal is to be established, how the special arbitration agreement is to be drawn up, the role of the Council in the event of failure to appoint the arbiter, the form in which the award is to be drafted, etc.

Judicial procedures

4. One of the aims of the American States is to reach the stage of inter-American justice. To take account of this desire for compulsory jurisdiction, the Pact of Bogota, in Chapter 4, Article 31, makes the jurisdiction of the International Court of Justice of The Hague compulsory. The Pact refers specifically to Article 36, paragraph 2 of the Statute of the International Court of Justice and recognises as compulsory the jurisdiction of the Court in all disputes of a juridical nature (e.g. the interpretation of a treaty; any question of international law; the existence of any fact which, if established, would constitute the breach of an international obligation; the nature or extent of the reparation to be made for the breach of an international obligation).

The Pact also provides that either of the parties to a dispute may have recourse to the Court when conciliation procedure has failed or arbitration has not been accepted.

Furthermore, the Court alone is competent to determine the merits of a plea by one of the parties that it is without jurisdiction to hear the controversy. If the Court declares itself without jurisdiction on the grounds that the controversy is national in character, that it has already been settled or that all internal means of recourse have not been exhausted, such controversy shall be declared ended. If the Court declares itself to be without jurisdiction for any other reason, this decision is tantamount to referring the dispute to arbitration which, as stated above (paragraph 3), becomes compulsory in certain cases. This procedure provides means of settling political differences by arbitration.

System of Collective Security

5. The American States have organized in the American continent a system of internal collective security (Inter-American Treaty of Reciprocal Assistance, Rio de Janeiro, 2nd September, 1947).

They regard the interference of any State in the affairs of another State as tantamount to aggression. They have signed various pacts which reject war as an instrument of policy and

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mutually reject their right to territorial conquest; they do not recognise gains obtained by the use of force. During the War, a so-called emergency committee was set up for political defence; it held a watching brief over all the American States to forestall any infiltration or any political aggression detrimental to the continent and was, in reality, directed against the Axis Powers. In its role of an investigating and co-ordinating body, it was able to make recommendations to the Council of the Union.

6. The system of collective security set forth in the Act of Chapultepec (1945) is defined by the Treaty of Rio (1947).

The Treaty prescribes preventive measures and sanctions covering all conflicts, and stresses the need for close co-operation between the American Governments for the maintenance of peace.

- (a) It specifies that an attack by any State against the territorial integrity, the sovereignty or political independence of any other State shall be considered as an attack against all the other American States;
- (b) it imposes conciliation on the American States as a duty. As a provisional measure, the Council can assume this duty by convening the Foreign Ministers of the countries concerned. (No time limit is set, and it can happen, as it already has, that the Council, after convening the Foreign Ministers without specifying the date of their meeting, itself acts as the organ of conciliation);
- (c) the Council also acts as the organ of political consultation. In this capacity, it is vested with powers of determination, and this makes its prescriptions, which are collective in character, binding on States parties to the Treaty.

These prescriptions may comprise recall of chiefs of diplomatic missions; breaking of diplomatic, consular and finally postal relations; interruption of commercial, economic and financial relations; the use of armed force.

They are optional in the case of a mere threat or of an extra-continental or intra-continental conflict, compulsory in the case of armed aggression or an aggression which, though not an armed attack, affects the sovereignty, the independence or the territorial integrity of one of the member States.

The rejection of pacifying action by an American State will stamp that State as an aggressor. However, no American State is required to make use of armed force.

#### B. THE UNITED NATIONS

7. The American States, like the Atlantic States, have at their disposal an alternative system for the peaceful settlement of international controversies, i.e. the one written into the United Nations Charter.

The Charter provides for situations of two kinds; the existence of disputes the continuance of which may constitute a threat to the maintenance of international peace and security, and the existence of any threat to the peace, breach of the peace or act of aggression.

8. For the first case, the Charter (Article 33,1) lays down that the parties shall first of all seek a solution of the dispute by negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement, or by recourse to regional agencies or arrangements (Article 36,1). This clause not only prescribes the traditional methods, but also, it is worth noting, recognises the priority and value of regional arrangements for the settlement of international disputes. The procedures of an agency such as the Organization of American States, are fully warranted under this head.

Should the parties omit to have recourse to peaceful means, the Security Council, if it deems it necessary, urges them to settle their dispute by such means. If this advice is followed, the Council may nevertheless recommend appropriate procedures or methods of adjustment; the legislation of all the States leaves them freedom to adopt these recommendations. The Council is, of course, expected to take into consideration any procedures already initiated and the jurisdiction of the International Court of Justice in legal matters. Should the parties "fail to settle the dispute", either of them may refer it to the Council. The latter recognises or denies the existence of a dispute and, in the affirmative, decides whether it concerns a reserved field, i.e. one outside the purview of any international authority, ascertains whether the procedures for pacific settlement referred to above (negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other Council recommendation) have been followed, and determines whether the continuance of the dispute is, in fact, likely to endanger the maintenance of international peace. It may then, if it deems it desirable, recommend the adoption of further means of pacific settlement, the employment of methods of appeasement, or even suitable terms of settlement. The field of action of the Council is, therefore, extremely wide.

9. The second situation comprises threats to the peace, breaches of the peace and acts of aggression (Article 39). When the Council has determined the existence of such circumstances, it makes recommendations or decides what measures shall be taken. These may be provisional measures which it imposes on the parties concerned (Article 40); on the other hand, it may call on all members of the Organization, or only some of them, to apply other sets of measures. The latter may include complete or partial interruption of economic relations or of rail, sea, air, postal and other means of communication (Article 41). If it considers these to be inadequate, it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security.

10. The attention of the Security Council may be drawn to these disputes by the parties concerned, including States which are not Members (Article 35, paragraph 2), by member States which are not parties to the dispute, by the Secretary-General (Article 99) and by members of the Council themselves (Article 39).

11. It is a moot point whether the General Assembly may itself bring a dispute to the notice of the Council but it would seem so (Articles 10 and 12,4). The General Assembly is, in any case, empowered to discuss any questions relating to the maintenance of international peace and security (Article 11) such as: supervision of the execution of the provisions of the Peace Treaties, attempts at finding peaceful means of smoothing out differences or of dealing with situations endangering peace (Article 14). The General Assembly has itself recognised that whenever there are threats to the peace, breaches of the peace and acts of aggression in respect of which the Security Council has been unable to fulfil its basic function, it may be convened for recommendations on the collective measures which should be taken (Resolution of 3rd November, 1950). However, this declaration of competence leaves unimpaired the primacy of the Security Council.

12. In brief, the United Nations Charter, although it refers legal disputes insofar as is feasible, to the International Court of Justice, provides that political disputes shall be handled entirely by a political agency, first and foremost the Security Council. However, the Charter omits certain definitions which, given a combination of procedures for the settlement of disputes, would appear to be essential, for instance, the definition of a dispute (presumably a deadlock between two parties regarding the fulfilment or non-fulfilment of certain obligations) or that of aggression. Consequently, the peaceful settlement of disputes by the Council rests on very fragile foundations. Last, but not least, in respect of questions of substance as opposed to procedure, the veto rule can operate.

This probably explains the interest evinced by the Charter itself in efficient regional agencies, to which Chapter VIII is devoted.

C. RELATIONS BETWEEN THE UNITED NATIONS AND THE ORGANIZATION OF AMERICAN STATES

13. It will not be out of place to examine the relations of the United Nations with agencies such as the Organization of American States for the pacific settlement of disputes.

The character of the OAS is two-fold. It is an international organization designed to permit of the exercise of the inherent right to individual or collective self-defence; its basis is Article 51 of the United Nations Charter (Article 3 of the Treaty of Rio de Janeiro, 1947). The American, like the Atlantic States can resort to force after they have been the victims of armed aggression. It is the Organ of Consultation of the OAS which determines the character of aggression.

Unlike NATO, the OAS must also be regarded as a regional agency set up within the framework of the United Nations (Article 1 of the OAS Charter, Bogota, 30th April 1948). According to the United Nations Charter, the purpose of regional agencies is primarily to deal with such matters relating to the maintenance of international peace and security as are appropriate for regional action. This is certainly the aim of the procedures for the pacific settlement of disputes between member States adopted by the OAS. They are thus consistent with the provisions of Chapter VIII of the United Nations Charter.

Consequently, in implementation of the combined stipulations of the Charter and of the Treaty of Rio de Janeiro, in the event of a dispute, the American States must first try to settle it themselves by the methods they have accepted as members of a regional agency. However, they may not use coercive measures without the authority of the Security Council. They notify the latter of the existence of a dispute and keep it informed of the activities undertaken or in contemplation for its settlement. Any member government can draw the attention of the Security Council or the General Assembly to the existence of the conflict (see paragraph 9 above). As has already been noted (see paragraph 7 above), the United Nations must refer the dispute back again if all means of settlement under the proscribed regional procedures have not been exhausted. The Security Council retains the right to ensure that the action taken is consistent with the purposes and principles of the United Nations (Article 52 of the Charter).

D. WESTERN EUROPEAN UNION

14. The members of the Western European Union have also stressed, in Article 8 of the Brussels Treaty (17th March 1948), their determination to settle disputes between themselves only by peaceful means. While the present Treaty remains in force, they agree to recognise the competence of the International Court of Justice as regards disputes of a legal character and to submit all other disputes, by which are meant political disputes, to arbitration procedure. However, so far, this procedure does not appear to have been defined.

CONCLUSIONS

15. The position of NATO States with respect to the peaceful settlement of disputes still remains to be examined.

- (a) As regards legal disputes, the position is reasonably clear. All its members, with the exception of the German Federal Republic, are members of the United Nations and as such they have acknowledged not only the optional jurisdiction of the International Court of Justice but, under Article 36 of the Statute of the Court, its compulsory jurisdiction subject to the reservations made by certain countries. As for the German Federal Republic, its position is on a par with that of its six WEU partners, by virtue of Article 8 of the Brussels Treaty.
- (b) As regards disputes of a political character, member States are bound only by the provisions of Article 1 of the North Atlantic Treaty and, with the exception of the German Federal Republic, by the United Nations Charter. These provisions are very obscure and, in a certain measure, problematical. If the prescribed procedures were followed, any difference between two NATO States would be submitted to the Security Council. There is no need to dwell on the benefit the enemies of the Alliance would derive from a public dispute between two parties to the North Atlantic Treaty, quite apart from the fact that the situation could only deteriorate as a result of such action.

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- (c) Under the terms of the relevant agreements, in the final analysis it normally falls to the North Atlantic Council to attempt itself to settle differences between member countries. Nevertheless, there is nothing to prevent the parties to a dispute if they are members of NATO, from submitting voluntarily to a procedure for its pacific settlement along the lines of those adopted by the American States, or from accepting a procedure recommended to them by the North Atlantic Council.

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