

THE TREATY FOR AMAZONIAN COOPERATION: A BOLD NEW INSTRUMENT FOR DEVELOPMENT

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I. INTRODUCTION

A. *The Amazon Basin: historical and geographic antecedents*

Much less is known about the Amazon river basin than about the North Pole. Amazonia remains, in many senses, the last frontier of mankind. Everything in it is superlative: it is the richest area in the globe in diversity of vegetation, and the largest covered by tropical rain forest; spanning an area of 5,870,000 square kilometres, equivalent to more than half the size of Europe, it encompasses large portions of at least eight countries; it is crisscrossed by some 80,000 kilometres of waterways, most of them navigable, and contains nearly one-fifth of all the fresh water running on the surface of the earth; its drainage basin is more than twice the size of any other, and the discharge of the Amazon river proper, at the rate of 4.2 million cubic feet per second, is seven times higher than that of the Mississippi; and it is inhabited by a population loosely estimated at ten million.

Alternatively viewed as an "Eldorado" by the Spanish *conquistadores* of the 16th and 17th centuries and their Portuguese, French, English and Dutch counterparts bold enough to venture into its seemingly impenetrable foliage, and as a "Green Hell" by all those settlers in quest of gold, rubber, oil, or other riches, who ever since have tried to bend the savage forest to their will, Amazonia has lured many adventurers in search of its elusive wealth,

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only to engulf them with the exquisite perversity of a carnivorous plant.

The recorded history of Amazonia is that of human greed. Whether it was the search for precious metals and stones, or Indians to be enslaved, or sheer territorial aggrandizement, Amazonia was prey to the feuds of distant warring kings. The political map of northern South America, as well as the remnants of ancient forts and cannon rotting in the jungle, bear witness to their ambitions. While the French, the English and the Dutch colonized the coastal fringe in the area corresponding today to the Guyanas, the Portuguese *bandeirantes* pushed westwards, preempting the vast open spaces of jungle and savannah east of the Andes left fallow by the absence of European settlements in what would have been Spanish domain under the Treaty of Tordesillas.¹ The political geography of Amazonia, thus defined, explains why over 60% of the region became Portuguese and eventually Brazilian territory.

The Spaniard Vicente Yañez Pinzón discovered the Amazon river in 1500, and called it the Sweet Sea. In 1541, a compatriot of his, Francisco de Orellana,² sailed the river from close to its source in the Andes to the Atlantic, but it was not until 1638 that the trip was made in the reverse direction by the Portuguese Pedro Teixeira. In 1755, the then Portuguese Prime Minister, the Marquis of Pombal, established a trading company, the General Company of Grão Pará and Maranhão, for the purpose of exploiting forest products and notably spices ("*Drogas do sertão*") as well as cattle, and military garrisons were posted to guard its holdings.

There followed a period of relative calm, interrupted by the visits of all manner of both genuine and allegedly scientific expeditions, generally viewed with jaundiced eyes by the Imperial Government of Brazil, and in the mid-19th century the Emperor, D. Pedro II, bowing to combined British and American pressure,

¹ The Treaty of Tordesillas (1494) apportioned the non-Christian world yet to be discovered between Portugal and Spain, and followed the bull of Pope Alexander VI (Borgia) which had given the New World to Spain while Africa and India were ascribed to Portugal; the new demarcation line gave Portugal a claim to Brazil (discovered in 1500). Under the doctrine of *uti possidetis*, effective occupation by Portuguese settlers greatly expanded the area allotted to Portugal by the Treaty, at the expense of Spain. This was accepted by Spain under the Treaty of Madrid of 1750. In 1777, the Treaty of San Ildefonso asserted Portuguese rights over much of the territory granted to Spain at Tordesillas.

² Orellana was a companion of Pizarro in the conquest of Perú; in the course of an expedition into the interior his detachment straggled at the Napo River and sailed down the Amazon, so christened because of the legend of native female warriors believed to inhabit the forest. Orellana reached the mouth of the river in 1541, but a later attempt to return upstream ended in his death.

reluctantly opened the Amazon river to international navigation (1866). At approximately this time, by virtue of the burgeoning Industrial Revolution and the world's demand for rubber, predatory exploitation of Amazonian rubber began, and the "boom" ensued, leading to the ephemeral prosperity of the port cities of Manaus and Belém (the latter at the estuary of the Amazon), only to dwindle around 1910, with fresh competition from the much improved plantations started by the British and the Dutch in Malaya and Sumatra, respectively. In 1927, the Ford Motor Co. opened two large rubber plantations on the Tapajós river—Fordlandia and Belterra—which, although they subsequently failed (despite a brief resuscitation during World War II), proved that Amazonia was, indeed, fit for human settlement and productive enterprise, despite the climate and the prevalence of tropical disease.

The rubber boom focused attention on the Brazilian Amazon, and a number of disputes arose over ill-defined boundaries. Those between Brazil and French Guyana were settled by a Swiss arbitral award in 1900 (the Amapá Question), in favour of Brazil, whereas the frontier with British Guyana, settled by an arbitral award rendered by the King of Italy in 1904, was apportioned between the two countries. In 1903, a Sudeten-like situation, engendered by the presence of Brazilian rubber workers in the Acre territory of Bolivia, operated by the United States-based Bolivian Syndicate, led to outbursts of violence, ultimately settled by the Treaty of Petrópolis of 1903, whereby Brazil purchased the territory in question from Bolivia in exchange for financial compensation and a commitment to build the Madeira-Mamoré railway, now abandoned but which at the time cost at least one life for every railway tie.

A similar outbreak of jungle violence occurred in Putumayo, Perú, at a rubber concession operated by the British Peruvian Amázon Co. Ltd. Ecuador ceded some of her Amazonian territory to Brazil in 1904, and to Colombia in 1916. In 1932, a brief war erupted between Perú and Colombia over the territory of Leticia, which was settled through the intervention of the League of Nations, and in 1941, Perú and Ecuador again went to war over a century-old, festering boundary conflict, which was only half resolved by a treaty of 1942, whereby Perú acquired a considerable portion of Ecuadorean territory in the Amazon region. Similar territorial claims exist between Venezuela and Guyana—the Essequibo question, now in abeyance pending a moratorium which will expire in 1982—and to some extent between Guyana and Suriname, who also share contested territory.

Clearly, the colonial inheritance in northern South America, encompassing the Amazon river basin, left territorial boundaries unclearly charted in those wild reaches and, as a result, plenty of blood was spilt in the jungle, a silent witness to the untold misery accruing from greed. The smouldering resentment left in some countries of the area over what are deemed to be unfair settlements, whether by force of arms or binding arbitration, heralds potential trouble spots for the hemisphere, thus enhancing what is already a heightened regional sensitivity to security considerations.

An illustration of this sensitivity is afforded by the Brazilian reaction to UNESCO's initiative in 1948 to establish a science-oriented International Institute of the Amazon Hylaea.³ Although it had been a Brazilian scientist who originally spearheaded the idea, ulterior and somewhat sinister motives were perceived in it, and as a consequence the entire effort had to be scuttled. A similar reaction was evoked by the idea floated more recently by the futurologist Herman Kahn of the Hudson Institute, aiming at the creation of huge man-made lakes by damming up some of the rivers in the Amazon basin.⁴ While the scheme may have been hare-brained to begin with, the nationalist feelings aroused by it in Brazil never permitted an in-depth public discussion of its technical aspects.

During the post-World War II period, the Amazonian economy remained fairly stagnant until the 1950's when Japanese settlers in the Brazilian State of Pará resumed the practice of the early colonial days and planted spices, such as vanilla and pepper, thus

³ The expression *Hylaea* had been coined by the German naturalist von Humboldt (1769-1859) to describe the Amazonian rain forest. In 1948, UNESCO convened a conference at Iquitos, Perú (3,750 Km. upriver from the mouth of the Amazon), which was attended by governmental representatives from Bolivia, Brazil, Colombia, Ecuador, France, Italy, the Netherlands, Perú, and Venezuela aiming at the establishment of a scientific institution devoted to the study of the Amazonian humid tropic. The resulting agreement (doc. UNESCO/NS/ILHA/10 Annex I, 1948) was signed by all of the participants, but eventually ratified only by Ecuador and France. Domestic political controversy aroused in Brazil by this initiative, perceived as an attempt to 'internationalize' Amazonia, prompted the Congress and the military to oppose it and it subsequently fell into oblivion. Esther Crampton, *Brazilian Nationalism and the Defeat of the International Institute of the Amazon Hylaea* (1970) (unpublished Ph.D. thesis, The American University, Washington, D.C.).

⁴ In 1968, Mr. Kahn advocated turning the Amazon into a vast inland lake, and also the interconnection of the Amazon, Orinoco, and River Plate Basins in order to facilitate the generation of hydroelectricity and the transport of the area's natural resources. This proposal, which would appear to have been insufficiently substantiated by factual research, stirred a storm of controversy in Brazil and contributed to heighten that nation's sensitivity to foreign interest in Amazonia. Kahn & Panero, *Novo enfoque sobre a Amazonia*, 41/2 REVISTA BRASILEIRA DE POLITICA INTERNACIONAL 1-214 (1968).

introducing agricultural alternatives into the region. After the new capital of Brazil, Brasília, was officially inaugurated in 1960, a road was built linking it to Belém, and a network of paved highways was soon crisscrossing the entire Brazilian portion of the Amazon basin. Notable among these is the Trans-Amazon Highway, which, if superimposed on a map of Europe, would stretch from Lisbon to Moscow.

The policy of occupation of the scarcely populated Amazonian hinterland by surplus population from the impoverished north-eastern part of the country, with settlements strung along the extended network newly carved out of the jungle, springs from geopolitical concepts ("live frontiers") espoused by the Brazilian leadership, and is closely linked with the national drive towards development of the Amazon basin and its integration into the mainstream of the country's economy, from which it had for so long been isolated by virtue of sheer lack of communication. If the doctrine is justifiable from a national security perspective, especially in view of the threat or reality of guerrilla warfare on the Amazonian perimetre in the mid- and late 1960's, from the standpoint of an effective settlement program, its implementation was not an unmitigated success. This was largely because of the general scarcity of knowledge, in Brazil and elsewhere, about the unique factors conditioning life and agricultural production within Amazonia. Nevertheless, most of the roads planned were actually built (against staggering odds) and, thanks to a generous system of federal fiscal incentives, both public and private investment has been funnelled into the region as a matter of high national priority.⁵

⁵ Under the influence of these geopolitical doctrines and the attendant national security considerations, the military, which assumed power in Brazil in 1964, gave impetus to policies designed to provide Amazonia with the physical infrastructure that would not only integrate the region with the rest of the country but also provide a basis for a colonization program, much along the lines of homesteading for the American pioneers of the 19th century. As a result of "Operation Amazonia" launched by the Brazilian Government in 1965-67, a Superintendancy for the Development of the Amazon (SUDAM) was created in 1966, and a new Program for National Integration, of epic proportions, was started in 1970, taking the form of construction of a complex network of 'penetration roads,' river ports, airports and telecommunications facilities. The Second National Development Plan for 1975-79 maintained these priorities, but in light of the poor results of the original settlement program, several improvements were made therein, notably through the *Polamazonia* program of 1974, which operates through 15 poles for the development of the area's agricultural, live-stock and mineral resources. D. MAHAR, *FRONTIER DEVELOPMENT IN BRAZIL: A STUDY OF AMAZONIA* (1979). These purely domestic programs are at the root of the move towards the conclusion of the Treaty for Amazonian Cooperation.

B. *The development of Amazonia*

Despite the vigorous efforts undertaken recently to gain better insights into the economic resources of Amazonia, not only by Brazil but also, in a modest but growing measure, by the seven other nations encompassing the Amazon basin, the latter remains largely untapped. For instance, it is estimated that the hydroelectric power potential of the basin is of the order of 5,500 million kilowatts. Six major hydropower projects are currently being planned, with another forty-five under study. Amazonia's fauna and flora are the richest on Earth, its rivers among the longest and most voluminous. Oil was found in the Amazonian territories of Ecuador and Peru, coal in Colombia, iron ore, manganese, gold, uranium, cassiterite and bauxite in Brazil, the latter also in Guyana, Suriname and Venezuela. Agricultural production with an export potential includes lumber, rubber, jute, cocoa, African palm, Brazil nuts, spices, *etc.*, in addition to cattle and fisheries.

From the little that is known about it, Amazonia is a vast reservoir of economically vital natural resources. This is not to say that there are not yet large-scale infrastructure development projects and industrial enterprises active in the area. They do indeed exist, and as everything else in Amazonia, on a superlative scale. Economic development in the area tends towards the predatory style of exploitation. It is often assumed that the governments of the area encourage this approach, just as they are suspected of supporting in the name of economic growth the assaults perpetrated by greedy landholders and commercial speculators against the life and property of the local indigenous population. This is clearly not the case, but the difficulties inherent in enforcing police jurisdiction, in its various manifestations, over an area as vast and of such difficult access as Amazonia lend credence to such assumptions, and the best intentioned governments find themselves powerless to control private actions in the remote reaches of the basin. The dichotomy between short-term private gain and long-term public interest is perhaps nowhere as crass as it is in Amazonia.

One of the major problems encountered in the development of this area, largely covered by rain forests, lies in its deforestation, which causes deleterious effects on both local and global climate as well as on human populations depending on the forest for their livelihood. Among the causes for deforestation may be listed an inappropriate system of fiscal incentives, which encourages the clearing of forests for cattle-grazing; the availability of alternative investments yielding higher returns than sustainable land

management in the area; a land tenure system traditionally favouring deforestation; the low price of land in the face of rapidly-increasing demand for it from a mushrooming population; an ingrained disregard for conservation laws; and very weak law enforcement machinery in the area.

The balance of the ecosystem depends on the intense circulation of the vegetation's life cycle. In the case of Brazil, the government is attempting to formulate and enforce a forest policy, patterned after the zoning concept, which would determine the carrying capacity for colonization projects with a view to sustaining the human population at an adequate standard without environmental degradation.⁶ The adoption of regulations designed to contain the deforestation process presupposes a knowledge of its underlying causes. It would appear that any solution would embody a rational policy of national incentives, as opposed to sanctions, in support of a common forest development policy to be adopted at the regional level for all Amazonian countries, pursuant to the Treaty for Amazonian Cooperation, which gives legal form and cogency to the concept of ecodevelopment, *i.e.*, the harmonization of the inter-relationships between man and nature and man and society.⁷

Aside from the vicissitudes of nature, there are many constraints on the development of Amazonia. They stem to a large extent from the pattern of human settlement in the area, marked by a low population density, its uneven spatial distribution, and its poor education, which place obstacles on the way to a satisfactory level of productivity. Entrepreneurial, managerial and technical talent are scarce; there is a traditional dependency on extractive activities as sources of employment and income. The regional market is narrow, and until recently, *i.e.*, the early 1960's, there were nearly insurmountable difficulties of communication except by air, despite an extensive network of navigable waterways. The high cost of transport of course influenced the prices of all other factors of production (except labour), with the result that the only viable enterprises, aside from government sponsored and heavily subsidized development projects, had to be assured of a very high rate of return in order to cover costs. This explains in part the predatory character of rubber exploitation, for instance, resulting in its shift to Southeast Asia. Last but by no means least in this list of material constraints, the illusory fertility of the area, as

⁶ Fearnside, *The Development of the Amazon Rain Forest: Priority Problems for the Formulation of Guidelines*, 4 INTERCIENCIA 338-42 (1979).

⁷ E. ODUM, ENVIRONMENTAL ETHICS AND THE ATTITUDE REVOLUTION (1976).

reflected in its luxuriant vegetation, is betrayed by the poor quality of most of its soil and sub-soil, largely consisting of laterite; the only soil of consistently good quality in the Amazon is to be found in the flood plains along the main rivers.

While Brazil had the most ambitious and sustained effort for the development of the Amazon basin, other countries have to a certain extent also undertaken their own schemes for the improvement of their Amazonian territories. These efforts, however, pale by comparison with those of Brazil, and are really only at an incipient stage. Different countries pursue different goals in this connection. For Bolivia, for instance, a landlocked nation, access to the sea is a critical issue, and therefore river navigation acquires considerable importance as a means to break the bondage of "mediterraneity." Perú sought geopolitical, defensive objectives in building the *Carretera Marginal de la Selva*, to be known in the future as the Bolivarian highway, skirting the Brazilian border rather than intersecting it so as to permit inter-modal river-and-road transport from the Atlantic to the Pacific Ocean. Ecuador is intent on a colonization scheme. Colombia wishes to develop the area surrounding Leticia, which is economically much closer to Brazil and Perú than to the mainstream of the national economy, from which the city, an important river port, is virtually isolated. Venezuela is concerned with her boundary security. Guyana and Suriname face problems of migration and smuggling along their borders.

While individual nations have in the recent past sought to put into effect some semblance of development programs for their Amazonian territories, these have yet to yield sizeable results. What is clearly needed is an integrated approach such as that which the Treaty for Amazonian Cooperation can help to bring about, triggering international collaboration for the solution of common problems. It is important, in this respect, that the momentum generated by the Treaty, indeed, the awareness of a common Amazonian interest, not be lost through delays in its implementation.

II. THE TREATY FOR AMAZONIAN COOPERATION

A. *Background and scope*

The Treaty for Amazonian Cooperation (TAC) was signed in Brasília on July 3, 1978, by the Foreign Ministers of the eight countries sharing the Amazon basin—Bolivia, Brazil, Colombia,

Ecuador, Guyana, Perú, Suriname and Venezuela. It was ratified by all of the countries and entered into effect on August 3, 1980, one month after the deposit of the instrument of ratification by Venezuela, the last to grant approval. The first meeting of Foreign Ministers under the Treaty is scheduled to take place on October 23-24, 1980, at Belém, State of Pará, Brazil.

This Treaty is a remarkable document, in that (i) it revitalizes the faltering process of Latin American economic integration by substituting the concept of physical integration for the relatively modest advances accomplished within various subregional groupings in the domain of trade;⁸ (ii) it brings about a long overdue convergence between the Andean group, on the one hand, and Brazil, on the other, thus overcoming what had been for many years a somewhat strained political relationship; (iii) recognizing that untrammelled economic growth must, within the framework of development, be balanced with ecological conservation, it institutionalizes the concept of internationally enforceable environmental protection for what constitutes in effect one of the most frail ecosystems on this planet; and (iv) it provides the legal foundation for the harmonious development, by means of controlled human occupation, of a unique and enormous area of land and water still virtually in its pristine state which, through the judicious application of appropriate technology, may yet play a role of extraordinary economic and social significance in a continent plagued by one of the world's highest rates of demographic expansion.⁹

In its twenty-eight articles, the Treaty provides for cooperation in scientific and technological research as well as in exchanges of information regarding the most diverse aspects of Amazonian development; indeed, technology looms large in the stipulations of the Treaty. The TAC, moreover, provides for the rational use of hydrological and other natural resources, with due regard to the ecological balance and the preservation of indigenous cultures—and one may regret that the introduction of the latter topic seems to have been made peripherally and more as an afterthought than as one of the essential provisions of the document. It further provides for the establishment of an infrastructure for transport and

⁸ To be considered in any plan of ecodevelopment are the countries of Central America, the Caribbean, the Andean Group and LAFTA, the Latin American Free Trade Association, which encompasses Mexico and most of South America.

⁹ The current average population growth of Latin America is 2.8% per annum. The present population of 350 million is projected to reach 600 million by the year 2000. Thus, during the last quarter of this century, the population of Latin America will almost double. 9 BOLETIN DEMOGRAFICO 1 (1976).

communications with full freedom for navigation on Amazonia's international rivers; for sanitation and the control of epidemics; for the promotion of border trade and of tourism; and so forth.

The bulk of this varied activity is to be carried out in each participating country by a Permanent National Commission to be established by the respective government. Unlike the River Plate Basin Treaty of 1969, from which it derived in part its inspiration, the Amazonian Treaty did not create a central and permanent coordinating body of an intergovernmental character, nor a centralized Secretariat. Rather, it provided for periodic meetings of Foreign Ministers of the contracting parties and for annual meetings of the Amazon Cooperation Council, instituted by the TAC, consisting of senior diplomatic representatives from each country, both bodies to be serviced on an ad hoc rotating basis by the government of the country where such meetings take place. Such flimsy institutional arrangements are of a nature to arouse misgivings about the practical implementation of the Treaty's provisions.

Nevertheless, from a political and diplomatic standpoint, there can be no doubt that Brazil's initiative in sponsoring the Treaty for Amazonian Cooperation was successful, by and large, on a variety of scores, regardless of the fact that the text eventually adopted (after only eighteen months of negotiations) differs markedly, in several respects, from Brazil's original proposals, whose adoption would have entailed an even bolder approach to the development of Amazonia. The substantial changes which the agreement underwent during the process of its negotiation illustrate the lingering suspicion of the Andean countries vis-à-vis Brazil, historically viewed as a territorial colossus with hegemonic ambitions (notwithstanding reality to the contrary).¹⁰ It also reflects the desire of the seven other signatories not to let the TAC become a means for Brazil to assert further moral if not legal rights vis-à-vis Argentina in the smouldering dispute over hydro-power exploitation projects on the Paraná River. Although this issue was resolved subsequently to mutual satisfaction, at the time of negotiations of the Amazonian Treaty, the Andean nations were anxious to avoid upsetting the balance of power in the Southern cone.

In order to allay these suspicious and thereby pave the way for a successful negotiation of the TAC, Brazil embarked upon a

¹⁰ See, e.g., Gen. Edgardo Mercado Jarrín (former Foreign and Prime Minister of Perú), *Pacto Amazónico: dominación o integración?*, in 583/4/5 SEMANA (Caracas) (December 1979).

veritable diplomatic offensive vis-à-vis the Andean group, through a series of state visits at the level of Chiefs of State and Foreign Ministers.¹¹ At the latest such visit, the Foreign Minister of Brazil met in January 1980, in Lima, with his counterparts from the five members of the Cartagena Agreement (Bolivia, Colombia, Ecuador, Perú and Venezuela), which resulted in the adoption of guidelines for mutual cooperation in the fields of trade and technology. Implementation of the Treaty for Amazonian Cooperation without prejudice to the strengthening of the Latin American Economic System (SELA) was one of the items discussed. It can be said that Brazil's relationship with the Andean group—which in the meantime has acquired momentum enough to become a political force in its own right—is now blossoming, which should facilitate implementation of the TAC.

In essence, Brazil's goal of securing international agreement for the concerted development of a physical infrastructure of integrated transport and communications networks ultimately linking the Atlantic and Pacific oceans was replaced by a mere *framework* for the coordinated development of the Amazon basin through strictly national efforts and, it may be hoped, with an equitable distribution of its benefits among all parties. At a time of recrudescence in East-West tensions and of heightened political sensitivity, for the United States, regarding various parts of Latin America (e.g., the Caribbean and Central America), Amazonia may no longer be viewed as a geopolitical backwater. As the "heart-land" of the continent and as a reservoir of largely untapped wealth of strategic significance, the area has belatedly come to be acknowledged as possessing geopolitical as well as economic importance, a fact of which the parties to the Treaty for Amazonian Cooperation were not unmindful.

As any instrument in the nature of a minimal consensus, the Treaty reflects the particular idiosyncrasies of the signatory states, notably their emphasis on national sovereignty, as expressed in the unanimity rule for the decision-making process. Thus, the Andean countries saw to it that the new agreement, purposefully kept vague, could not overshadow either the Andean Pact itself or the Latin American Economic System (SELA). As

¹¹ The President of Perú, Gen. Morales Bermúdez, met at the border with the President of Brazil, Gen. Geisel, in late 1976; the President of Venezuela, Carlos Andrés Pérez, visited Brazil in November 1977, and gave his vital endorsement to the pending Treaty; the President of Perú, Gen. Morales Bermúdez, visited Brazil in October 1979, and the newly-elected President of Brazil, Gen. Figueiredo, visited Venezuela in December 1979.

further evidence of the prevailing sensitivity to national sovereignty, witness the insistence of some of the negotiators of the agreement, whose countries are embroiled in territorial disputes in different degrees of cogency, on a clause regarding the inviolability of territorial boundaries and the non-renunciation of claims pertinent thereto. For Brazil, who has no such claims, it was easy to accept this clause, despite the fact that the country's boundaries within the Amazon region, totalling some 11,000 km., are nearly three times the length of her Atlantic coastline (4,600 km.).

The shared concern of most of the signatories in not setting up a customs union, as originally proposed by Brazil, nor multilateral machinery designed to implement the lofty if somewhat vague aspirations embodied in the Treaty, is reflected in the latter's lack of definitions, to such an extent that nowhere in the text is there to be found a precise statement of its geographic scope. Nor, indeed, are there any more explicit guidelines concerning criteria for regional cooperation, the utilization of international waterways both for navigational and other economic purposes, or the role of foreign private investment. These and other aspects were left for future, ad hoc resolution, presumably by the Foreign Ministers upon recommendation from the Amazon Cooperation Council. The only real commitment enshrined in the Treaty is that of reciprocal consultations on matters deemed by the contracting parties to be relevant to the development of their respective Amazonian territories. Even this modest achievement, however, in creating at the very least a multilateral *awareness* or consciousness of the need for a balanced approach to the development of the Amazon basin, already can be termed a constructive first step in this direction.¹²

B. *Negotiation of the Treaty*

With 63.3% of the Amazon basin within its territory, and desirous of safeguarding it against foreign interference, in November 1976, Brazil took the diplomatic initiative of proposing a treaty to her Amazonian neighbors, with a view to establishing an integrated physical infrastructure within the basin. In proposing the Amazonian Treaty, the Brazilian government departed from precedent; the diplomacy of the Brazilian Foreign Ministry (Itamaraty)

¹² Cf. U. SCHERFENBERG, DER AMAZONASPAKT: INHALT, ZIELE UND PROBLEME EINES NEUEN INTEGRATIONSVERTRAGS 18-23 (1979) (Hamburg, Institut für Iberoamerika-Kunde). See also Landau, *Tratado de Cooperación Amazónica: nuevo ensayo de integración*, INTEGRACION LATINOAMERICANA 3-10 (1978).

has traditionally relied on bilateral relationships rather than on the institutionalization of multilateral machinery. Among the reasons which prompted Brazil to take this initiative are considerations of a security, diplomatic and economic nature. The former refer to the strategic nature of Brazil's empty "hinterland" and, perhaps, also to concern with the use of Guyana and certain Caribbean islands as refuelling stops for Cuban military flights to Africa. The diplomatic motivation may have sprung from Brazil's growing sense of estrangement from the Andean group and especially in respect of Venezuela,¹³ whose oil may also have spurred the Brazilian interest. On the economic front, there was the interest in extending to neighboring areas the massive plan for development of the natural resources of the Amazon basin, while securing access to the Pacific Ocean. The other seven countries were initially approached on a bilateral basis and accepted the idea of attending a meeting, which was convened in Brasília in March of 1977 and attended by representatives of the other seven countries, who considered a working paper introduced by the Itamaraty.

A first round of negotiations took place in Brasília on November 28-30, 1977, immediately following the state visit to Brazil of Venezuelan President Carlos Andrés Pérez. The other countries took the position that Itamaraty's working document was too incisive, and proceeded to defuse it; for example, by substituting the concept of *economic cooperation* for that of *physical integration*. A second round of negotiations took place in March 1978, again in Brasília, to consider a revised Brazilian working paper as well as proposals from other participants. Venezuela, for instance, lobbied for the provisions concerning the non-renunciation of territorial claims (embodied in Article XIX of the Treaty), protection of indigenous populations (Article XIII) and a specific proposal on the use of river resources, regarding which no consensus could be reached. A third and final round of negotiations was held in Caracas on May 15-18, 1978, when the final text of the agreement was approved.

Perceptions of the significance of the Treaty vary. It has been said, and not without reason, that "The main significance of the Amazon Pact lies in the decision of the contracting parties to consult on the development of their geopolitically sensitive frontier areas and to pay more attention than in the past to the ecological

¹³ Roett, *Brazil Ascendant: International Relations and Geopolitics in the Late 20th Century*, 29 J. OF INT'L AFFAIRS (1975).

dangers inherent in the unbridled exploitation of the Amazon region."¹⁴ This would be a relatively modest accomplishment, if a sobering one, and perhaps not unimportant in a zone as volatile as that of northern South America.

C. *Legal-institutional issues raised by the Treaty*

The Treaty for Amazonian Cooperation (TAC)¹⁵ has a number of implications of a legal-institutional nature which deserve close scrutiny, beginning with the *consideranda* for the Treaty, which state as its objectives the promotion of the "harmonious development of the Amazon region" and "an equitable distribution of the benefits of said development." Given the unequal geographic share that the eight signatory countries have in the Amazon region, this should be construed as being in line with the overall inter-American policy, reflected in other hemispheric fora and institutions such as the Organization of American States (OAS) and the Inter-American Development Bank (IDB), to the effect that preference will be given to the lesser-developed countries within the region.

Indeed, this basic principle is reflected in Article XVII of the Treaty, whereby the contracting parties commit themselves "to give special attention to the consideration of initiatives presented by the least developed countries which require joint action and efforts by the contracting parties." Even though it is nowhere defined which are the least developed countries within the Amazon sub-region, it can be surmised that they comprise Bolivia, Guyana and Suriname, with the possible inclusion of Ecuador (as being in the least developed category as defined, *e.g.*, by the IDB, notwithstanding the country's membership in OPEC), and despite the fact that Suriname's per capita income is one of Latin America's highest in view of that nation's plentiful natural resources and relatively small population (389,000 in 1978).¹⁶

¹⁴ Bond, *Venezuela, Brazil and the Amazon Basin*, 22 ORBIS 644 (Fall 1978).

¹⁵ For full text, see 17 INT'L LEGAL MATERIALS 1045 (1978).

¹⁶ According to the IDB (*Economic and Social Progress in Latin America, 1978 Report*), the following are the Gross Domestic Product (GDP) per capita rates for the eight signatories of the TAC:

Bolivia	479.9
Brazil	1,121.8
Colombia	637.1
Ecuador	627.1
Guyana	553.6
Perú	848.0
Suriname	2,110.0

Another of the *consideranda* of the TAC is one of the factors which make this instrument so unique, namely, the assertion that "so as to achieve overall development of [the contracting parties'] respective Amazonian territories, it is necessary to maintain a balance between economic growth and conservation of the environment." This notion reflects the spirit of the United Nations Conference on the Human Environment (Stockholm, 1972), but this would appear to be the first, if not the only, instance in which it has been formally adopted as one of the principles underlying a treaty, albeit not in a binding clause.¹⁷ Given the frail ecosystems of the Amazon region and the wholesale ecological destruction wrought by unshackled commercial exploitation of the region's natural resources, such as lumber, this expression of concern by the signatory governments, also reflected elsewhere in the Treaty, even if thus far unaccompanied in practice by either a binding agreement or by any enforcement measures (aside from the research and information exchanges envisaged in Article VII of the Treaty), should be hailed as a significant step forward in the reconciliation of the twin objectives of economic growth and environmental preservation.

It belatedly has come to be recognized that growth alone does not constitute development, but rather that it must also entail a fair distribution of its benefits, *i.e.*, a modicum of social welfare. These are basic tenets of the New International Economic Order, generally espoused by Third World countries, but in advancing the cause of conservation and equating it with economic growth—a goal whose mystique pervades developing societies—the eight South American parties to the TAC have carried the concept of development to a higher plane of international responsibility.

Venezuela	2,127.3
Average TAC members	1,063.10
LATIN AMERICA	1,076.80

(All figures are preliminary estimates for 1978 and are expressed in U.S. 1976 dollars. For Suriname, preliminary estimates of GNP per capita for 1978 were taken from the World Bank's 1979 *Atlas*). It is nevertheless important to note that these statistics do not accurately reflect the situation of extreme underdevelopment and acute poverty prevalent throughout the Amazonian territory.

¹⁷ References to the goal of environmental preservation are also to be found in a predecessor agreement, the Treaty on the River Plate Basin, signed in Brasília on April 23, 1969 (likewise a Brazilian initiative), 8 INT'L LEGAL MATERIALS 905 (1969), after which the TAC has been to some extent patterned. See also special provisions on pollution in a follow-up instrument to the River Plate Treaty, *e.g.*, the Treaty between Argentina and Uruguay, 13 INT'L LEGAL MATERIALS 251 (1974). A very recent expression of concern about reconciliation between the objectives of economic development and conservation can be found in the Declaration of Environmental Policies and Procedures relating to Economic Development, 19 INT'L LEGAL MATERIALS 524 (1980).

This they reaffirm in the following *considerandum*, when they state that the contracting parties are "conscious that both socio-economic development as well as conservation of the environment are responsibilities inherent in the sovereignty of each State, and that cooperation among [them] shall facilitate fulfillment of these responsibilities, by continuing and expanding the joint efforts being made for the ecological conservation of the Amazon jungle." The reference to national sovereignty which is emphasized throughout the Treaty and which is characteristic of its approach should be seen in the context of the essentially defensive nature of this agreement, *erga omnes*. Confronted with the choice between a nationally-based strategy for Amazonian development and the design of multilateral machinery to implement it, the signatories of the Treaty clearly opted for the former alternative which, however, debatable, is unequivocally and consistently asserted in the Treaty.

The final two *consideranda* are interesting in that, by stressing *cooperation* among the signatories on matters of common concern as a step towards Latin American solidarity and (economic) *integration*, and by then labelling the TAC itself as "the beginning of a process of cooperation," the parties to the Treaty, and notably the Andean countries, have apparently sought to mitigate, if not defuse, the thrust of the original Brazilian initiatives for such an instrument. The original proposed by Brazil was clearly aimed at the integration of the physical infrastructure of the Amazon basin. Now it is loosely referred to in Article X of the Treaty but certainly not as its primary objective. While one can only conjecture what the underlying motivation may have been, one plausible assumption is that the Andean nations did not wish the TAC to be symmetrical with, and hence potentially overshadow, the Cartagena Agreement of 1969, better known as the Andean Pact, which instituted the community of five nations¹⁸ sharing the An-

¹⁸ The number of member states was six before Chile left in 1976. Largely inspired by President Eduardo Frei of Chile, the Cartagena Subregional Integration Agreement, 8 INT'L LEGAL MATERIALS 910 (1969), was signed in Bogotá, Colombia, on May 26, 1969 on behalf of Bolivia, Chile, Colombia, Ecuador and Perú, and was joined by Venezuela in 1973. Its Secretariat and headquarters are located in Lima, Perú. For an analysis of the Agreement's legal-institutional implications, see F. GARCIA-AMADOR, EL ORDENAMIENTO JURIDICO ANDINO (1977). The rationale of preserving the supremacy of the Andean Pact over the TAC also explains the cautious avoidance of the designation *Pact* for the Amazonian Treaty, as proposed. For many years, there was a certain measure of diplomatic tension between the members of the Cartagena Agreement and Brazil (to some extent also with Argentina), stemming in part from the democratic bent of the six governments originally involved, and this reserved atmosphere prevailed even during the negotiation of the TAC.

dean *cordillera*, or mountain range, all of which are parties to the TAC.

The key to the purpose and spirit of the Treaty lies in Article I, whereby the signatories agree "to undertake joint actions and efforts to promote the harmonious development of their respective Amazonian territories in such a way that these joint actions produce equitable and mutually beneficial results and achieve also the preservation of the environment, and the conservation and rational utilization of the natural resources of those territories." In other words, development of each country's territory within the Amazon region remains the country's sovereign prerogative, but an effort will be made to reconcile these purely national initiatives in an harmonious manner and thereby bring about joint actions aiming at the development of the area according to stated parameters. Article X, which gives the priority goal of the Treaty as being that "of fully incorporating [the Amazonian territories into the contracting parties'] respective national economies," reinforces this notion.

From a legal standpoint, it can be inferred from the single paragraph to Article I, as well as from other sections of the Treaty (*e.g.*, Articles VI and XVIII) which refer to the conclusion of supplementary agreements, that the TAC is endowed with the juridical characteristics of a *traité-cadre*, an "umbrella agreement" which for its full implementation requires the conclusion of complementary and specific understandings and agreements. Indeed, this is the nature of most integration agreements, including the Treaty of Montevideo, which in 1960 established the Latin American Free Trade Association (LAFTA), and the Cartagena Agreement itself, both of which contain basic principles and general norms to be supplemented by ad hoc agreements and resolutions in specific instances.¹⁹

Thus, when the TAC states that the parties would "prepare . . . the pertinent legal instruments which will permit the aims of the present Treaty to be attained," it is establishing a legal framework within which ad hoc agreements are to be developed in re-

It was defused, however, during the actual process of negotiation, by the visit of Venezuelan President Carlos Andrés Pérez to Brazil in 1977, by an encounter of the Presidents of Brazil and Perú at the border, and, in the aftermath of the Treaty's signature, by the state visits of President Francisco Morales Bermúdez of Perú to Brazil, and of Brazilian President Joao Baptista Figueiredo to Venezuela, both in 1979.

¹⁹ GARCIA-AMADOR, *id.* at 66-68. See also INSTITUTO INTERAMERICANO DE ESTUDIOS JURIDICOS INTERNACIONALES, PROBLEMÁTICA JURÍDICA E INSTITUCIONAL DE LA INTEGRACIÓN DE AMÉRICA LATINA: ENSAYO DE SISTEMATIZACIÓN 738-41 (1967).

sponse to actual needs. Normally, this delegation of competence assumes the existence of some entity charged with the continuing issuance of resolutions designed to implement the purposes of the agreement, but in the case of the TAC there is none, except for the Amazonian Cooperation Council and the periodic meetings of Ministers of Foreign Affairs of the contracting parties, contemplated respectively in Articles XXI and XX of the Treaty (discussed below). The actual enforcement of the Treaty is entrusted to Permanent National Commissions, which are to be established in each member country (Article XXIII), but there is no permanent international administrative entity, such as a Secretariat, charged with this responsibility.

Article II of the Treaty defines its geographic scope, albeit in a somewhat generic fashion, by stating its applicability to the territories of the contracting parties within the Amazonian Basin as well as to any of their territories "which, by virtue of [their] geographical, ecological or economic characteristics [are] considered closely connected with that Basin." This definition is based primarily on political rather than scientific considerations, since only the southernmost fringe of the territories of Guyana, Suriname and Venezuela can be said to be part of the Amazon basin (they are part of the Orinoco basin), whereas French Guyana, which is reached by some affluents of the Amazon river, while clearly belonging to the latter's drainage basin, is excluded from the Treaty.

Actually an overseas department of France, French Guyana is one of the last non-sovereign territories in the Western hemisphere, and is regarded in Latin America as a colonial enclave, distinguished only by echoes of the Dreyfus case and, in more recent times, by a rocket-firing aerospace research facility guarded by the French Foreign Legion. In any event, its dependent status vis-à-vis a European power would have made it most unwelcome to the signatories of the TAC, an instrument with Monrovia overtones of "Amazonia for the Amazonians." Thus, the southern portion of the territories of Venezuela, Guyana and Suriname was encompassed by the Treaty as having physical features resembling those of the Amazon basin, but French Guyana was deliberately excluded from its scope.²⁰

²⁰ Both France and Trinidad & Tobago tried to join the TAC negotiations at an early stage, but in both cases they were diplomatically turned down by consensus among the negotiating countries.

Article III of the Treaty sets forth in ample form the principle of freedom of international commercial navigation on the Amazon river "and other international Amazonian rivers," except for cabotage. This section thus extends by reciprocity among the eight TAC signatories the principle of free navigation granted by unilateral acts, bilateral treaties and the principles and rules of international law (regarding which, however, there still is no perfect consensus in respect of navigation in international waterways, nor indeed on the definition of what constitutes an international river; presumably, an international Amazonian river is one within the purview of the Amazon basin).²¹

Article VI of the Treaty states the goal of affirmative action by the riparian states to facilitate free and unimpeded navigation by means of the elimination of physical obstacles to it, "so as to enable the Amazonian rivers to become an effective communication link among the contracting parties and the Atlantic Ocean." Article V, however, commits the signatories to undertake "efforts aimed at achieving rational utilization of the hydro resources."

Article IV reaffirms the sovereign right of each state to the exclusive utilization of natural resources within its territory, the exercise of such right to be unfettered by any restrictions other than those arising from international law. Herein lies some of the rationale for the conclusion of this Treaty, which, in the face of heightened international concern about the ecological damage wrought in the Amazon region by a predatory and essentially uncontrollable exploitation, and in view of the actual or presumed wealth of the area, led the TAC signatories to join forces in resisting any external attempts, whether perceived or real, to exercise control over its natural resources. Once again, it is the principle of "Amazonia for the Amazonians." In Article XVI, the sovereignty rule is again employed to preserve the unassailability of national development projects not actually inconsistent with "international law and practice between neighbouring and friendly countries," whatever that may be.²²

²¹ Given the considerable difficulties encountered in the formulation of a definition of international rivers, the U.N. International Law Commission, in its current consideration of the topic "The law of the non-navigational uses of international watercourses," has before it at its 32nd session in Geneva (May 5-July 25, 1980) the second report prepared by Special Rapporteur, Prof. Stephen M. Schwebel, wherein the concept of international watercourse systems is substituted for that of international rivers. See his provisional second report, mimeo, p. 28, Article I.

²² This is yet another area wherein the law remains somewhat murky, albeit governed by the ancient maxim of Roman law, *Sic utere tuo ut alienum non laedas* ("Use your own so as not to injure that which belongs to others"). Cf. 1 OPPENHEIM'S INTERNATIONAL LAW 313-4

Article V, already quoted, aims at the rational utilization of the hydro resources of the Amazonian rivers, "taking account of the economic and social development of the region." These functions, of course, extend beyond navigation and encompass the use of hydropower for the generation of electric energy, for which there is a vast potential in the Amazon basin (e.g., the Brokopondo project in Suriname and Tucuruí in Brazil). Bearing in mind the serious difficulties that have arisen within the framework of the River Plate Basin between Argentina, Brazil and Paraguay in respect of the allocation of waters of the Paraná River for hydropower utilization purposes, which difficulties have only recently been resolved notwithstanding the presence of a similar provision in the River Plate Basin Treaty (Article I, b), it is understandable that the negotiators of the TAC, in line with the latest thinking on multipurpose river basin development, should have seen fit to devote a full section of the Treaty to this purpose. The rule contained in Article XVI, of course, reflects the same concern.

Article VII of the TAC raises no special legal issues, in that it aims at the promotion of scientific research and information exchanges regarding conservation. Other provisions of the Treaty (Articles I, paragraph; IX, paragraph 1, c; and notably XV) likewise seek to promote such exchanges of information among the parties. Since this is a typical function of international administrative secretariats, it is hard to see how such systems can be effectively institutionalized in the absence of any permanent multilateral machinery. While such machinery need not *eo ipso* be multilateral in character, and might be centered in several national institutions which may have achieved an acknowledged standard of excellence in certain functional activities, in practice this would mean that the relatively more advanced countries within the Amazon region, and particularly Brazil (which has established an enviable installed capacity in each of the functional sectors contemplated by the Treaty), would sponsor and probably harbour the corresponding systems. This would detract from the avowed intention of the TAC negotiators, and the Brazilian delegation bent over backwards to ensure a relatively low profile, to

(7th ed. 1952). In support, see the *Corfu Channel* case, 1949 I.C.J. REP. 4, 16; the *Trail Smelter Arbitration*, U.S.T.S. 893, 6 BEVANS 61-62; *Lake Lanoux Arbitration* 1959 I.L.R. 122-23; Principle 21 of the Stockholm Conference on the Human Environment (Report of the Conference, U.N. doc. A/C. 48/14/1972, Rev. 1, p. 5); Article 3, Charter of Economic Rights and Duties of States as adopted in U.N.G.A. Resolution 3281 of December 12, 1974 reprinted in 14 INT'L LEGAL MATERIALS 255 (1975).

avoid the preeminence of any of the contracting powers. This helps to explain, although it does not fully justify, the absence of a centralized permanent secretariat, which would almost necessarily reflect Brazilian preeminence in a variety of fields.

Article XIX of the Treaty constitutes a standard disclaimer clause, inserted at the insistence of those countries who have territorial claims pending against them, to the effect that a signing of the TAC may not be construed to imply acceptance or renunciation, in any manner whatsoever, of the position or interpretation that any contracting party may hold on matters concerning limits or territorial rights which may exist between the parties.

Coming to institutional issues, the Treaty employs a variety of expressions to connote different degrees of cooperation among its signatories in the pursuit of certain stated objectives. Thus, the contracting parties agree to "*cooperate*" to increase the flow of tourists into Amazonia (Article XIII), and to ensure the effectiveness of measures aiming at the conservation of Amazonia's ethnological and archaeological wealth (Article XIV); to "*make efforts* aimed at achieving rational utilization of . . . hydro resources" (Article V); to "*promote coordination* of the present health services in their respective Amazonian territories" (Article VIII); to "*establish close cooperation* in the fields of scientific and technological research" (Article IX), to which end they may undertake *inter alia* "joint or coordinated implementation of research and development programmes;" to "undertake to *study* the most harmonious ways" of establishing a suitable physical infrastructure in their Amazonian territories (Article X); to "*carry out studies* into the means for eliminating physical obstacles to . . . navigation" (Article VI, paragraph); to "*encourage* joint studies and measures aimed at promoting the economic and social development of said territories" (Article XI); to "*present initiatives for undertaking studies*" for the elaboration of programmes of common interest (Article XVII); to "*seek to maintain*" a permanent exchange of information and cooperation among themselves etc. (Article XV); and to "*undertake joint actions and efforts* to promote the harmonious development of their respective Amazonian territories" (Article I). As can be seen, the agreements range from the merely hortatory to actual commitments to take concrete action, but in all cases the responsibility for actual implementation rests with the individual governments concerned.

It may well be asked how this is to operate in practice, in view of the admittedly rudimentary nature of institutional development in the relatively less developed signatory nations of the TAC.

Each member country is bound by Article XXIII of the Treaty to create a Permanent National Commission charged with enforcing in its territory the provisions set out in the Treaty, as well as with the execution of the decisions taken at meetings of Foreign Affairs Ministers and by the Amazonian Cooperation Council, "without jeopardizing other tasks assigned to [it] by the State." However, it is difficult to conceive of any national institution, even with the sophisticated paraphernalia of modern public administration in a developed country, which is capable of coping effectively with the wide range of tasks listed in the Treaty, especially when the venue of its implementation is as complex as that of the Amazon basin. Were it not for the political factors already cited, this Treaty would therefore have signified a perfect opportunity for setting into place one or more technical agencies, and preferably a small, highly skilled, centralized Secretariat capable of carrying out these functions according to strictly multilateral criteria.

Since, however, this was apparently not viable in view of the political atmosphere prevalent at the time of negotiation of the Treaty (but which has improved considerably since), the TAC goes about solving the problem of its own effective implementation in several different and complementary ways:

1. it does not preclude such a possibility, and therefore opens the way for a solution of this type if the political dynamics of the situation should change and other circumstances warrant it;
2. it actually endorses the establishment of bilateral (and ultimately multilateral) machinery for the achievement of certain targets (Arts. VI, IX, XI, XVIII and XXI, item 4); and
3. it allows resort to existing, external international machinery for certain specified purposes (Arts. IX, paragraph 2 and XV).

For the time being, the multilateral institutional mechanisms contemplated in the Treaty with a view to its implementation are fairly tenuous. They consist of Meetings of Ministers of Foreign Affairs of the contracting parties, to be convened "when deemed opportune or advisable, in order to establish the basic guidelines for common policies, for assessing and evaluating the general development of the process of Amazonian cooperation and for taking decisions designed to carry out the aims set out in [the Treaty]" (Article XX). Also included is an Amazonian Cooperation Council, comprised of top-level diplomatic representatives, which is to meet once a year, basically in order "to ensure that the aims and objectives of the Treaty are complied with," to carry out the

decisions taken at the Foreign Ministers' meetings, to recommend the convening of such meetings, "to take under consideration initiatives and plans presented by the [contracting parties] as well as to adopt decisions for undertaking bilateral or multilateral studies and plans, the execution of which, as the case may be, shall be the duty of the Permanent National Commissions," and "to evaluate the implementation of plans of bilateral or multilateral interest."

Whatever "teeth" the TAC may have, they are clearly vested in the Amazonian Cooperation Council, and although there is room to wonder about the adequacy of having a strategy for the development of Amazonia entrusted to representatives of Foreign Ministries, one can only hope that for substantive input they would draw heavily on the technical departments of their own governments. While this has traditionally been the case in Brazil, one may wonder about the situation in some of the other countries involved. The Amazonian Cooperation Council, as previously indicated, will not be able to rely upon the services of a permanent Secretariat, however small; rather, it will have to contend with a *pro tempore* Secretariat provided by the country in whose territory the next regular meeting of the Council is scheduled to be held (Article XXII), the venue of such meetings being rotated in alphabetical order among the contracting parties (Article XXI, paragraph 2). The sole function of the Secretariat, aside from servicing the meetings, is to distribute the pertinent documentation among the parties.

If this arrangement may on the surface seem flimsy, it ought to be remembered that there is a good precedent for it in Latin America, in the creation of CECLA, the Special Economic Committee for Latin American Coordination, originally convened under OAS auspices in 1963 and which eventually became a fairly powerful lobbying instrument for the Latin American vis-à-vis the industrialized countries, and provided the inspiration for the creation of a new, strictly Latin American organization, SELA, the Latin American Economic System.²³ CECLA also functioned originally with no more than a *pro tempore* rotating Secretariat, but illustrated the fact that it is the political will of the parties, rather than the nature of their institutional arrangements, that determines the course of multilateral action. One may only hope that a positive will for action will in time infuse the deliberations of the Amazonian Cooperation Council. The results of the May 1980 elec-

²³ Bond, *Regionalism in Latin America: prospects for the Latin American Economic System (SELA)*, 32 INTERNATIONAL ORGANIZATION 401 (1978).

tions in Perú, which brought to power a President who, during his previous administration, had shown a strong commitment to Amazonian development, give grounds to hope for such a favourable prospect.

Consistent with the emphasis on national sovereignty, which pervades the Treaty, all decisions taken at meetings of the Foreign Ministers and of the Amazonian Cooperation Council shall require the unanimous vote of the parties to the TAC. Only in one case, that of decisions taken at meetings held in accordance with Article XXIV (Special Commissions set up by the parties to study specific problems or matters related to the aims of the Treaty), will the unanimous vote of the *participating* countries always be required.

The final adjective clauses of the Treaty do not offer special interest from a legal standpoint, except possibly Article XXVI, which disallows "interpretive reservations or statements." Given the Latin American tradition of virtually nullifying international agreements by expressing reservations to them, this would seem to be a healthy development, and consonant with the aims of the Treaty. Likewise, Article XXVII, stipulating that it shall remain in force for an unlimited period of time and shall not be open to adherence, is consistent with the goals of the TAC and the political definition of its geographic scope. The treaty became effective thirty days after the deposit of the last instrument of ratification by the contracting parties with the government of Brazil, which acts as depositary, and shall cease to have effect for the contracting party which denounces it one year after the denunciation has been formalized, following by at least ninety days the communication to the depositary of the intention to denounce (Article XXVII).

III. THE TREATY AND A STRATEGY FOR AMAZONIAN DEVELOPMENT

The world is starved for natural resources, of which there is an abundant supply in the Amazon basin. This is especially relevant in the light of active strategic stockpiling by the United States and other nations, made inevitable by a recrudescence in international political tensions. It is fair to predict that this will give powerful impetus, in the medium- to long-term future, to the exploitation of Amazonian natural resources. Were it not so, it is likely that the same nations who for four and a half centuries had neglected the development of their Amazonian "hinterland" would continue to do so, despite the existence of a Treaty whose princi-

pal corollary is the creation of a collective awareness of the need to develop the area, and to do so by means of harmonious strategies. The fact that Amazonia may indeed attract international concern suggests that financial and technical resources may be forthcoming from external sources to assist them in this endeavor.

The Treaty for Amazonian Cooperation sets forth broad parameters for action intended to bring about economic growth and environmental protection. If the institutions loosely created under the terms of the Treaty, depending on the political will of the parties, manage to monitor and reconcile national development efforts within Amazonia so as to achieve a synergistic effect, the formulation of a concerted strategy for the development of the area ought not to present insurmountable obstacles. If implemented harmoniously, as called for in the Treaty, such a strategy would in effect mean the conquest, for the benefit of mankind, of one of the last tracts of virtually virgin land on this planet. However, devising a development strategy for an area as complex as Amazonia constitutes an extraordinary challenge to human ingenuity. Although it has been observed that "Latin America possesses the technical, financial and political capacity to rapidly introduce modern large-scale technology, modifying aquatic and terrestrial environments,"²⁴ this power thus far resides only with the largest countries, in this case Brazil, which would run against the spirit of the Treaty, which rejects such preeminence. Quite clearly, weak and underdeveloped states can scarcely be expected to meet this challenge. It follows that international development agencies, whose multilateral character ought to defuse political sensitivities to foreign dominance, have a major opportunity in this regard, as indeed is envisaged by the Treaty.

It would appear that one of the very first steps designed to put into practice the objectives of the Treaty lies in the establishment of a pre-investment agency for project identification, evaluation and design. Nothing in the TAC precludes the creation of such an agency by a unanimous decision of the Foreign Ministers pursuant to a recommendation from the Amazon Cooperation Council. An analogous course of action was followed in the establishment of the Financial Fund for the Development of the River Plate Basin, entrusted with the performance of similar tasks in that context.²⁵

²⁴ Nelson & Lee, *Environmental Dimension of Water Management in Latin America*, 3 WATER SUPPLY AND MANAGEMENT 238 (1979).

²⁵ Created by Resolution Nr. 5 of the IV Meeting of Foreign Ministers of the River Plate Basin (Asunción, 1971). The Charter of the Fund was signed during the VI meeting (Buenos Aires, June 12, 1974) and entered into force on October 14, 1976. The Fund's capital is US \$100 million, of which \$20 million have been subscribed.

If, in addition to capital subscriptions from the participating governments, such an agency were able to count upon financial contributions from such multilateral lending agencies as the World Bank and the Inter-American Development Bank, its ability to perform effectively in the area of pre-investment would be enhanced correspondingly.

In the same vein, joint binational and multinational enterprises could be set up, within the framework of the TAC, whether intended for hydropower exploitation, for the development of transport or mineral resources, or for any other purposes requiring functional international cooperation. Successful examples of such institutional arrangements elsewhere in Latin America, and notably on the River Plate Basin hydroelectric works, suggests that this approach is not only feasible but may in fact constitute the most appropriate method of meeting the titanic challenge of developing Amazonia.²⁶

While Amazonia is not a modern Eldorado, nor indeed solely a Green Hell, the area does contain a wealth of natural resources whose rational exploitation should contribute to bringing the fruits of development to the nations whose territories encompass the Amazon basin. It remains to be seen whether these nations are capable of meeting this challenge through a convergence of their long-term enlightened self-interests. In Amazonia, "most of today's problems are traceable to past pursuits of conflicting and mutually exclusive goals."²⁷ Witness, *e.g.*, the dichotomies between the simultaneous creation of an ample highway network in a country—Brazil—suffering from a tremendous oil shortage and with underdeveloped river navigation; the adoption of a regional development model for the Brazilian Amazon fostering import-substituting industrialization, and therefore requiring some measure of infant-industry protection, while at the same time a free trade zone was promoted in Manaus; and the official encouragement of human settlements along the highways while capital-intensive manufacturing enterprises are given fiscal incentives.

²⁶ E. WHITE, *EMPRESAS MULTINACIONALES LATINOAMERICANAS* (1973) (Mexico). The most striking examples of Latin American binational companies operating large hydroelectric power complexes are Itaipu (Brazil-Paraguay), Yaciretá (Argentina-Paraguay) and Salto Grande (Argentina-Uruguay), all within the framework of cooperation in the River Plate Basin. A similar arrangement is envisaged for a forthcoming power project, Corpus (Argentina-Paraguay). Both the Itaipu Treaty of April 26, 1973, and the Yaciretá Treaty of December 3, 1973, adopt the principle of common and indivisible property of the hydropower potential flowing at the border on the Paraná River.

²⁷ MAHAR, *supra* note 5, at 164.

While these contradictions are due largely to the difficulties inherent in the planning process for an area as complex as Amazonia,²⁸ the scarcity of reliable data—which the TAC attempts to address—is an impediment to a better diagnosis of the area's ills, and therefore to the prescription of appropriate therapies. If this situation prevails even in Brazil, where massive efforts have been undertaken with a view to gaining better insights into the Amazonian reality, one can well imagine what the obstacles are in the other countries where such efforts have yet to be initiated on a large scale.

It reflects favorably upon the maturity of judgment and the pragmatism of the eight contracting parties to the Treaty for Amazonian Cooperation that they have been able to reconcile their political and other differences in order to lay the groundwork for future joint endeavors, both bilateral and multilateral, aiming at the integrated and balanced development of Amazonia. The underlying recognition of the need for a cooperative approach rather than unilateral action in the name of unfettered national sovereignty must be regarded as constructive and hopeful. Viewed as a point of departure for a grand, bold adventure on the threshold of the twenty-first century, the Treaty assumes the proportions of an act of enlightened statesmanship.

²⁸ A. da Silva Lima, *La mise en valeur de terres nouvelles: le cas de l'Amazonie brésilienne* 345-51 (1973) (Doctoral thesis, Université de Paris, I).

