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REGIONAL AND INTERNATIONAL ACTIVITIES

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ORGANIZATION OF AMERICAN STATES (OAS)

I. CONFERENCE OF PLENIPOTENTIARIES

Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region

The Conference of Plenipotentiaries on the Protection and Development of the Marine Environment of the Wider Caribbean Region was held in 1983 at Cartagena, Colombia. The Conference was convened by the Executive Director of the United Nations Environment Program in accordance with the recommendation adopted in 1981 by the Intergovernmental Meeting on the Action Plan for the Caribbean Environment Program.

Representatives of Colombia, Costa Rica, Cuba, France, Grenada, Guatemala, Honduras, Jamaica, Mexico, Netherlands, Nicaragua, Panama, Saint Lucia, Trinidad and Tobago, United Kingdom, United States and Venezuela participated in the conference as well as the Caribbean Community and the European Economic Community. Representatives from the organs and specialized agencies of the United Nations and the Organization of American States also attended.

On March 24, 1983, during this Conference, the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region was signed. The following is a summary of many of the provisions of the Convention.

The Convention applies, according to article I, to the wider Caribbean region (known as the "Convention area") excluding the internal waters of the Contracting Parties, except as provided otherwise in any protocol to the Convention. Article 2 defines the

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Convention area as the marine environment of the Gulf of Mexico, the Caribbean Sea and the areas of the Atlantic Ocean adjacent thereto, south of the 30 degree north latitude and within 200 nautical miles of the Atlantic coast of the States invited to participate in the Conference.

Article 3 provides that the Contracting Parties shall endeavor to conclude bilateral or multilateral agreements, including regional or subregional agreements, for the protection of the marine environment of the Convention area. The Convention and its protocols are to be construed in accordance with international law and shall not prejudice the present or future claims of any Contracting Party concerning maritime jurisdiction.

Article 4 outlines the general obligations of the Convention. The Contracting Parties are individually or jointly obligated to take all appropriate measures to prevent, reduce and control pollution of the Convention area and to ensure sound environmental management. They also shall ensure that the implementation of those measures does not cause pollution of the marine environment outside the Convention area.

Articles 5 through 9 call for the Contracting Parties to take all appropriate measures to prevent, reduce and control pollution caused by dumping, passing ships, land-based sources, sea-bed activities and airborne pollution within the Convention area. The establishment of specifically protected areas is provided for in article 10.

Articles 11 through 13 deal with cooperation in cases of emergency, environmental impact assessment, and scientific and technical cooperation. According to article 14, the Contracting Parties shall cooperate with a view toward adopting rules and procedures in conformity with international law with respect to liability and compensation for damages from pollution. Article 15 designates the United Nations Environment Program to carry out certain secretariat functions, including preparation and convening of meetings and conferences; performing miscellaneous functions assigned by protocols to the Convention; coordinating the implementation of cooperative relations agreed upon by the Contracting Parties; and coordination with other international organizations or agencies.

Pursuant to article 16, the meetings of the Contracting Parties are to be held once every two years in order to review the imple-

mentation of the Convention and its protocols. These meetings will have the following functions: to periodically assess the state of the environment in the Convention area; to adopt, review and amend annexes to the Convention and its protocols; to make recommendations regarding the adoption of additional protocols; to establish working groups and consider and adopt cooperative activities within the framework of the Convention and its protocols. Any additional protocols to the Convention are to be adopted by the Contracting Parties under article 17 at Conferences of Plenipotentiaries.

Article 20 provides for the adoption of rules of procedure for meetings and for the determination of the respective financial participation under the Convention and protocols by a unanimous vote of the Contracting Parties. At present, there is no convention or treaty in the Inter-American system which requires a unanimous vote by the decision-making organs. This provision may be the result of influences from the system employed by the U.N. Security Council.¹

Article 23 deals with disputes as to the interpretation or application of the Convention or its protocols. It provides that Contracting Parties shall seek settlement of their disputes through negotiation or any other peaceful means. If the Contracting Parties concerned cannot settle their dispute in this manner, they may, upon agreement, submit their dispute to arbitration under the conditions set out in the Annex to the Convention. A Contracting Party may accede to arbitration at any time.

The Convention and its protocols, as provided in article 27, shall be open for accession by the States and organizations which were invited to participate in the Conference, as well as the Caribbean Community and the European Economic Community. According to article 28, the Convention becomes effective on the thirtieth day following the date of deposit of the ninth instrument of ratification or accession to the Convention. Pursuant to article 30, the Government of the Republic of Colombia is the official depository of the original text of the Convention.

1. Three permanent members of the U.N. Security Council participated in the Conference that approved the Convention.

Annex Providing Arbitral Tribunal

An Annex to the Convention provides for an arbitral tribunal for the settlement of disputes as referred to in article 23 of the Convention. The Secretary General of the United Nations plays a key role in constituting this tribunal. The Annex provides that each of the Contracting Parties to a dispute appoint an arbitrator. The two arbitrators so appointed then designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The chairman may not be from the same country as one of the parties to the dispute, may not have his usual place of residency in the territory of one of these parties, may not be employed by any of them or have dealt with the case in any other capacity.

If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary General of the United Nations shall, at the request of either party, designate a chairman. Likewise, if one of the parties to a dispute does not appoint an arbitrator within two months of the receipt of the request to do so, the Secretary General of the United Nations would designate the chairman. This chairman would then request the party who has not appointed an arbitrator to do so within two months. After such time, if the arbitrator has not been appointed, the Secretary General would then make the appointment.

The Annex provides that the arbitral tribunal render its decision in accordance with international law, the provisions of the Convention, and its protocols. Each tribunal constituted under the provisions of the Annex is to follow its own rules of procedure.

The decisions of the arbitral tribunal as to procedure and substance are to be determined by a majority vote of its members. The tribunal has power to take all appropriate measures in order to establish the facts. The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings. The tribunal may also hear and determine counterclaims arising directly out of the subject matter of the dispute. Unless the tribunal determines otherwise, expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.

Any Contracting Party that has an interest in the subject matter of the dispute, may intervene in the proceedings with the consent of the tribunal. The tribunal shall render its award within five

months of the date on which it is established, but may extend the time limit for a period which should not exceed five months if circumstances so require. The decision of the tribunal is final and binding upon the parties to the dispute and is to be accompanied by a statement of reasons.

The Protocol Concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region

On March 24, 1983, the Contracting Parties to the Convention signed the Protocol Concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region. The Protocol applies to oil spill incidents posing a significant threat of pollution to the marine and coastal environment of the wider Caribbean region or adversely affecting the related interests of one or more of the Contracting Parties.

As provided in the protocol, the Contracting Parties are to cooperate in taking all necessary preventive and remedial measures to protect the marine and coastal environment of the wider Caribbean region from oil spill incidents. This is to apply particularly to the coastal areas of the islands of the region. The Contracting Parties shall also, within their capabilities, establish and maintain the means of responding to oil spills and endeavor to reduce the risk thereof. The Protocol encourages the Contracting Parties to accomplish these goals by the enactment of legislation, the preparation of contingency plans, the identification and development of the capability to respond to oil spills, and the designation of an authority responsible for the implementation of the Protocol. Each Contracting Party is to render assistance, within its capabilities, to other Contracting Parties requesting assistance in responding to an oil spill incident. The Protocol also provides for an exchange of information, operational measures, subregional and institutional arrangements and meetings of the Contracting Parties.

Resolutions

During the Conference of Plenipotentiaries, several important resolutions were adopted. The Conference urged, by resolution, that all States and regional economic integration organizations entitled to sign the Convention and the Protocol do so as soon as possible. In two other resolutions, the Conference requested the United Nations Environment Program to convene a working group

of experts to be nominated by the Contracting Parties and Signatories to prepare a draft protocol on land-based sources of marine pollution and on specially protected areas and wildlife in the wider Caribbean region as well.

II. WORLD CONFERENCE ON THE INDEPENDENCE OF JUSTICE

From June 6 through June 9, 1983, the World Conference on the Independence of Justice was held in Montreal, Canada. During this Conference, the Draft Universal Declaration on the Independence of Justice was approved. The Declaration represents an achievement of particular significance in contemporary international relations and will be submitted to the United Nations for consideration during the 1983 General Assembly Session.

Selected judges, law professors, and jurists from the five Continents participated in the Conference and nearly twenty international non-governmental organizations were represented.² Judges of four international courts—the International Court of Justice,³ the Court of Justice of the European Communities, the European Court of Human Rights, and the Inter-American Court of Human Rights—participated in the Conference.

The Declaration is divided into six chapters which have been labeled as follows: Preamble; I. International Judges; II. National Judges; III. Lawyers; IV. Jurors; and V. Assessors.

Preamble

The Preamble concerns the importance of justice and the rule of law through which the free exercise of fundamental human rights as well as peace between nations can be secured. The Preamble recalls that States have long established courts and other institutions for the purpose of assuring that justice be duly administered in their respective territories. Independence in the administration of justice must be guaranteed to judges, both national and

2. The Inter-American Bar Association was represented by Dr. Rafael Eyzaguirre of Chile, Chairman of the Executive Committee, and Dr. Isidoro Zanotti of Brazil, the General Rapporteur of the Association.

3. The Charter of the United Nations has established the International Court of Justice as its principal judicial organ in order to promote the peaceful solution of disputes between States. The Court, pursuant to its governing statute, is to be composed of independent judges elected regardless of nationality. Various treaties have established other courts with international competence.

international, lawyers, jurors and assessors.

International Judges

The international status of judges requires the assurance of independence and impartial and conscientious exercise of their functions. Accordingly, this chapter of the Declaration provides that States should respect the international character of the responsibilities of judges and should not seek to influence them in the discharge of these responsibilities. The Declaration calls for the principles of judicial independence as embodied in the Universal Declaration of Human Rights and other international instruments for the protection of human rights to apply to international judges.

Under the Declaration, international judges are to be appointed or elected in accordance with governing constitutional and statutory provisions which shall, if possible, not confine the power of nomination to governments or make nomination dependent on nationality. Only a jurist of recognized standing may qualify to be a judge of an international court. The terms of compensation and pension of judges shall be established and maintained so as to ensure their independence. Judges shall enjoy privileges and immunities, facilities and prerogatives no less than those conferred upon chiefs of diplomatic missions recognized by the Vienna Convention on Diplomatic Relations. Judges shall not be liable for acts done in their official capacity.

All measures of discipline and removal relating to judges shall be governed exclusively by the statutes and rules of their courts and be within their jurisdiction. Unless inappropriate under the circumstances, these rules shall apply to judges *ad hoc* and to arbitrators in public international arbitrations.

National Judges

This chapter of the Declaration establishes that national judges are to be free to decide matters before them in accordance with their assessment of the facts and their understanding of the law without any improper influences, inducements, or pressures, direct or indirect. National judges, being entitled to freedom of expression, association and assembly under this chapter, may take collective action to protect their judicial independence. In addition, the chapter establishes that the Judiciary is to be independent of the Executive and Legislative branches of their respective

governments and is to have jurisdiction, directly or by review, over all issues of a judicial nature.

The Executive of a State may not be given the power to suspend the operation of its courts and must refrain from any act or omission which preempts the judicial resolution of a dispute or frustrates the proper execution of a court decision. No legislation or executive decree shall attempt to retroactively reverse specific court decisions nor to change the composition of the court to affect its decision-making. Participation in judicial appointments, however, by an Executive or Legislature is consistent with judicial independence as long as judicial appointments are made in consultation with members of the judiciary and the legal profession or by a body in which members of the judiciary and the legal profession participate or form a majority.

The Declaration describes candidates for judicial office as individuals of integrity and ability, well trained in the law, and encourages continuing legal education for judges. Candidates are to have equality of access to judicial office (*i.e.*, there shall be no discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or status, subject however to any citizenship requirements). The chapter states that judges may not serve in an Executive or a Legislative capacity unless it is clear that these functions can be combined without compromising their judicial independence. Additionally, judges may neither be active members of political parties nor practice law, and must refrain from business activities, except those activities which are incidental to their personal investments or ownership of property.

The responsibility for Court Administration is vested by the Declaration in the judiciary. The assignment of a judge to a post within the court to which he is appointed is an internal administrative function. The State is to provide adequate resources to allow for due administration of justice, including physical facilities appropriate for the maintenance of judicial independence, dignity and efficiency, judicial and administrative personnel, and operating budgets. The budget of the courts is to be prepared in collaboration with the judiciary.

A judge's promotion shall be based on an objective assessment of the candidate's integrity and independence of judgment, professional competence, experience, humanity, and commitment to uphold the rule of law. A judge's term of office, independence, secur-

ity, adequate remuneration and conditions of service, shall be secured by law and shall not be altered to his or her detriment. The appointment of temporary judges for a probationary period is inconsistent with judicial independence. The salaries and pensions of judges shall be commensurate with their status, dignity and the responsibility of their office, and shall be regularly adjusted to fully account for inflation. Judges shall enjoy immunity from suit for acts and omissions in their official capacity.

A complaint against a judge shall be processed expeditiously and fairly and the judge shall have the opportunity to comment on the complaint at the initial stage. The proceedings for judicial removal or discipline when such are initiated shall be held before a Court or a Board predominantly composed of members of the judiciary and shall be selected by the judiciary. The power of removal, however, may be vested in the Legislature by impeachment or joint address upon a recommendation of said Court or Board. All disciplinary action shall be based upon established standards of judicial conduct. With the exception of proceedings before the Legislature, the decision of a disciplinary tribunal shall be subject to appeal. A judge shall not be subject to removal except on proven grounds of incapacity or misbehavior rendering him unfit to continue in office.

The Declaration provides that all persons have the right to be tried expeditiously by an established, ordinary, court or judicial tribunal, which is subject to review by higher courts. No *ad hoc* tribunals shall be established, except in the case of a grave public emergency. Civilians charged with criminal offenses of any kind shall always be tried by ordinary civilian courts. The jurisdiction of military tribunals is confined to military offenses committed by military personnel, with a right of appeal to a legally qualified appellate court.

Finally, under this chapter of the Declaration, it is the duty of judges to ensure the fair conduct of trials within their states. Additionally, judges should remain informed about international conventions and other instruments establishing human rights and to endeavor to implement them.

Lawyers

This chapter of the Declaration concerns the maintenance of the legal profession's independence as an essential guarantee of the promotion and protection of human rights. A fair and equitable

system of justice requires the independence of lawyers in the discharge of their professional duties without any restrictions, influences, pressures, threats or undue interference. All persons under the Declaration are to have effective access to legal services provided by an independent lawyer for protection of their economic, social, cultural, civil, and political rights. Further, no lawyer shall suffer or be threatened with penal, civil, administrative, economic or other sanctions by reason of his having advised or represented any client or client's cause.

The Declaration provides that legal education shall be open to all persons with the requisite qualifications. Under this chapter, lawyers have a responsibility to educate the public about the principles of the rule of law, the importance of the independence of the judiciary and of the legal profession, and to inform them of their rights, duties and available remedies. It is the duty of the lawyer to show proper respect toward the judiciary.

The Declaration provides that lawyers shall enjoy freedom of association, freedom of belief and freedom of expression. In particular, they shall have the right to take part in public discussion of matters concerning the law and the administration of justice, including the joining of local, national and international organizations, promoting law reforms and taking an active role in the political, social and cultural life of their countries.

The Declaration establishes the functions of a bar association in ensuring the independence of the legal profession to be *inter alia*: to promote and uphold the cause of justice; to maintain the honor, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession; to protect and defend the role of lawyers in society; to protect and defend the dignity and independence of the judiciary; to promote the free and equal access of the public to the system of justice and the right of everyone to a fair and public hearing before an impartial tribunal; to promote and support law reform and public discussion on the interpretation and application of existing and proposed legislation; to promote high standards of legal education as a prerequisite for entry into the profession; to promote the welfare of members of the profession. The bar associations shall freely establish and enforce a code of professional conduct for lawyers. Disciplinary proceedings shall be conducted by a disciplinary committee established by the bar association. There shall be a right of appeal from any rulings of the disciplinary committee to an appropriate appellate body.

Jurors

This chapter of the Declaration provides that an opportunity for jury service is to be extended to all persons without regard to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or status, subject however to citizenship requirements. The Declaration outlines the standards concerning jury selection, administration of the jury system, jury consideration and deliberations.

Assessors

This chapter discusses the status of assessors, who may on certain judicial, quasi-judicial bodies or administrative tribunals, sit with a judge, magistrate or other jurist, to assist him in his duties. The assessor need not have legal training, but must have some professional qualification or socio-economic expertise that pertains to the subject matter under consideration. Unless selected by the parties unanimously, the assessor shall be appointed by a neutral authority. The assessor shall be vested with the authority, immunity and powers necessary to carry out his duties.

III. UNITED NATIONS

Vienna Convention on Succession of States in Respect to State Property, Archives and Debts

On April 8, 1983, a Conference, convened by the United Nations General Assembly in Vienna, Austria, adopted the Vienna Convention on Succession of States in Respect to State Property, Archives and Debts. This Convention contains 51 articles; a summary of some of its provisions follows.

The Convention applies to the effects on state property, archives, and debts of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations. The Convention defines "State property of the predecessor State" as property, rights and interest which, according to the internal law of the predecessor State, were owned by that State at the date of the succession. The passing of State property from the predecessor State entails the extinction of the rights of that State and the creation of the rights of the successor State to the State property. The passing of such property, unless otherwise agreed, shall take

place without compensation. The predecessor State is to take all measures necessary to prevent the damage or destruction of such property.

When part of the territory of a State is transferred by that State to another State, the passing of State property of the predecessor State to the successor State is to be settled by agreement between them. The Convention defines "State archives of the predecessor State" as all documents of whatever date and kind, produced or received by the predecessor State in the exercise of its functions which belonged to the predecessor State at the date of the succession of States, according to its internal law and were preserved by it directly or under its control as archives for whatever purpose. The passing of State archives of the predecessor State entails the extinction of the rights of that State and the creation of the rights of the successor State to the State archives in the same manner as the passing of State property.

The Convention contains several provisions concerning specific categories of succession of States; *i.e.* the transfer of part of the territory of a State, the creation of newly independent States, the uniting of several States, the separation of a part or parts of the territory of a State, and the dissolution of a State. The Convention also has provisions involving: State debts, the date of passing State debts, the settlement of disputes by consultation and negotiation, conciliation, judicial settlement and arbitration or settlement by common consent. The Convention becomes effective on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

IV. COUNCIL OF EUROPE

Convention on the Transfer of Sentenced Persons

In 1983, the Council of Europe met in Strasbourg, Austria, with the objective of developing international cooperation in the field of criminal law.⁴ During their meeting, on March 21, 1983, the Convention on the Transfer of Sentenced Persons was adopted. This Convention contains 25 articles; a summary of some of their provisions follows:

The Convention provides for transferring people, sentenced by a State Party, to allow them to complete their sentences in another

4. The text of this Convention is published in 22 I.L.M. 530-37 (1983).

State. Any sentenced person to whom the Convention may apply shall be informed by the sentencing State of the substance of the Convention. If the sentenced person expresses an interest to the sentencing State in being transferred, that State shall send the administering State the pertinent information, as soon as possible, after the judgment becomes final.

The sentencing State or the Administering State may also request the transfer of a prisoner. The Convention allows a transfer to be made if the following conditions have been met: a) the person is a national of the administering State; b) the judgment is final; c) at the time of receipt of the request for transfer, the sentenced person has at least six months of the sentence to serve or the sentence is indeterminate;⁵ d) the transfer is consented to by the sentenced person or, in view of the age, physical or mental condition of the sentenced person, one of the two States considers it necessary; e) the acts or omissions of the sentenced person would constitute a criminal offense according to the law of the administering State, and f) the sentencing and administering States agree to the transfer. Under the Convention, request for transfers and replies in general should be made, in writing, to the Ministry of Justice of the requesting State. Alternate channels of communication may be used upon declaration to the Secretary General of the Council of Europe. According to the Convention, once the sentenced person is taken into custody by the authorities of the administering State, the enforcement of the sentence in the sentencing State is suspended.

The Convention provides that each State Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws. The sentencing State, however, shall have the sole right to decide on any application for review of the judgment. The administering State shall terminate enforcement of the sentence as soon as it is informed by the sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of the Convention and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of its

5. In exceptional cases, the States Parties may agree to a transfer even if the time to be served by the sentenced person is less than six months.

application.

Abolition of the Death Penalty

On April 28, 1983, the member States of the Council of Europe adopted Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, (signed in Rome, 1950).⁶ This Protocol provides for the abolition of the death penalty.

The preamble to the Protocol expresses the Council of Europe's general sentiment in favor of the abolition of the death penalty. Article 1 to the Protocol forbids the institution of the death penalty, or the execution of any person by a member State. A member State, however, according to article 2, may provide for the imposition of the death penalty in respect to acts committed in times of war or when there is an imminent threat of war. The member state must communicate the relevant provisions of that law to the Secretary General of the Council of Europe. Article 4 provides that no reservation may be made under article 64 of the Convention in respect of the provisions of this Protocol.

Study on The Possibility For Member States to Accede to the Inter-American Convention on Extradition of 1981⁷

On October 1, 1982 the Parliamentary Assembly of the Council of Europe adopted Recommendation 950 concerning extradition of criminals.⁸ The Preamble recalls that, in addition to the European Convention on Extradition of 1957, member States have concluded a wide range of bilateral extradition treaties with each other and with non-member States within and outside Europe. The Assembly also expressed its concern that improved means of transportation and relaxed frontier control have greatly facilitated the escape of criminals from member States; and that criminals, especially those who have means to do so, often take refuge outside of Europe. The Preamble stressed that no reciprocal extradition treaties should be concluded with countries whose judicial systems provide a possibility of unfair trial or arbitrary judgment, or where

6. The text of this protocol is published in 22 I.L.M. 538-41 (1983).

7. The Inter-American Convention on Extradition was signed at Caracas on February 25, 1981 at the closing of an Inter-American Specialized Conference on Extradition convoked by the Organization of American States.

8. The text of this recommendation is published in 22 I.L.M. 681-82 (1983).

torture is practiced, unless proper guarantees are obtained.

With these considerations, the Parliamentary Assembly recommended to the Committee of Ministers:

a. In respect of extradition from non-member States:

- i. Instruct the European Committee on Crime Problems to study whether Council of Europe member States might accede to the Inter-American Convention on Extradition;
- ii. Ask governments of those member States which may extradite only if there is an extradition treaty with the requesting State, whether their national law does not provide for enough safeguards to drop this requirement;
- iii. Invite member governments to make an effort to improve their control of existing escape routes to other continents for criminals having the means to fly there;

b. In respect of extradition from member States:

- i. Invite member governments, if and when proceeding to a review of their penal law, to take penal provisions in other member States into account, so that it may be easier to compare penal provisions from one country to another;
- ii. Invite the governments of those member States which have not yet ratified the European Convention on Extradition and its two protocols to do so now;
- iii. Instruct the European Committee on Crime Problems (CDPC) to examine whether, and to what extent, extradition procedures may be simplified. . . .⁹

Protection of Users of Computerized Legal Information Service

On February 22, 1983, the Committee of Ministers of the Council of Europe approved a Recommendation concerning the protection of users of computerized legal information services.¹⁰ The Preamble to this Recommendation notes that the use of computers for the sorting and retrieving of legal information has already been introduced in a great number of member States of the Council of Europe. There is a growing dependence on such means which, in turn, has created new responsibilities with respect to the handling of legal information and for the protection of those seeking to obtain such information.

9. *Id.* at 681-682.

10. *Id.* at 669-74.

In an appendix to the Recommendation, the Committee of Ministers requests that the Governments of the member States of the council of Europe take appropriate steps to implement the general principles concerning the protection of users of computerized legal information services. These principles are contained in Part I of the appendix, under the following titles: Definitions, Access of Computerized Legal Information Services to Legal Source Texts, Access of Users to Computerized Legal Information Services, Participation of Users, Coverage, Cooperation Among Services, Relationship Between the Service and the User. According to these principles, a "computerized legal information service" as defined as a service providing information by automated means on legislation, court decisions, or legal literature.

States should facilitate access to computerized legal information. The legal information services should, whenever possible, be permitted to use materials existing in machine-readable form. Computerized legal information should be adapted to the needs of the users. The selection of documents should be sufficiently representative in accordance with clearly defined standards. Legal information services should endeavour to comply with common technical standards agreed upon within the competent national and international organizations in order to facilitate cooperation, exchanges of information and the interrogation of data banks via networks.

Part II of the appendix contains the guidelines for the relationship between a computerized legal information service and a user of such a service. This part is divided into ten sections under the following titles: Nature of the Data Base, Nature of the Service Offered, Description of the System and the Methods Used for Retrieval, Data Processing Equipment Available to the User and Services to be Rendered, Availability of the Services, Costs, Use of Output, Guarantees for the User, Up-Dating of System Documentation and Termination of the Relationship.

Measures to be Taken in Cases of Kidnapping Followed by a Ransom Demand

On September 24, 1982, the Committee of Ministers of the Council of Europe approved a Recommendation concerning measures to be taken in cases of kidnapping followed by a ransom de-

mand.¹¹ The Recommendation suggests improved communication between various police and judicial authorities to facilitate the handling of kidnappings where there has been a ransom demand. Particular recommendations include the following: a) emergency arrangements necessary to safeguard the life of the victim and bring the case to a successful conclusion to be made by a permanent or *ad hoc* group comprising representatives of the various groups concerned; b) professional and technical training to be provided for police officers who are responsible for combating such crimes, and for prosecutors and judges to whom such cases are referred; c) operational plans to ensure that authorities are not caught off guard by such kidnapping; d) advise and assistance to be provided for the family and relatives of the victim by qualified persons.

V. COUNCIL OF THE INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT).

Convention on Agency in the International Sale of Goods

A Diplomatic Conference, convened by the governing Council of the International Institute for the Unification of Private Law (UNIDROIT) to consider a Draft Convention, prepared by a committee of governmental experts, was held in Geneva, Switzerland. Representatives of 49 States attended the Conference.¹² During that Conference, on February 17, 1983, the Convention on Agency in the International Sale of Goods was adopted.

This Convention contains 35 articles and is divided into six chapters: Preamble; Sphere of Application and General Provisions; Establishment and Scope of the Authority of the Agent; Legal Effects of Acts Carried Out by the Agents, Termination of the Authority of the Agent; and Final Provisions. The Convention is a complex document, containing extensive and detailed provisions, reflecting the influence of European law professors and experts in drafting. A summary of some of its provisions follows:

The preamble to the Convention states that the objectives of the United Nations Convention on Contracts for the International Sale of Goods adopted in 1980 should be kept in mind. The Con-

11. *Id.* at 680.

12. Only five American States were represented: Chile, Guatemala, Mexico, Nicaragua and the United States.

vention applies to transactions where one person, the agent, has authority or purports to have authority on behalf of another person, the principal, to conclude a contract of sale of goods with a third party. It governs not only the conclusion of such a Contract but any acts undertaken by the agent for the purpose of concluding the contract or in relation to its performance.

The Convention applies only to transactions where the principal and the third party have their places of business in different States and the agent has his place of business in a Contracting State or the rules of private international law lead to the application of the law of a Contracting State. Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract of sale is to be taken into consideration in determining whether the Convention applies. The Convention does not apply to the agency of a dealer on a stock, commodity or other exchange; the agency of an auctioneer; agency arising from statutory or judicial authorization to act for a person without capacity to act; agency by virtue of a decision of a judicial or quasi-judicial authority or subject to the direct control of such an authority.

Nothing in the Convention is to affect any rule of law for the protection of consumers. The Convention, in light of its international character, is to be interpreted to promote uniformity of application and the observance of good faith in international trade. Matters governed by the Convention, but not expressly dealt with by it, are to be settled in conformity with general principles of law based on the subject matter or in the absence of such principles, in conformity with the rules of Private International Law.

The Convention governs both implied and express agency. Under its provisions, the agent has authority to perform all acts necessary to achieve the purposes for which the authorization was given. Where an agent acts without authority or outside the scope of his authority, his acts do not bind the principal and the third party to each other, unless ratified by the principal. An agent, acting without authority or outside the scope of his authority, is liable to a third party for such compensation as will place the third party in the same position as he would have been if the agent had acted with authority and within the scope of his authority.

The authority of the agent is terminated: upon agreement between the principal and the agent; on completion of the transactions for which the authority was created; on revocation by the principal or renunciation by the agent, whether or not this is con-

sistent with the terms of their agreement; or when the applicable law so provides. The Government of Switzerland is the official depository for the Convention, which will become effective after the tenth ratification or accession.

VI. INTERNATIONAL LAW ASSOCIATION

Draft Articles on State Immunity

The following is a brief summary of some of the provisions of the Draft Articles on State Immunity prepared by the International Law Association for a Convention on State Immunity.

Under these Draft Articles, foreign States would be immune from the adjudicatory jurisdiction of a forum State for acts performed by it in the exercise of its sovereign authority, *i.e.*, *jure imperii*. Article III provides for several exceptions to immunity from adjudication. Under these Draft Articles, a foreign State may waive its immunity with respect to the forum State either expressly or by implication. An express waiver may be made in one of the following ways: a unilateral declaration, an international agreement, a provision of a contract or an explicit agreement. An implied waiver may be made by participating in proceedings before a tribunal of the forum State or agreeing in writing to submit a dispute to arbitration in the forum State. In such an instance, a foreign State shall not be immune with respect to proceedings in a tribunal of the forum State which relates to: the constitution or appointment of the arbitral tribunal, the validity or interpretation of the arbitration agreement, the award, the arbitration procedure, or the setting aside of the award.

Unless otherwise agreed to by the parties in writing, if the cause of action arises out of a commercial activity carried on by the foreign State, or an obligation of the foreign State arising out of a contract, whether or not in a commercial transaction, the foreign State is not immune from liability. Likewise, under the Draft Articles, if the foreign State enters into a contract for employment in the forum State, or if work under such a contract is to be performed wholly or partly in the forum State and the proceedings relate to the contract, the foreign State is not immune from liability. This provision shall not apply if, at the time proceedings are brought, the employee is a national of the foreign State, or, at the time the contract for employment was made, the employee was neither a national nor a permanent resident of the forum State.

The Draft Articles also contain rules on service of process, default judgment, immunity from attachment and execution and exceptions to immunity from attachment and execution.