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PRELIMINARY ANALYSIS OF LEGAL REQUIREMENTS FOR ADMISSION OF  
NEW MEMBER STATES TO THE PAN AMERICAN HEALTH ORGANIZATION

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Introduction

This preliminary legal analysis has been prepared for the consideration of the PAHO Executive Committee, 88th Meeting, pursuant to its discussion on Agenda Item 4, First Plenary Session, 23 June 1982, Request of the Government of Belize for Membership in the Pan American Health Organization (Document CE88/10). As requested, this preliminary analysis does not deal with the specific agenda item, but with the general legal requirements for admission to PAHO of new Member Governments.

Provisions of PAHO Constitution

The Constitution of the Pan American Health Organization (PAHO) contains only one requirement for full membership in the Organization:

"All American States are entitled to membership in the Organization. (American States which are Members of the Organization are hereinafter called Member Governments)." (PAHO Constitution, Article 2.A, Final Act, XII Pan American Sanitary Conference, CD1.R1, 1947).

This is the only membership criterion established in the original 1947 Constitution. It is essentially a continuation of the membership criteria for the earliest Inter-American Sanitary Conventions dating from 1902. All the original Pan American sanitary codes from the 1905 Regulations on International Sanitary Policy (Convention Ad Referendum, Second General International Sanitary Convention) to the Pan American Sanitary Code of 1924 (VII Pan American Sanitary Conference, U.S.T.S. 714, 1924) were open to adherence upon demand by any government.<sup>1</sup>

Thus, the tradition within the Hemisphere has been to welcome all independent States from the Region into the Inter-American Health System.

The PAHO Constitution, in continuing this tradition, opens its membership to "all American States." This term is subject to precise legal definition. "American" has a geographical meaning: the seat of government of the State must be located in the Western Hemisphere. A "State," under international law, is traditionally defined as an entity which has 1) a people, 2) a territory, 3) a government, and 4) a capacity to enter into relations with other States of the world. An entity is recognized as a State when other States accord it diplomatic relations, when it is admitted to membership in an international organization, or when it is allowed to accede to international treaties.

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<sup>1</sup>Only American States generally acceded to these treaties, because of their Inter-American context, titles and nature of the obligations for notification and quarantine.

There is nothing in PAHO's history or practice to suggest that the term "American States" in the PAHO Constitution has any other meaning than this accepted legal definition. The practice of admitting all newly independent American States to membership upon application confirms this interpretation. Likewise, various resolutions adopted by the Pan American Sanitary Conferences since 1947 also confirm this meaning (E.g. CSP12.R2, 1947, Annex).

There are no other formal legal requirements for admission to membership in PAHO. In practice, American States, in their applications for PAHO Membership, have indicated their willingness to assume all the obligations imposed by the Constitution and to comply with the provisions of the Pan American Sanitary Code, as well as to contribute by means of a quota assessment to the financial support of the Organization. PAHO Directing Council and Sanitary Conference resolutions admitting new Member Governments have noted these acceptances of PAHO legal obligations. But such statements are not formal legal requirements. Indeed, in 1963, the PAHO Directing Council failed to adopt such a requirement, reasserting the provisions of Article 2.A of the PAHO Constitution as the sole criteria for admission of new members (CD14.R21, 1963, cf. CSP12.R2, 1947, Annex).<sup>2</sup>

#### PAHO-OAS Relationship

The suggestion that PAHO's relationship with the Organization of American States (OAS) in some way affects PAHO membership criteria has no legal foundation.

PAHO, as an organization, is independent from the OAS. This independence can be traced to the creation of the International Sanitary Bureau in 1902; it was strengthened by the 1924 Pan American Sanitary Code. Its most recent formulation is our present Constitution, approved in 1947, which, significantly, predates the Charter of the OAS (signed at Bogotá, 30 April 1948, 2 U.S.T.S. 2394). The PAHO Constitution is a separate international treaty, which can be amended only in accordance with its own provisions, unless specifically abrogated by a later multilateral agreement.

The OAS is similarly independent. Its Charter establishes its own membership requirements, in chapter III. Those provisions differ from PAHO's in their procedural specificity, as well as by the Article 8 requirement for peaceful resolution of certain territorial claims prior to OAS admission after 1964.

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<sup>2</sup>This does not mean that a State admitted without such advance acceptance of the PAHO constitutional obligations would be free later to reject them. Under the doctrine of pacta sunt servanda, a State which ratifies a treaty is bound by its provisions.

OAS membership requirements do not even purport to pertain to Inter-American Specialized Organizations, which are governed by an entirely separate Chapter (XXI) of the OAS Charter, providing in pertinent part:

"For the purposes of the present Charter, Inter-American Specialized Organizations are the intergovernmental organizations established by multilateral agreements and having specific functions with respect to technical matters of common interest to the American States." (Article 130, OAS Charter).

"Relations that should exist between the Specialized Organizations and the Organization (OAS) shall be defined by means of agreements concluded between each organization and the Secretary General, with the authorization of the General Assembly." (Article 134, OAS Charter).

The OAS Charter, thus, does not require or suggest that members of Inter-American Specialized Organizations must be members of the OAS, or that eligibility for OAS membership has any relevance for membership in an Inter-American Specialized Organization. The PAHO Constitution clearly states that all American States are entitled to membership in PAHO. The OAS Charter could not and does not affect this provision.

The Agreement concluded between the OAS and PAHO in 1950 (CD3.R2) simply ratifies this independent relationship:

"The Pan American Sanitary Organization is recognized as an Inter-American Specialized Organization." (Article I, OAS-PAHO Agreement, 1950).

"The Pan American Sanitary Organization shall continue to enjoy the fullest autonomy in the accomplishment of its purposes, within the limits of the instruments which govern it...." (Article III, OAS-PAHO Agreement, 1950).

Thus, it should be clear that the tie between PAHO and the OAS in no way amends the requirements for admission to PAHO established by the PAHO Constitution.

PAHO history and practice confirm this conclusion. There are at present two Member Governments of PAHO which have never applied for admission to the OAS: the State of Guyana was admitted to PAHO in 1967; the State of Canada became a PAHO Member Government in 1971. Neither is a member of the OAS. Separate quota assessments were established for each country upon admission. (CD17.R1, 1967; CD20.R2, 1971). This is precedent for admission to PAHO of other non-OAS American States.

Conclusion

1. The PAHO Constitution states, in Article 2.A, that all American States are entitled to membership in the Organization. This is consistent with the history of the Inter-American health system.
2. American States are those entities with a) a people, b) a territory, c) a government whose seat is located in the Western Hemisphere, and d) a capacity to enter into international relations with other States.
3. PAHO's status as an Inter-American Specialized Organization, recognized in conformity to Chapter XXI of the Charter of the OAS, could not and does not purport to amend this PAHO Constitutional provision. Precedent exists for admission to PAHO of non-OAS American States.
4. In practice, new Member Governments have indicated their willingness to accept the provisions of the Pan American Sanitary Code and the PAHO Constitution, prior to admission to PAHO, but this is not a formal legal requirement for admission.
5. Thus, all entities which are American States are entitled to admission to PAHO; Article 2.A of the PAHO Constitution contains the sole legal requirements for admission of new Member Governments.