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Recommended Citation
Isidoro Zanotti, Regional and International Activities, 13 U. Miami Inter-Am. L. Rev. 235 (1981)
Available at: http://repository.law.miami.edu/umialr/vol13/iss2/6
REPORTS
Regional and International Activities

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ORGANIZATION OF AMERICAN STATES (OAS)

I. GENERAL ASSEMBLY

The OAS General Assembly held its tenth regular session in Washington, D.C., from November 19 through November 27, 1980. The General Assembly [hereinafter Assembly] approved 53 resolutions on legal, political, economic, social, cultural, administrative and budgetary matters. The following paragraphs summarize these resolu-

A. Inter-American Cooperation for Development

In resolution AG/RES.464 (X-0/80), the Assembly expressed that a basic goal of the Inter-American system is developmental cooperation. The resolution calls for a redefinition of goals so that the Inter-American system may achieve its full potential in view of the challenges the system will confront until the end of the century. The Assembly also referred to previous resolutions dealing with the General Assembly’s special session on Inter-American cooperation for development.

The Assembly instructed a Joint Working Group of the Permanent Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture to complete the preparatory work necessary to hold the special session of the General Assembly and submit this research to the OAS Permanent Council. This research should identify those areas of cooperation where the member states of the OAS agree. Those two Councils were instructed to consider the various aspects of Inter-American cooperation for development in their areas of competence. The Permanent Council was also instructed to take the necessary measures to prepare the preliminary draft agenda and a proposed plan for Inter-American developmental cooperation.

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B. Regional Economic Development Fund

In the preamble of resolution AG/RES.465 (X-0/80), the General Assembly focused on the increase in energy and food problems in Latin American and Caribbean countries. The resolution indicated that many states are unable to finance the increasing costs of their fuel imports. The Assembly instructed the Inter-American Economic and Social Council (CIES), at its next meeting, to consider the feasibility of establishing a Regional Fund of US $300 million, consisting of annual non-reimbursable contributions of US $100 million. The purpose of this Fund is to assist the developing countries of the region, especially those most affected by the energy and food crises. The Assembly also instructed CIES to study three aspects of this Fund: (1) the method of administering the Fund without additional budgetary costs to the Organization; (2) the operative aspects of the Fund; and (3) the criteria for its distribution.

C. Economic and Social Situation of Latin America and the Caribbean

Considering the economic standards of the OAS Charter, the General Assembly urged the member states of the OAS, through resolution AG/RES.467 (X-0/80), to hold consultations for the purpose of developing formulae that will lead to effective short and medium term solutions of the serious problems arising from the present international economic crisis, which has had a persistent effect on the countries of Latin America and the Caribbean. The Assembly urged the international financial institutions to review their lending policies in light of their own financial soundness and the serious balance of payments situation currently affecting the developing countries of the region, particularly oil-importing countries. The Assembly hoped more concessionary financing terms would be granted to oil-importing nations.

D. Panama Canal Tolls

Resolution AG/RES.469 (X-0/80) expressed the concern of the General Assembly over the impact of the increases in Panama Canal tolls on the foreign trade of Latin American and Caribbean countries. It emphasized the need for consultation, and instructed the General Secretariat to continue studying this matter.

E. Conventions on Terrorism

Through resolution AG/RES.474 (X-0/80), the General Assembly urged the governments of the OAS member states to sign or ratify the
International Convention against the Taking of Hostages. This Convention was approved by the UN General Assembly at its thirty-fourth session. The Assembly urged the governments of the OAS member states to consider the advisability of signing or, where appropriate, ratifying or adhering to those international conventions concerning terrorism and related matters approved at either the international or Inter-American level.

F. Belize

The OAS General Assembly in resolution AG/RES.501 (X-0/80) noted that at its thirty-fifth session, the UN General Assembly adopted Resolution 35/20 on November 11, 1980. In this resolution the UN General Assembly reaffirmed the inalienable right of the people of Belize to self-determination, independence and territorial integrity. The UN General Assembly declared that Belize should become an independent state. The OAS General Assembly, affirming the principles of self-determination, endorsed the UN resolution on the question of Belize and offered its cooperation to facilitate the constitutional evolution of Belize as a sovereign, independent state of the Americas.

G. Convocation of CIDIP-III

One of the important steps taken by the OAS General Assembly was the convocation of the Third Inter-American Specialized Conference on Private International Law (CIDIP-III), by resolution AG/RES.505 (X-9/80). The Assembly recalled that the Second Inter-American Specialized Conference on Private International Law (CIDIP-II), held in Montevideo in April, 1979, approved important instruments on the following topics: conflict of laws concerning checks, conflict of laws concerning commercial companies, extraterritorial validity of foreign judgments and arbitral awards, execution of preventive measures, proof of and information on foreign law, general rules of private international law, and domicile of physical persons; and an additional protocol on letters rogatory. The Assembly also noted that CIDIP-II recognized the value of the development and codification of private international law in the hemisphere and requested the OAS General Assembly to convok CIDIP-III.

With these and other statements contained in the preamble of the resolution, the General Assembly decided to convok the Third Inter-American Specialized Conference on Private International Law (CIDIP-III). The Permanent Council will determine the place and time of CIDIP-III in due course. The OAS General Assembly instructed the Inter-American Juridical Committee to continue with the
preparation of reports and draft conventions on the topics recom-
mended by CIDIP-II, and to consider the conclusions and opinions
submitted to it by meetings with experts convoked by the Organiza-
tion. The Assembly recommended that the Permanent Council pre-
pare the draft rules of procedure and the agenda for the conference,
which are to be submitted to the governments of the member states. It
requested the OAS General Secretariat to prepare technical and infor-
mal documents on the topics to be considered by CIDIP-III, as it
did for CIDIP-I and CIDIP-II. Also, the General Assembly requested
the General Secretariat to take any other necessary steps for the
preparation of CIDIP-III, including consultation with experts and
exchange of information and documents.

H. Legal Issues in the Field of Transfer of Technology

Through resolution AG/RES.504 (X-0/80), the General Assembly
recalled that the Inter-American Juridical Committee had issued
guidelines for systematizing the legal problems involved in the trans-
fer of technology. It requested the OAS General Secretariat to con-
sider the transfer of technology as one of the priority areas for the use
of available resources and to establish interdisciplinary cooperation
among the various areas of the General Secretariat as a means of
keeping the OAS abreast of the development of this topic worldwide.
The purpose of this resolution is to provide more extensive technical
support to the member states and to the OAS as a whole, with a view
toward developing more technological exchange under fairer and
more equitable conditions than those prevalent in the present world
market.

I. Course on International Law

Resolution AG/RES.502 (X-0/80) recalls that the General Assem-
bly provided in resolution AG/RES.185 (V-0/75) that a course on
international law should be conducted annually. The old resolution
allocated the necessary funds in the program budget of the Organiza-
tion to enable at least one fellow from each member state to partici-
pate each year. It also provided for the administration of the course
and the publication of the text of lectures. The General Assembly had
recognized the value and usefulness of this prestigious Inter-American
activity in other resolutions. The Assembly expressed its gratitude to
the Inter-American Juridical Committee for organizing and holding
the Seventh Course on International Law in Rio de Janeiro in August,
1980. The Assembly also thanked the General Secretariat for the
assistance it provided in organizing and holding the course, and
praised the Getulio Vargas Foundation for its cooperation.
J. Inter-American Court of Human Rights

The General Assembly, through resolution AG/RES.507 (X-0/80), expressed the OAS's recognition of the work accomplished by the Inter-American Court of Human Rights, and thanked the Government of Costa Rica for its broad support of the Court. It expressed the hope that other member States of the OAS would ratify or adhere to the American Convention on Human Rights, and adopt measures enabling them to use the consultative, conciliatory and jurisdictional mechanisms established by the Convention.

K. Draft Convention Defining Torture as an International Crime

In resolution AG/RES.509 (X-0/80), the General Assembly expressed its appreciation to the Inter-American Juridical Committee and the Inter-American Commission on Human Rights for their work in drawing up a Draft Convention defining torture as an International Crime. The Assembly decided to forward the Draft Convention to the governments of the member states for consideration and comment. The Permanent Council will introduce appropriate amendments to the Draft Convention and submit it to the next regular session of the General Assembly.

L. Annual Report of the Inter-American Commission on Human Rights

Through Resolution AG/RES.510 (X-0/80), the General Assembly acknowledged the annual report of the Inter-American Commission on Human Rights, which included consideration of the human rights situations in Chile, El Salvador, Paraguay and Uruguay, and special reports on human rights in Argentina and Haiti. The Assembly expressed its support for the Commission's work and reaffirmed the importance of its reports for the promotion and defense of human rights. It further acknowledged the observations, objections and comments by those governments as well as the information on the measures these governments have taken and will continue to take to guarantee human rights in their countries. The Assembly urged the governments of the member States to adopt and put into practice the necessary measures to preserve and safeguard the full exercise of human rights, especially in cases that concern the status of individuals detained without due process, the disappearance of persons, the return of exiles and the lifting of states of emergency. Furthermore, the Assembly reiterated the need to avoid and to terminate violations of fundamental human rights, especially the right to life and the right to personal security and freedom, and reaffirmed that summary execu-
tion, torture and prolonged detention without due process are violations of human rights.

The Assembly recommended that the member States re-establish or perfect the democratic system of government. It reaffirmed that effective protection of human rights should also extend to social, economic and cultural rights, and emphasized to the governments of the member states their responsibility to fully participate in the cooperation for hemispheric development. On the other hand, the General Assembly invited the governments of the member States to sign or ratify the American Convention on Human Rights, which has been ratified or acceded to by Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Panama, Peru and Venezuela. The Assembly recommended that the governments establish central records to account for all detained persons so that their relatives and other interested persons may promptly learn of any arrests. The Assembly also requested that arrests be made only by competent and duly identified authorities.

II. INTER-AMERICAN SPECIALIZED CONFERENCE ON EXTRADITION

This Conference, established by the OAS General Assembly through resolution AG/RES.310 (VII-0/77), was held in Caracas, Venezuela, from February 16 to 25, 1981. Twenty-two member States of the OAS were represented. The Conference considered the Draft Convention on Extradition which was approved by the Inter-American Juridical Committee, and proposed amendments to this draft submitted by several delegations. The OAS General Secretariat prepared technical and reference documents for the Conference. As a result of its deliberations, the Conference adopted a new Inter-American Convention on Extradition.

The author of this report had the honor of collaborating in the preparatory work and providing technical services during the Conference. He plans to write a detailed article on the new Convention for publication in a future issue of this journal. He will survey the different steps taken by the OAS since 1954 to update the rules of multilateral nature on extradition in the Western Hemisphere. He will also undertake a comparative analysis of the provisions of the new Convention as contrasted with other multilateral instruments on extradition. A summary of some provisions of the Convention follows.
A. Inter-American Convention on Extradition

This new Convention was signed on February 25, 1981 by the representatives of the Governments of the following member States of the OAS who had the full powers to do so: Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Haiti, Panama, Nicaragua, Dominican Republic, Uruguay and Venezuela. It is expected that other member States of the OAS will sign the Convention in the near future.

The new Inter-American Convention on Extradition is the most modern, up-to-date, multilateral instrument on extradition. It incorporates several innovations reflecting the evolution of international law in this area and the realities of contemporary international relations. No similar provision exists in the other multilateral conventions on extradition adopted in the Western Hemisphere.

Article 6 discusses the right of asylum, stating that no provision of the Convention may be interpreted as a limitation on the right of asylum when its exercise is appropriate. This rule can be considered as part of the broad context of the "humanitarian question." The right of asylum has special meaning for Latin American countries because four conventions in the Inter-American System and other conventions of a regional nature discuss the right to asylum.

The question of nationality is the subject of Article 7, paragraph 1, which states that the nationality of the person sought may not be invoked as a ground for denying extradition, except when the law of the requested State otherwise provides. In paragraph 2, the article states that in the case of convicted persons, the States Parties may negotiate the mutual surrender of nationals so that they may serve their sentences in the States of which they are nationals. These provisions reflect the tendencies of several relatively recent bilateral treaties.

The Convention will be open for signature by member States and is subject to ratification. Article 29 provides that the Convention shall be open to accession by any American State and shall also be open for accession by States having the status of permanent observers to the OAS, following approval of the pertinent request by the OAS General Assembly.

In its report, the Working Group made several observations and suggestions, including one which referred to the "humanitarian question." Some delegations at the Conference proposed that a provision on this question be inserted in the Convention. This was approved without objection and paragraph 2 of Article 20 contains the sugges-
tion drafted by the Working Group. Paragraph 2 was a valuable contribution of the Course on International Law.

On extraditable offenses, the Convention does not adopt the system of lists of offenses which is used in many bilateral treaties. Instead, paragraph 1 states that for extradition to be granted, the offense for which the person is sought shall be punishable at the time of its commission by a penalty of not less than two years of deprivation of liberty under the laws of both the requesting State and the requested State.

In Article 4, the Convention establishes the grounds for denying extradition. Among these grounds the following deserves special mention. Extradition shall not be granted when, as determined by the requested State, the offense for which the person is sought is a political offense, an offense related thereto, or an ordinary criminal offense prosecuted for political reasons. Of course, similar provisions concerning political offenses appear in practically all multilateral and bilateral treaties on extradition. A significant innovation specified by the Convention calls for the denial of extradition when, from the circumstances of the case, it can be inferred that prosecution was undertaken for reasons of race, religion, or nationality.

III. UNITED NATIONS

A. Convention on Certain Conventional Weapons

The United Nations Conference on Prohibitions or Restrictions of the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects was held in Geneva from September 10 to 28, 1979, and from September 15 to October 10, 1980. On October 10, 1980, the Conference adopted a Convention and Protocols on prohibitions and restrictions on the use of certain conventional weapons. The Conference also approved a resolution on small caliber weapon systems.

The Conference resulted in the adoption of three Protocols. The first of these prohibits the use of any weapon whose primary effect is to injure the human body by the use of fragments which escape X-ray detection.

The second Protocol contains definitions of and restrictions on the use of mines, booby-traps and other devices. The Protocol covers the use of mines laid to interdict beaches, waterway and river crossings, but does not apply to the use of antiship mines at sea or within inland waterways.
Article 3 of this Protocol prohibits the directing of mines, booby-traps, and certain other devices against civilian populations or individual civilians for purposes of reprisal or for offensive or defensive military operations. Moreover, the Protocol requires that all feasible precautions be taken to protect civilians from the effects of these weapons.

Other articles of this Protocol deal with restrictions on the use of remotely delivered mines, booby-traps and other devices in populated areas; with recording and publication of the location of minefields, mines and booby-traps; with protection of United Nations forces and missions from the effects of minefields, mines and booby-traps; and with international cooperation in the removal of such devices.

The third Protocol deals with restrictions on the use of incendiary weapons, which are defined as devices primarily designed to set fire to objects or to cause burn injury to humans through the action of flame, heat, or a combination thereof, produced by chemical reaction. Said weapons include flame throwers, fougasses, shells, grenades, mines, bombs, or other containers of incendiary substances.

Article 2 of this Protocol prohibits the use of incendiary weapons in attacks on individual civilians or civilian populations. Also prohibited are attacks on military objectives with incendiary weapons when the military objective is located within a concentration of civilians, except when the military objective is clearly separated from the concentration of civilians and all feasible precautions have been taken. Finally, the Protocol forbids the use of incendiary weapons on forests or plants, except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives or are themselves military objectives.

IV. United Nations Conference on Trade and Development

A. Convention on the Multimodal Transport of Goods

This Convention was adopted by the United Nations Conference on Trade and Development on May 24, 1980, and was open for signatures from September 1, 1980 until August 31, 1981. After August 31, 1981, it will be open for accession. The Convention is a detailed and complex instrument. As defined by the Convention, "international multimodal transport" means the carriage of goods by at least two different modes of transport, pursuant to the terms of a contract, from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country.
The provisions of the Convention shall apply to all contracts of multimodal transport between places in two States if: (1) the place for the taking in charge of the goods by the multimodal transport operator, as provided for in the multimodal transport contract, is located in a contracting State, or (2) the place for delivery of the goods by the multimodal transport operator, as provided for in the multimodal transport contract, is located in a contracting State. The Convention shall not affect, or be incompatible with, the application of any international convention or national law relating to the regulation and control of transport operations. Nor shall it affect the right of each State to regulate and control at the national level multimodal transport operations and operators. The multimodal transport operator shall comply with the applicable law of the country in which he operates and with the provisions of the Convention.

One part of the Convention deals with documentation. Other parts contain rules on the liability of the multimodal transport operator and the liability of the consignor: the period of responsibility, the basis and limitation of liability, non-contractual liability, and special rules on dangerous goods. The Convention also discusses claims and actions, notice of loss, damage or delay, limitation of actions, jurisdiction and arbitration.

V. COUNCIL OF EUROPE

A. European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and Restoration of Custody of Children

This Convention was adopted by the Council of Europe, and was opened for signature by the member States of the Council in May 1980. It is subject to ratification.

Article 1 defines several terms or expressions: (1) “child” means a person of any nationality, so long as he is under 16 years of age and has not the right to decide on his own place of residence under the law of his habitual residence, the law of his nationality or the internal law of the State addressed; (2) “authority” means a judicial or administrative authority; (3) “decision relating to custody” means a decision of an authority in so far as it relates to the care of the person of the child; and (4) “improper removal” means the removal of a child across an international frontier in breach of a decision relating to his custody which has been given in a contracting State.

Articles 2 to 6 refer to the central authorities. Each contracting State shall appoint a central authority to carry out the functions provided for in the Convention. Federal States and States with more
than one legal system are free to appoint more than one central authority and may determine the extent of their appointment under the Convention.

The central authorities of the contracting States shall have four functions: 1) they shall cooperate with each other and promote cooperation between the competent authorities in their respective countries; 2) they shall ensure the transmission of requests for information from competent authorities and relating to legal or factual matters concerning pending proceedings; 3) they shall, on request, provide each other with information about their law relating to the custody of children and any changes in that law and; 4) they shall also keep each other informed of any difficulties likely to arise in applying the Convention.

Any person who has obtained a decision in a contracting State relating to the custody of a child and who wishes to have that decision recognized or enforced in another contracting State may submit an application for this purpose to the central authority in any contracting State. The application shall be accompanied by the documents specified in the Convention. The central authority receiving the application may refuse to intervene where the conditions set forth in the Convention are not satisfied.

Articles 7 to 12 of the Convention contain rules concerning the recognition and enforcement of judicial decisions and the restoration of custody. A decision relating to custody given in a contracting State shall be recognized and, where it is enforceable in the State of origin, made enforceable in every other contracting State. In case of an improper removal, the central authority of the State addressed shall take steps forthwith to restore the custody of the child. According to the terms of the Convention, the foreign decision may never be reviewed as to its substance.

Articles 13 to 16 discuss the procedure, and Articles 17 to 20 refer to reservations and other instruments. Articles 21 to 30 contain the final clauses.

VI. Hague Conference on Private International Law

The Hague Conference held its fourteenth session in October 1980. This session approved several declarations, recommendations and decisions and adopted the following conventions: Convention on the Civil Aspects of International Child Abduction and Convention on International Access to Justice.¹

¹. 19 INT'L LEG. MAT. 1501 (1980).
A. *Convention on the Civil Aspects of International Child Abduction*

Articles 1 through 36 contain substantive provisions, and Articles 37 to 45 are the final clauses. The Convention's purpose is to enact measures for the prompt return of children wrongfully removed or retained by someone in a contracting State and to ensure that each contracting State gives full faith and credit to the custody and access rights of the other contracting States.

Removal or retention of a child will be considered wrongful if (1) such removal breaches the sole or joint custody rights of a person, institution, or other organization under the law of the State in which the child was a permanent habitual resident prior to his removal or retention, and (2) at the time of removal or retention the person, institution, or organization retaining sole or joint custody of the child actually exercised these custody rights.

The Convention shall apply to any child under the age of 16 who is a permanent resident of a contracting State immediately before any breach of custody or access rights. The Convention no longer applies when the child reaches 16 years of age.

A contracting State shall designate a central authority to discharge the duties imposed by the Convention. Federal States, States with more than one system of law and States having autonomous territorial organizations shall be free to appoint more than one central authority and to specify the territorial extent of each central authority's powers. Central authorities shall cooperate with each other and promote cooperation among the competent authorities in their respective States to secure the prompt return of children wrongfully removed or retained, as well as to achieve the other Convention objectives.

To secure the return of a child wrongfully removed or retained, any person, institution or other body claiming a breach of custody rights may apply for assistance to the central authority of either the child's permanent residence or any other contracting State. The contracting State's judicial or administrative authorities shall proceed expeditiously in arranging the return of children who have been wrongfully removed or retained.

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of the Convention. Matters arising out of the Convention require neither legalization nor other similar formality. Nationals or habitual residents of any contracting State shall be entitled to the status of national or perma-
nent habitual resident of any other contracting State for purposes of obtaining legal aid in civil commercial proceedings within any such contracting State. Each central authority shall bear its own costs in applying the Convention. Central authorities and other public services of contracting States shall not impose any charges in relation to applications submitted under the Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. They may, however, require the payment of expenses incurred or to be incurred in implementing the return of the child. A contracting State may, by making reservation to the Convention, declare that it shall not be bound to assume any costs resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

The Convention shall be open for signature by the States which were members of the Hague Conference on Private International Law at the time of its fourteenth session. It shall be ratified, accepted or approved, and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands. Any other State may accede to the Convention by depositing the instruments of accession with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

B. Convention on International Access to Justice

This Convention contains thirty-six articles dealing with legal aid in broad terms. Articles 31 to 36 contain the final clauses.

Nationals and permanent residents of any contracting State shall be entitled to legal aid for court proceedings in civil and commercial matters in each contracting State on the same conditions as if they themselves were nationals of and permanent residents in that State. In states where legal aid is provided in administrative, social or fiscal matters, this provision shall apply to cases brought before the courts or tribunals competent in such matters.

Each contracting State shall designate a central authority to receive and act upon applications for legal aid submitted under the Convention. Federal States and States which have more than one legal system may designate more than one central authority. Applications for legal aid may be submitted to a contracting State by either a specifically designated transmitting authority or through diplomatic channels.
All documents forwarded according to the Convention shall be exempt from legalization and other analogous formality. Applications for legal aid shall be handled expeditiously, and applicants shall not be charged for the transmission of these applications. In addition, no security, bond or deposit shall be required of foreign nationals, non-domiciliaries or non-residents of any State in which proceedings are held. Plaintiffs or intervening parties whose permanent residence is in a contracting State other than the one in which the proceedings are held are also exempt from paying any security, bond, or deposit. These plaintiffs and intervening parties are additionally exempt from paying any security for court cost.

The new Convention shall replace Articles 17 to 24 of the Hague Convention on Civil Procedures of 1905 or Articles 17 to 26 of the Hague Convention of 1954. The new Convention shall be open for signature by the States which were members of the Hague Conference on Private International Law at the time of its fourteenth session and by non-member States which were invited to participate in its preparation. It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands. Any other State may accede to the Convention and deposit its instruments of accession with the same Ministry of Foreign Affairs.

C. Decision Concerning Consumer Sales

The fourteenth session of the Hague Conference agreed on the importance of avoiding any further debate on these articles, and placed on the agenda for a future Hague Conference the revision of the Convention of 1955 on the law applicable to international sale of goods. The fourteenth session decided that those involved in the negotiation of this revision should determine whether to include the articles mentioned below in the new general convention on sales or make them the subject matter of a separate convention on the law applicable to consumer sales.

With this decision, the Hague Conference adopted ten articles embodied in a Draft Convention applicable to certain consumer sales. According to the draft, the Convention would apply to certain contracts for the international sale of goods bought primarily for personal, family or household use. The declaration of the parties as to the choice of law or the jurisdiction of a court or arbitrator will not by itself be sufficient to confer an international character upon a contract of sale. For the purpose of the Convention, a person who buys goods primarily for a personal, family or household use is referred to as a
consumer. The Convention would not apply to sales by auction or by way of execution or otherwise by authority of law. Nor would it apply to sales of stocks, shares, investment securities, negotiable instruments, money, commodities or other exchanges.

The jurisdiction chosen by the parties shall govern the contract to which the Convention would apply. A choice of law made by the parties, however, shall in no case deprive the consumer of the protection afforded by the mandatory rules of the internal law of the country in which he had his permanent residence at the time the order was given. The choice of law provision must be in writing and expressly stated. In the absence of a choice of law provision drafted by the parties, the law of the country in which the consumer had his permanent residence at the time the order was given shall govern the contract to which the Convention would apply. The application of a law specified by the Convention may be refused only when such application would be manifestly incompatible with public policy (ordre public).

VII. EUROPEAN COMMUNITY

A. Convention on the Law Applicable to Contractual Obligations

This Convention was opened for signature in Rome on June 18, 1980. It was signed by Belgium, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg and the Netherlands. This is a complex document. A summary of some of the Convention’s provisions follows.

The first part of the Convention provides rules concerning its scope. The Convention applies to contractual obligations in all situations involving a choice between the laws of different countries. It does not apply to: (a) questions involving the status or legal capacity of natural persons; (b) contractual obligations relating to wills and succession, rights in property arising out of a matrimonial relationship, rights and duties arising out of a family relationship, parentage, marriage or affinity; (c) obligations arising under bills of exchange, checks and promissory notes and other negotiable instruments to the extent that the obligations under such negotiable instruments arise out of their negotiable character; (d) arbitration agreements and agreements on the choice of forum; (e) questions governed by the law of companies and other bodies, corporate or unincorporated, such as legal capacity, internal organization, the personal liability of officers for the obligations of the company; (f) the question whether an agent is able to bind a principal (or an entity to bind a company or corpo-
rate director to a third party); (g) the constitution of trusts, and the relationship between settlors, trustees and beneficiaries; or (h) evidence and procedure.

The rules of the Convention do not apply to contracts of insurance which cover risks in the territories of the member States of the European Economic Community. This provision does not apply to contracts of re-insurance.

A contract shall be governed by the law chosen by the parties. By their choice the parties can select the law applicable to the whole or only a part of the contract. At any time, the parties may agree to subject the contract to a law other than that which previously governed it. The fact that the parties have chosen a foreign law, whether or not accompanied by the choice of a foreign tribunal, shall not prejudice the application of rules of the law of that country.

Other provisions of the Convention deal with the applicable law in the absence of a choice by the parties. If the applicable law has not been chosen in accordance with the Convention, the contract shall be governed by the law of the country with which the contract is most closely connected.

If disputed, the existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under the Convention if the contract or term were valid. A contract entered into between parties who are in the same country is valid if it satisfies the formal requirements of the law which governs it under the Convention or under the law of the country where it is entered into. But a contract concluded between parties who are in different countries is valid if it satisfies the formal requirements of the law which governs it under the Convention or of the law of one of those countries.

The application of a rule of law may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum specified by the Convention. Also, the international character and desirability of achieving uniform application of the rules provided in the Convention shall be considered in their interpretation.

The Convention was opened on June 19, 1980 for signature by the States Parties of the European Economic Community. The Convention is subject to ratification, acceptance or approval, and it will have effect on the first day of the third month following the deposit of the seventh instrument of ratification, acceptance or approval.
VIII. Conference for the Protection of the Mediterranean Sea Against Pollution from Land-Based Sources

The Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources was held in Athens in May 1980. The Conference adopted a Protocol for the protection of the Mediterranean Sea against pollution from land-based sources.

The contracting parties to the Protocol were also parties to the Convention for the Protection of the Mediterranean Sea against Pollution adopted at Barcelona in February, 1976. Noted in the preamble of the Protocol was the rapid increase in industrialization and urbanization, as well as the seasonal increase in the coastal population due to tourism. The Protocol recognized the danger posed to the marine environment and to human health by pollution from land-based sources and also the serious problems resulting from pollution in many coastal waters and river estuaries of the Mediterranean Sea. According to Article 1 of the Protocol, the contracting parties shall take all appropriate measures to prevent, abate, combat and control Mediterranean Sea area pollution caused by discharges from rivers, coastal establishments, outfalls, or emanating from any other land-based sources within their territories.

In its sixteen articles, the Protocol concerning the protection of the Mediterranean Sea against pollution contains several important provisions: (1) the parties undertake to eliminate pollution of the Protocol Area from land-based sources by substances listed in annex I to the Protocol; (2) they shall elaborate and implement, jointly or individually, the necessary programs and measures to eliminate pollution; (3) these programs and measures shall include, in particular, common emission standards and standards for use; and (4) these standards shall be fixed by the parties and periodically reviewed (if necessary every two years) for each of the substances listed in annex I. The parties shall strictly limit pollution from land-based sources in the protocol area by substances or sources listed in annex II to the Protocol; and to this end they shall elaborate, jointly or individually, suitable programs and measures to limit pollution.

IX. Conference on the Conservation of Antarctic Marine Living Resources

This important Conference was held in Canberra, Australia, from May 7 to May 20, 1980. Argentina, Australia, Belgium, Chile, France, the German Democratic Republic, the Federal Republic of
Germany, Japan, New Zealand, Norway, Poland, South Africa, the Soviet Union, the United Kingdom, and the United States of America were represented at the Conference. The Conference adopted the Convention on the Preservation of Antarctic Marine Living Resources and also approved some resolutions and recommendations on this matter.

A prior significant document on the Antarctic, the Antarctic Treaty, was signed on December 1, 1959. This Treaty has significance for the Convention on the Preservation of Antarctic Marine Living Resources. Twenty-two states are parties to the Antarctic Treaty: Argentina, Australia, Belgium, Brazil, Bulgaria, Chile, Czechoslovakia, Denmark, France, the German Democratic Republic, the Federal Republic of Germany, Japan, the Netherlands, New Zealand, Norway, Poland, Romania, South Africa, the Soviet Union, the United Kingdom, the United States of America, and Uruguay.

A. Convention on the Conservation of Antarctic Marine Living Resources

This Convention was adopted by the above-mentioned Conference on May 20, 1980. The States participating in the Conference could sign the Convention from August 1 to December 31, 1980. The Convention is subject to ratification, acceptance, or approval by the signatory States. The signatory States shall deposit their instruments of ratification, acceptance, or approval with the Government of Australia, the Depositary of the Convention. The effective date of the Convention will be on the thirtieth day following the date of deposit of the eighth instrument of ratification, acceptance or approval. If subsequent to the effective date of the Convention, a State or regional economic integration organization deposits an instrument of ratification, acceptance, approval, or accession, the Convention shall enter into force on the thirtieth day following such deposit.

The Convention shall be open for accession by any State interested in research or harvesting activities related to the marine living resources to which the Convention applies. It shall also be open for accession by regional economic integration organizations which include sovereign States that have members on the Commission for the Conservation of Antarctic Marine Living Resources created by the Convention: provided that the State members of the Commission have transferred competence on matters covered by the Convention to the regional economic integration organizations. The accession of such regional economic integration organizations shall be subject to approval of members of the Commission.
The preamble of the Convention recognizes the importance of safeguarding the environment and protecting the ecosystem of the Antarctic area, and the importance of increasing knowledge of the Antarctic marine ecosystem and its components, in order that decisions on harvesting may be based on sound scientific information. The preamble stresses that all mankind has a duty to utilize the continent for peaceful purposes only and to prevent the Antarctic from becoming the scene or object of international discord.

Articles I to XXV of the Convention deal with substantive matters, and Articles XXVI to XXXIII contain the final clauses. Several final clauses have already been mentioned, concerning signature, ratification, accession, and entry into force of the Convention. A summary of the most important substantive provisions follows.②

The Convention applies to the Antarctic marine living resources living in the area south of 60° south latitude and the area between 60° south latitude and the Antarctic Convergence, which form part of the Antarctic marine ecosystem. Antarctic marine living resources are defined as the populations of fin fish, molusks, crustaceans and all other species of living organisms found south of the Antarctic Convergence, including birds. The Antarctic marine ecosystem means the complex relationship of Antarctic marine living resources with each other and with their physical environment.

The Convention’s objective is the conservation of Antarctic marine living resources. Any harvesting and associated activities in the area to which the Convention applies shall be conducted in accordance with the provisions of the Convention and with the following principles of conservation:

a) prevention of the decrease in the size of any harvested population to a level below which ensures its stable recruitment, and for this purpose, its size should not be allowed to fall below a level which ensures the greatest net annual increment; b) maintenance of the ecological relationships between harvested, dependent and related populations of Antarctic marine living resources and the restoration of depleted populations; and c) prevention of changes or minimization of the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades.

The contracting parties, whether or not they are parties to the Antarctic Treaty, agree that they will not engage in any activities in

the Antarctic Treaty area which are contrary to the principles and purposes of the Treaty. Nothing in the Convention and no acts or activities taking place while the Convention is in force shall: (1) constitute a basis for asserting, supporting, or denying a claim to territorial sovereignty in the Antarctic Treaty area or create any rights of sovereignty in the Antarctic Treaty area; (2) be interpreted as a renunciation or diminution by any contracting party of any right, claim or basis of claim to exercise coastal state jurisdiction under international law within the area to which the Convention applies; or (3) be interpreted as prejudicing the position of any contracting party with regard to its recognition or non-recognition of any such right, claim or basis of claim.

The contracting parties which are not parties to the Antarctic Treaty acknowledge the special obligations and responsibilities of the Antarctic Treaty Consultative Parties for the protection and preservation of the environment of the Antarctic Treaty area. They also agree that, in their activities in the Antarctic Treaty area, they will observe, when appropriate, the “agreed measures” for the conservation of Antarctic fauna and flora and such other measures as have been recommended by the Antarctic Treaty Consultative Parties to fulfill their responsibility for the protection of the Antarctic environment from all forms of harmful human interference. For the purpose of the Convention, “Antarctic Treaty Consultative Parties” means the contracting parties to the Antarctic Treaty whose representatives participate in meetings under Article IX of the Antarctic Treaty.

The contracting parties to the Convention establish and agree to maintain the Commission for the Conservation of Antarctic Marine Living Resources. Membership in the Commission shall be as follows: (1) each contracting party which participated in the conference at which the Convention was adopted shall be a member of the Commission; (2) each State Party which has acceded to the Convention shall be entitled to be a member of the Commission during such time as that acceding party is engaged in research or harvesting activities in relation to marine living resources to which the Convention applies; and (3) each regional economic integration organization which has acceded to the Convention shall be entitled to be a member of the Commission during such time as its States members are so entitled.

The Commission shall have legal personality and shall enjoy in the States Parties such legal capacity as may be necessary to perform its functions. The function of the Commission shall be to implement the objectives and principles set out in the Convention. It shall have, among others, the following functions: (1) to facilitate research and comprehensive studies of Antarctic marine living resources and of the
Antarctic marine ecosystem; (2) to compile data on the status and changes in the population of Antarctic marine living resources; (3) to ensure the acquisition of catch and effort statistics on harvested populations; (4) to identify conservation needs and analyze the effectiveness of conservation measures; and (5) to formulate, adopt and revise conservation measures on the basis of the best scientific evidence available.

The Commission shall bring to the attention of any State which is not a party to the Convention any activity undertaken by its nationals or vessels which, in the opinion of the Commission, affects the implementation of the objectives of the Convention. The Commission shall also bring to the attention of all contracting parties any activity which, in the opinion of the Commission, affects the implementation by a contracting party of the objectives of the Convention or the compliance by the contracting party with its obligations under the Convention.

The decisions of the Commission on substantive matters shall be taken by consensus. Decisions on other matters shall be taken by a simple majority of the members of the Commission present and voting.

The headquarters of the Commission shall be established at Hobart, Tasmania, Australia. The Commission shall hold a regular annual meeting, with other meetings held at the request of one third of its members. The first meeting of the Commission shall be held within three months after the effective date of the Convention, provided that among the contracting parties at least two States are conducting harvesting activities within the area to which the Convention applies.

The Convention also provides for the establishment of a scientific committee for the conservation of Antarctic marine living resources, which shall be a consultative body to the Commission. Each member of the Commission shall be a member of the scientific committee and shall appoint a representative with suitable scientific qualifications. The representative may be accompanied by other experts. The official languages of the Commission and of the scientific committee shall be English, French, Russian and Spanish. The Commission and the scientific committee shall cooperate with the Antarctic Treaty Consultative Parties on matters falling within the competence of the latter, and shall also cooperate, as appropriate, with FAO and other specialized UN agencies.

Each contracting party agrees to exert appropriate efforts, consistent with the United Nations Charter, to ensure that no one engages in any activity contrary to the objectives of the Convention. In order
to promote the objectives and ensure observation of the provisions of
the convention, the contracting parties agree that a system of observa-
tion and inspection shall be established. The system shall be elabo-
rated by the Commission on the basis of certain Convention prin-
ciples.

On the question of settlement of disputes, the Convention pro-
vides that if any dispute arises between two or more of the contracting
parties concerning the interpretation or application of the Conven-
tion, those contracting parties shall consult with a view toward hav-
ing the dispute resolved by negotiation, inquiry, mediation, concilia-
tion, arbitration, judicial settlement, or other peaceful means of their
own choice. Any dispute not resolved shall, with the consent of all
parties to the dispute, be referred for settlement to the International
Court of Justice or to arbitration. In cases where the dispute is re-
ferred to arbitration, the arbitral tribunal shall be constituted as
provided in the annex to the Convention.

X. AGREEMENT ESTABLISHING THE OPEC FUND FOR INTERNATIONAL
DEVELOPMENT

The Organization of the Petroleum Exporting Countries (OPEC)
organized a special fund in 1976. It has been revised several times,
with the latest revision being adopted on May 27, 1980.3

The preamble of the Agreement stresses three points: (1) the
importance of economic and financial cooperation between OPEC
member countries and the other developing countries; (2) the
strengthening of the collective financial institutions of developing
countries; and (3) the desire of the member countries of OPEC to
establish a collective financial facility to consolidate their assistance
to other developing countries, in addition to the existing bilateral and
multilateral channels through which the OPEC members have ex-
tended financial cooperation to such other countries. According to the
Agreement, the OPEC Fund for International Development is a mul-
tilateral agency for financial cooperation and assistance established by
OPEC member countries and endowed by them with an international
legal personality. Membership in the fund is open to all OPEC mem-
ber countries. The objective of the fund is to reinforce financial coop-
eration between OPEC member countries and other developing coun-
tries by providing financial support on appropriate terms to assist the
latter countries in their economic and social development efforts.

The fund is empowered to engage in all functions necessary or incidental to implementing its objectives according to the guidelines to be issued by the Ministerial Council and the Governing Board for this purpose. It is empowered to engage in four functions: (1) provide concessional loans for balance of payments support; (2) provide concessional loans for the implementation of developing projects and programs; (3) make contributions or provide loans to eligible international agencies; and (4) finance technical assistance activities.

Eligible beneficiaries of the fund's financing are the governments of developing countries other than OPEC member countries and international development agencies, the beneficiaries of which are developing countries. The resources of the fund consist of contributions by member countries, and funds received from operations.

The fund has a Ministerial Council, a Governing Board, a Director General and such staff as may be necessary for the fund to carry out its functions. Each member is represented in the Ministerial Council by its Minister of Finance or any other authorized senior representative. The Ministerial Council may authorize financial resources from the fund for specific purposes.

Applications for assistance from the fund shall be submitted by eligible beneficiaries to the Director General of the fund for evaluation. Approval of assistance is determined by the Governing Board. In each case, assistance is extended by virtue of an agreement signed on behalf of the fund by the chairman of the Governing Board or his authorized representative.

The fund may, by virtue of a special arrangement, entrust an appropriate international development agency, an executing national agency, or any other qualified agency of a member with the task of the administration of the project and program loans approved by it. Such administration shall otherwise be determined by the fund. The administration of the loans is subject to the provisions of the agreement, the directives and regulations issued by the Governing Board and the details of each loan agreement. Each member of the fund shall designate by a written notice to the fund its executing national agency which will act as the channel of communications with the fund on matters connected with the Agreement.