Regional and International Activities

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Second Inter-American Specialized Conference on Private International Law (CIDIP-II)

CIDIP-II will be held in Uruguay starting April 23, 1979. It will deal with several important topics of Private International Law.

The Inter-American Juridical Committee, the principal legal body of the Organization of American States, has prepared several draft conventions and other documents for submission to CIDIP-II. These works are published in the following document: CIDIP-II/8 rev. 1 dated May 29, 1978, 117 pages.

In previous issues of the Lawyer of the Americas, we have analyzed the different works performed by that Committee for CIDIP-II.

During its meeting held in January-February 1978, the Committee dealt with the topic of general standards of Private International Law. As a result of the study of this matter, the Committee decided it would be convenient to also prepare draft conventions on personality and capacity, and domicile in Private International Law.

At its last meeting held in July-August 1978, The Inter-American Juridical Committee approved these draft conventions on Private International Law, and requested the Permanent Council of the Organization of American States (OAS) to add these to the draft agenda of CIDIP-II.

Personality and capacity in Private International Law

The draft convention which was prepared by the Inter-American Juridical Committee, consists of eight articles of a substantive nature, plus the final clauses.

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This draft provides, among other things, that the rights pertaining to personality shall be protected by the law of the court which has jurisdiction over matters relating to legal capacity of natural persons. The capacity to act over natural persons shall be governed by the law of their domicile.

State and legal persons, jointly formed by States, shall be governed by Public International Law and shall be able to exercise their capacity in the territory of another State in accordance with the laws of the latter. Foreign legal persons, formed under public law, shall be able to exercise their capacity in the territory of a State in accordance with its laws.

The personality and capacity of legal persons of a private nature shall be governed by the law of the State of their incorporation or registration. This personality shall be subject to the restrictions established by the laws of the recognizing State. The function and habitual exercise (within a State) of acts concerning the purpose of a foreign legal person, whether directly or indirectly, shall be subject to the laws and courts of that State. The law declared to be applicable by the Convention cannot be utilized in the territory of any State that considers it manifestly contrary to its public policy.

According to the draft, the Convention will be open for signature and ratification by the Member States of the OAS; it shall also remain open for accession by any other State.

**Domicile in Private International Law**

The Inter-American Juridical Committee also prepared a draft convention on domicile in Private International Law during its meeting in July-August 1978.

This draft convention states, in its six basic articles, that the domicile of a natural person shall be determined in accordance with the following factors, in their order of presentation: 1) the habitual residence in a place; 2) the principal place of business; or 3) simple residence.

The domicile of spouses shall be the place where they live together. If there is no joint domicile, the domicile of each spouse shall be determined in the manner set forth in the previous paragraph.

The domicile of diplomats and persons who reside temporarily abroad for reasons of employment or commission by their Governments, or for purposes of scientific or cultural reasearch, shall be the last domicile they possessed in their respective national territories.
The domicile of juridical persons shall be the place of their incorporation or registration. Establishments, branches, or agencies constituted in one State by a juridical person domiciled in another, shall be considered domiciled in the place where they conduct their activities.

In its final clauses, the draft provides that the Convention will be open for signature and ratification by the Member States of the OAS. It will also be open for accession by any other State.

Fifth Course on International Law

The Course on International Law, a highly regarded activity of the Inter-American Juridical Committee, is held once a year in Rio de Janeiro with the cooperation of the OAS Department of Legal Affairs, the General Secretariat’s Fellowship Program, and the Getulio Vargas Foundation. The Fifth Course was held from August 7 to September 1, 1978.

Among eighty-five candidates, twenty-seven fellowships were awarded to persons from twenty Member States through the OAS Fellowship Program. Three of these persons, however, were unable to accept the fellowships. Nine persons were selected for course participation by the Getulio Vargas Foundation and sixteen were admitted by the Director of the Course. Therefore, total participation was forty-eight. Included among these participants were diplomats and other high government officials, law professors, practicing attorneys, and judges.

Several members of the Inter-American Juridical Committee, high officials of the OAS, and distinguished professors from several American countries, delivered lectures and conducted seminars and round tables. The principal topics were: the new treaties on the Panama Canal; peaceful settlement of controversies in the Inter-American System; institutional framework of inter-American relations; the present status of economic integration in Latin America; the American Convention on Human Rights of 1969; inter-American cooperation for educational, scientific, technological, and cultural development; the role of the Permanent Observers in the OAS; Public International Law at present; international politics and its impact on the development of Public International Law; extradition; nuclear energy law; the law of the sea; and topics of the Second Specialized Inter-American Conference on Private International Law (CIDIP-II).

The Director of the Course, Dr. Isidoro Zanotti, supervised and coordinated all activities of the Fifth Course. In addition, he had
supervised, coordinated, and directed the four previous courses. As in previous courses, he organized working groups among the participants to consider some specific aspects of the program of the Fifth Course. The reports of these working groups were appended to the report on the Fifth Course prepared by the Director and published as a document of the OAS Permanent Council (CP/INF.1361/78, October 31, 1978, 123 pages).

**COOPERATION AMONG THE COUNTRIES OF THE AMAZONIAN REGION**

On July 3, 1978, the representatives of eight countries of the Amazonian region, namely Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Surinam and Venezuela, signed the treaty for Amazonian Cooperation. The treaty, which was signed in Brasilia, was a very significant step taken by these eight countries. It is the beginning of activities, programs, and actions of wide scope concerning an extraordinary region of the world.

The preamble of the Treaty expressed the common aim of the signatories to pool their efforts (made within their respective territories as well as among themselves) to: promote the harmonious development of the Amazon region; permit an equitable distribution of the benefits of said development among the Contracting Parties so as to raise the standard of living of their peoples; and achieve total integration of their Amazonian territories into their respective national economies. In addition, they recognized the usefulness of sharing national experiences in matters pertaining to the promotion of regional development, and that socio-economic developments, as well as conservation of the environment, are responsibilities inherent in the sovereignty of each State. Cooperation among the Contracting Parties shall facilitate fulfillment of these responsibilities, by continuing and expanding the joint efforts being made for the ecological conservation of the Amazon region. Furthermore, they were convinced that the Treaty represents the beginning of a process of cooperation which shall benefit their respective countries and the Amazon region as a whole.

In Article I, the Contracting Parties agreed to undertake joint actions and efforts to promote the harmonious development of their respective Amazonian territories, and thus, produce equitable and mutually beneficial results. In addition, these actions would promote preservation of the environment, and the conservation and rational utilization of the natural resources of those territories.

According to Article II, the Treaty shall be applied in the territories of the Contracting Parties in the Amazonian Basin, as well as
in any territory of a Contracting Party which, by virtue of its geographical, ecological or economic characteristics, is considered closely connected with that Basin.

The freedom of commercial navigation is guaranteed in Article III. Article III provides that in accordance with (and without prejudice to) the rights granted by unilateral acts, the provisions of bilateral treaties among the Parties, and the principles and rules of international law, the Contracting Parties mutually guarantee, on a reciprocal basis, that there shall be complete freedom of commercial navigation on the Amazon and other international Amazonian rivers. The parties will observe fiscal and police regulations currently in force and those regulations within the territory of each party. This rule shall not apply to sabotage.

The Contracting Parties declared in Article IV that the exclusive use of natural resources within their respective territories is a right inherent in the sovereignty of each State and that the exercise of this right shall not be subject to any restrictions other than those arising from International Law.

Articles V and VI deal with the rational utilization of the Amazonian rivers. In order to enable the Amazonian rivers to become an effective communication link among the Contracting Parties and with the Atlantic Ocean, those riparian states interested in a specific problem affecting free and unimpeded navigation shall, as circumstances may warrant, undertake national, bilateral, or multilateral measures aimed at improving and making the said rivers navigable.

The Contracting Parties decided in Article VII to promote scientific research and exchange information and technical personnel among the competent agencies of their respective countries, and to establish a regular system for the proper exchange of information on the conservationist measures adopted or to be adopted by each State in its Amazonian territories.

In Article IX, the Contracting Parties agree to establish close cooperation in the fields of scientific and technological research, as follows: a) joint or coordinated implementation of research and development programs; b) creation and operation of research institutions or centers for improvement and experimental production; and c) organization of seminars and conferences, exchange of information and documentation, and the means for their dissemination.

The Contracting States are in agreement, as stated in Article X, to undertake the study of the most harmonious ways of establishing or improving road, river, air, and telecommunication links, while taking
into account the fact that the plans and programs of each country are aimed at attaining the priority goal of fully integrating the respective Amazonian territories into their national economies.

Article XJJ provides for the promotion of tourism.

A provision of broad scope concerning proposals for studies is contained in Article XVII, by which the Contracting Parties may present proposals for studies with respect to the preparation of programs of common interest for the development of their Amazonian territories. In general terms, Article XVII provides for the fulfillment of the actions contemplated in the Treaty.

Meetings of the Ministers of Foreign Affairs

Article XX establishes that the Ministers of Foreign Affairs of the Contracting Parties shall hold meetings when deemed opportune or advisable, for the purpose of adopting the guidelines for common policies, assessing and evaluating the general development or the process of Amazonian cooperation, and making decisions designed to carry out the aims set forth in the Treaty.

Meetings of the Ministers of Foreign Affairs shall be convened at the request of any of the Contracting Parties, provided that the request has the support of no fewer than four Member States. The first meeting of the Ministers of Foreign Affairs shall be held within a period of two years following the date of entry into force of the Treaty. The seat and date of the first meeting shall be established by agreement among the Ministers of Foreign Affairs of the Contracting Parties. The designation of the host country for the meetings shall be by rotation, in alphabetical order.

Amazonian Cooperation Council

The Amazonian Cooperation Council, according to Article XXI, shall be composed of top level diplomatic representatives. It shall meet once a year. Its duties are the following:

1. To ensure that there is compliance with the aims and objectives of the Treaty.
2. To be responsible for carrying out the decisions taken at meetings of the Ministers of Foreign Affairs.
3. To make recommendations to the Parties with regard to the advisability and appropriateness of convening meetings of Ministers of Foreign Affairs and of drawing up the pertinent agenda.
4. To consider the proposals and plans presented by the Parties, as well as to decide whether to undertake bilateral or multilateral studies and plans, the execution of which shall be the duty of the Permanent National Commission.

5. To evaluate the implementation of plans of bilateral or multilateral interest.

6. To draw up the Rules and Regulations for its functioning.

The Council may hold special meetings through the initiative of any of the Contracting Parties with the support of the majority of such Parties. The seat of the regular meetings of the Council shall be rotated in alphabetical order among the Contracting Parties.

Secretariat

Article XXII provides that the functions of the Secretariat shall be performed pro-tempore by the Contracting Party in whose territory the next regular meeting of the Amazonian Cooperation Council is scheduled to be held. This Secretariat shall send the pertinent documentation to the Parties.

With due respect to the people who negotiated the Treaty, this provision concerning the pro-tempore Secretariat raises serious doubts. A regular or permanent Secretariat in a specified place is much more desirable than temporary Secretariats at different places. It is highly desirable that a Protocol to the Treaty amend Article XXII in order to establish a regular Secretariat at a definite place.

Permanent National Commissions

The creation of Permanent National Commissions is provided for in Article XXIII. These Commissions will be in charge of enforcing, in their respective territories, the provisions set out in the Treaty, as well as carrying out the decisions taken by the Ministers of Foreign Affairs and by the Amazonian Cooperation Council, without prejudice to other tasks assigned to them by each State. Whenever necessary, as indicated in Article XIV, the Contracting Parties may set up special Commissions to study specific problems related to the aims of the Treaty.

According to Article XXVI, no interpretative reservations or statements to the Treaty are allowed.

The Treaty will come into force, as stipulated in Article XXVII, thirty days after the last instrument of ratification has been deposited by the Contracting Parties.
On May 4, 1978, a Treaty on extradition and a Treaty on maritime boundaries were concluded between Mexico and the United States. At the same time, an Agreement concerning tourism between these countries was signed. On June 6, 1978, a Memorandum of Understanding concerning cooperation on environmental programs was also signed.

1. Extradition

The Treaty on extradition between Mexico and the United States, dated May 4, 1978, is one of the most recent bilateral treaties on this matter in the Western Hemisphere. Some of its provisions are similar to those of the European Convention on Extradition, adopted by the Council of Europe in 1957.

This Treaty between Mexico and the United States follows the usual pattern of the bilateral treaties on extradition negotiated by the United States, in the sense that it adopts a list of offenses for which extradition should be granted. Generally speaking, the multilateral treaties on extradition do not adopt a list of offenses but rather establish minimum penalties for offenses justifying extradition, such as deprivation of liberty for no less than one year. The final article of the Treaty contains provisions concerning ratification and entry into force.

On extraditable offenses, the Treaty provides that extradition shall take place for wilful acts which fall within any of the clauses of the Appendix and are punishable, in accordance with the laws of both Contracting Parties, by deprivation of liberty, the maximum of which shall not be less than one year. If extradition is requested for the execution of a sentence, there shall be the additional requirement that the part of the sentence remaining to be served shall not be less than six months.

Extradition shall be granted only if the evidence is found to be sufficient, as set forth by the laws of the requested Party. Under the Treaty, the territory of a Contracting Party shall include all the territory under the jurisdiction of that Contracting Party, including territorial waters (and vessels), airspace, and any registered aircraft of the Contracting Party which is in flight when the offense is committed.

Extradition shall not be granted when the offense for which it is requested is a political offense (or of a political character), or military
The Treaty stipulates that the Executive authority of the requested Party shall make the trial decision as to any issue raised regarding the application of the provision. Under the Treaty, the following offenses shall not be included in this provision: a) the murder or other willful crime against the life or physical integrity of a Head of State or Head of Government or of his family, including attempts to commit such an offense; b) an offense which the Contracting Parties may have the obligation to prosecute by reason of a multilateral international agreement. Extradition shall not be granted when the offense for which extradition is requested is a totally military offense.

The previous paragraph is a literal transcription of Article 5, paragraph 2, of the bilateral Treaty between Mexico and the United States. As this provision deals with one of the most important aspects in the field of extradition, the author would like to offer some personal comments on this provision.

Article 5, paragraph 1, of the Treaty uses the words “political or of a political character” in referring to offenses for which extradition should not be granted. The courts may have a hard time in interpreting these provisions, as the distinction is not an apparent one. Other international treaties contain similar provisions. The Treaty on International Penal Law, adopted in Montevideo in 1940, provides that extradition shall not be granted for political crimes and for common crimes committed with a political purpose (Article 20, d and e). The Inter-American Convention of 1933 on extradition stipulates that extradition shall not be granted for political offenses or for offenses connected with political offenses. An almost identical principle is established by the 1957 European convention on extradition (Article 3, paragraph 1). A similar provision is contained in the draft inter-American convention on extradition approved by the Inter-American Juridical Committee on February 1, 1977. The bilateral Treaty on extradition between Paraguay and the United States, dated May 24, 1973, uses the words “offense of a political character or connected with” such an offense. In the Treaty on extradition between Argentina and the United States, dated January 21, 1972, the following words were used: “when the offense . . . is of a political character or has connection with an offense of a political character.”

Article 5 also stipulates that certain offenses should not be considered to be of a political nature, such as offenses which the Contracting Parties may have the obligation to prosecute by reason of multilateral international agreement. In this respect, it should be recalled that there are several multilateral conventions which contain such an obligation. The 1948 convention on genocide, the 1970 ICAO
convention adopted at The Hague, and the 1971 ICAO convention adopted at Montreal (the latter two dealing with different unlawful acts against the safety of civil aviation), as well as the 1971 convention of the OAS and the 1973 United Nations convention on terrorism, all contain this obligation.

"Military offenses" are also excluded from extradition, according to the 1978 Treaty between Mexico and the United States, and other Treaties between the United States and other countries. The draft inter-American convention on extradition, which was approved by the Convention on July 12, 1957, excluded military offenses from extradition. After reviewing its 1957 draft and the draft convention approved in 1959 by the extinct Inter-American Council of Jurists, the Committee decided to drop "military offenses" from the draft convention which the Committee approved on February 7, 1973. The Committee made this decision in view of a suggestion presented by Mexico. On February 1, 1977, the Committee did not include in its new draft convention on extradition, "military offenses," thus maintaining in this respect what it had decided in February 1973.

The 1978 Treaty between Mexico and the United States contains provisions on several other matters, such as lapse of time, capital punishment, extradition of nationals (another difficult aspect), extradition procedure and required documents, decision and surrender, requests for extradition made by Third Parties, surrender of property, transit, and expenses. The Treaty also provides for summary extradition. If the person sought informs the competent authorities of the requested State that he agrees to be extradited, then that Party may grant his extradition without further proceedings, and shall take all measures permitted under its laws to expedite the extradition.

An appendix to the Treaty contains a list of 31 types of offenses for which extradition should be granted, which includes the following: offenses relating to unlawful seizure or exercise of control of trains, aircraft, vessels, or other means of transportation; offenses against the laws relating to prohibited weapons, and the control of firearms, ammunition, explosives, incendiary devices, or nuclear materials; offenses against the laws relating to international trade and transfer of funds or valuable metals; offenses against the laws relating to the control of companies, banking institutions, or other corporations; offenses against the laws relating to the sale of securities, including stocks, bonds, and instruments of credit; offenses against the laws relating to protection of industrial property or copyright; bribery, including soliciting, offering, and accepting bribes.
2. Maritime boundaries

The Treaty of May 4, 1978, regarding maritime boundaries between the United States and Mexico, establishes the location of the maritime boundaries between the two countries. These boundaries shall not affect or prejudice, in any manner, the positions taken by either Party with respect to the extent of internal waters, the territorial sea, or the high seas. In addition, sovereign rights or jurisdiction for any other purpose shall not be affected by these boundaries.

3. Tourism

The agreement between the United States and Mexico, dated May 4, 1978, provides for the development of the tourism industry and its infrastructure, facilitation and documentation, tourism programs, development of tourism from third countries, tourism training, and statistics.

According to the agreement, each Party will facilitate, within its respective territories, the establishment and operation by the other Party of official travel promotion offices. In addition, the Parties (subject to their laws) will facilitate and encourage the activities of travel agents, tour operators, airlines, railroads, motor coach operators, and steamship companies generating two-way tourism between their countries.

It is also stipulated in the agreement that each Party will fulfill the following obligations: permit air and surface carriers of the other Party (whether they be public or private) to appoint sales representatives in its territory in order to market their services; encourage the carriers of the other Party to develop and promote, through designated and authorized sales outlets in its territory, special or excursion fares designed to encourage reciprocal tourist travel; expedite, to the extent possible, the award to the carriers of new air routes established under the bilateral Air Transport Agreement signed by both countries.

In addition, the agreement states that the Parties will endeavor to reduce, simplify, or eliminate, as deemed appropriate, the barriers to entry of tourists into both countries. The Parties will encourage the training of personnel at ports of entry and elsewhere within their respective territories, so as to promote respect of tourists' rights. The Parties shall consider, on the grounds of reciprocity and official request, the waiver of applicable visa fees for the entry and exit of both teachers and experts in tourism. With regard to their awareness of
the importance of automobile collision and liability coverage to automobile tourism between the two countries, the Parties agree to publicize the automobile insurance requirements of their respective territories.

The two countries have also agreed, in the same instrument, to establish joint promotional programs in other countries to encourage travel to the United States and Mexico as a common tourist destination. The Parties will also encourage their respective experts to exchange technical information and documents in several fields, including systems and methods to prepare teachers and instructors on technical matters (particularly with regard to hotel operation and administration), marketing, and scholarships for teachers, instructors, and students.

4. Cooperation on environmental programs

The Memorandum of Understanding between the United States and Mexico, dated June 6, 1978, contains several norms concerning the cooperation between these two countries on environmental programs and transboundary problems.

THE UNITED NATIONS

Final Document of the Tenth Special Session of the General Assembly on Disarmament

This Document was adopted on June 30, 1978, by resolution S-10/2 of the tenth special session of the UN General Assembly. It was the first special session of the General Assembly devoted entirely to disarmament. The Document is very comprehensive and it is divided into 129 paragraphs. The final document includes the paragraphs reprinted below:

11. Mankind today is confronted with an unprecedented threat of self-extinction arising from the massive and competitive accumulation of the most destructive weapons ever produced. Existing arsenals of nuclear weapons alone are more than sufficient to destroy all life on earth. Failure of efforts to halt and reverse the arms race, in particular nuclear arms race, increases the danger of the proliferation of nuclear weapons. Yet the arms race continues. Military budgets are constantly growing, with enormous consumption of human and material resources. . . .

16. In a world of finite resources there is a close relationship between expenditure on armaments and economic and social de-
velopment. Military expenditures are reaching ever higher levels, the highest percentage of which can be attributed to the nuclear-weapon States and most of their allies, with prospects of further expansion and the danger of further increases in the expenditures of other countries. The hundreds of billions of dollars spent annually on the manufacture or improvement of weapons are in sombre and dramatic contrast to the want and poverty in which two thirds of the world's population live. . . . Thus, the economic and social consequences of the arms race are so detrimental that its continuation is obviously incompatible with the implementation of the new international economic order based on justice, equity and cooperation. Consequently, resources released as a result of the implementation of disarmament measures should be used in a manner which will help to promote the well-being of all peoples and to improve the economic conditions of the developing countries.

19. The ultimate objective of the efforts of States in the disarmament process is general and complete disarmament under effective international control. The principal goals of disarmament are to ensure the survival of mankind and to eliminate the danger of war, in particular nuclear war, to ensure that war is no longer an instrument for settling international disputes and that the use and the threat of force are eliminated from international life, as provided for in the Charter of the United Nations. . . .

33. The establishment of nuclear-weapon-free zones on the basis of agreement or arrangements freely arrived at among the States of the zone concerned, and the full compliance with those agreements or arrangements, thus ensuring that the zones are genuinely free from nuclear weapons, and respect for such zones by nuclear-weapon States, constitutes an important disarmament measure.

34. Disarmament, relaxation of international tension, respect for the right to self-determination and national independence, the peaceful settlement of disputes in accordance with the Charter of the United Nations and the strengthening of international peace and security are directly related to each other. Progress in any of these spheres has a beneficial effect on all of them; in turn, failure in one sphere has negative effects on others.

35. There is also a close relationship between disarmament and development. Progress in the former would help greatly in the realization of the latter. Therefore, resources released as a result of the implementation of disarmament measures should be devoted to the economic and social development of all nations and contribute to the
bridging of the economic gap between developed and developing countries.

36. Non-proliferation of nuclear weapons is a matter of universal concern. Measures of disarmament must be consistent with the inalienable right of all States, without discrimination, to develop, acquire and use nuclear technology, equipment and materials for the peaceful use of nuclear energy and to determine their peaceful nuclear programs in accordance with their national priorities, needs and interests, while (sic) bearing in mind the need to prevent the proliferation of nuclear weapons. International cooperation in the peaceful uses of nuclear energy should be conducted under agreed and appropriate international safeguards applied on a non-discriminatory basis.

75. The complete and effective prohibition of the development, production and stockpiling of all chemical weapons and their destruction represent one of the most urgent measures of disarmament. Consequently, conclusion of a convention to this end, on which negotiations have been going on for several years, is one of the most urgent tasks of multilateral negotiations. After its conclusion, all States should contribute to ensuring the broadest possible application of the convention through its early signature and ratification.

76. A convention should be concluded prohibiting the development, production, stockpiling and use of radiological weapons.

100. Governmental and non-governmental information organs and those of the United Nations and its specialized agencies should give priority to the preparation and distribution of printed and audio-visual material relating to the danger represented by the arms race as well as to the disarmament efforts and negotiations on specific disarmament measures.

115. The General Assembly has been and should remain the main deliberative organ of the United Nations in the field of disarmament and should make every effort to facilitate the implementation of disarmament measures. . . .

116. Draft multilateral disarmament conventions should be subjected to the normal procedures applicable in the law of treaties. Those submitted to the General Assembly for its commendation should be subject to full review by the Assembly.

121. Bilateral and regional disarmament negotiations may also play an important role and could facilitate negotiations of multilateral agreements in the field of disarmament.
122. At the earliest appropriate time, a world disarmament conference should be convened with universal participation and with adequate preparation.

124. The Secretary General is requested to set up an advisory board of eminent persons, selected on the basis of their personal expertise and taking into account the principle of equitable geographical representation, to advise him on various aspects of studies to be made under the auspices of the United Nations in the field of disarmament and arms limitation, including a program of such studies.

128. Finally, it should be borne in mind that the number of States that participated in the general debate, as well as the high level representation and the depth and scope of that debate, are unprecedented in the history of disarmament efforts. Several Heads of State or Government addressed the General Assembly. In addition, other Heads of State or Government sent messages and expressed their good wishes for the success of the special session of the Assembly. Several high officials of specialized agencies and other institutions and programs within the United Nations system and spokesmen of twenty-five non-governmental organizations and six research institutes also made valuable contributions to the proceedings of the session. It must be emphasized, however, that the special session marks not the end but rather the beginning of a new phase of the efforts of the United Nations in the field of disarmament.

129. The General Assembly is convinced that the discussions of the disarmament problems at the special session and its Final Document will attract the attention of all peoples, further mobilize world public opinion and provide a powerful impetus for the cause of disarmament.

International Law Commission

For several years the International Law Commission of the United Nations dealt with the most-favoured-nation clauses. Finally, at its 1978 session, the Commission decided to suggest to the UN General Assembly that the draft articles which were prepared on this topic by the Commission should be recommended to the Member States with a view to the conclusion of a convention on the subject.

Draft articles on most-favoured-nation clauses

The International Law Commission prepared the drafts of thirty articles and extensive commentaries. They are published in the Re-
Draft Article 4 says that a most-favoured-nation clause is a treaty provision whereby a State undertakes an obligation towards another State to accord most-favoured-nation treatment in an agreed sphere of relations.

Draft Article 5 provides that most-favoured-nation treatment is treatment accorded by the granting State to the beneficiary State, or to persons or things in a determined relationship with that State, not less favourable than treatment extended by the granting State to a third State or to persons or things in the same relationship with that third State.

With regard to the legal basis of most-favoured-nation treatment, Article 7 stipulates that nothing in the present articles shall imply that a State is entitled to be accorded most-favoured-nation treatment by another State on any basis other than an international obligation undertaken by the latter State.

Under a most-favoured-nation clause, as indicated in Article 9, the beneficiary State only acquires, for itself or for the benefit of persons or things in a determined relationship with it, those rights which fall within the limits of the subject matter of the clause.

Three articles deal with the effect of a most-favoured-nation clause: Articles 11, 12, and 13. According to these articles, if a most-favoured-nation clause is not made subject to a condition of compensation, the beneficiary States will acquire the right to most-favoured-nation treatment without the obligation to accord any compensation to the granting State. If a most-favoured-nation clause is made subject to a condition of compensation, however, the beneficiary State will only acquire the right to most-favoured-nation treatment upon agreeing the agreed compensation to the granting State. Finally, if a most-favoured-nation clause is made subject to a condition of reciprocal treatment, the beneficiary State will only acquire the right to most-favoured-nation treatment upon according the agreed reciprocal treatment to the granting State.

With regard to the necessity of the above provisions, the International Law Commission states in its commentaries that reference should be made to the development of the most-favoured-nation clauses historically known as "conditional" and to the "conditional"
interpretation of clauses which in their terms made no reference to the conditions.

The Commission indicates that in the eighteenth century, the "conditional" form first made its appearance in the Treaty of Amity and Commerce concluded between France and the United States of America on February 6, 1778. Article II of this treaty provided that these two countries "engage mutually not to grant any particular favor to other nations, in respect of commerce and navigation, which shall not immediately become common to the other Party, who shall enjoy the same favor, freely, if the concession was freely made, or on allowing the same compensation, if the concession was conditional."

The Report of the Commission states that it has been determined that the "conditional" clause was inserted in the treaty of 1778 at the French insistence, but that, "even if it were true that the idea was of French origin, the 'conditional' form of the clause seemed peculiarly suited to the political and economic interests of the United States for a long period." The Report of the Commission goes on to explain the evolution of U.S. policies in this regard, and also indicates the more recent practice and doctrinal views on the subject.

The arising of rights and the termination or suspension of rights under a most-favoured-nation clause are dealt with in Articles 20 and 21.

According to Article 23, a beneficiary State under a most-favoured-nation clause is not entitled to treatment extended by a developed granting State to a developing third State on a non-reciprocal basis within a scheme of generalized preferences established by that granting State, where the scheme (adopted in accordance with its relevant rules and procedures) conforms with a generalized system of preferences recognized by the international community of States as a whole or by a competent international organization, for its member states.

Article 24 contains rules on the most-favoured-nation clause in relation to arrangements among developing States, and Article 25 deals with the clause in relation to treatment extended to facilitate frontier traffic. According to Article 25, a beneficiary State, other than a contiguous one, is not entitled under a most-favoured-nation clause to the treatment extended by the granting State to a contiguous third State in order to facilitate frontier traffic. A contiguous beneficiary State is entitled under such a clause to treatment not less favourable than the treatment extended by the granting State to a contiguous
third State, in order to facilitate frontier traffic, but only if the subject matter of the clause is the facilitation of frontier traffic.

Article 29 establishes that the present articles are without prejudice as to any provision on which the granting State and the Beneficiary State may otherwise agree. Article 30, the last one of the draft articles, provides that the present articles are without prejudice to the establishment of new rules of international law in favor of developing countries.

State responsibility

The International Law Commission has had the topic of state responsibility on its agenda for many years and has published several reports on the subject. The Report of the Commission on the work of its thirtieth session (1978) contains the texts of the draft articles adopted so far by the Commission on this topic, as well as commentaries on these articles.

Other topics

The International Law Commission, at its 1978 session, also considered the following topics: succession of States in respect of matters other than treaties; question of treaties concluded between States and international organizations or between two or more international organizations; the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier; and relations between States and international organizations.

International Law Seminar

During the 1978 session of the International Law Commission, the United Nations Office at Geneva organized a session of the International Law Seminar for advanced students of international law and junior government officials. From May 29 to June 16, 1978, the Seminar held eleven meetings devoted to lectures, which were followed by discussions. There were twenty-three participants in the Seminar. Seven members of the Commission delivered lectures on different topics, and the Director of the Division of Human Rights of the UN Secretariat and the Director of the Seminar also delivered lectures during the Seminar.
Additional Protocol to the European Convention on Information on Foreign Law

This Protocol was opened for signature at Strasbourg on March 15, 1978. It was adopted in order to expand the scope of the European Convention on Information on Foreign Law, which was opened for signature by the member states of the Council of Europe in London on June 7, 1968, and entered into force December 17, 1969. State Parties to this Convention are: Austria, Belgium, Cyprus, Denmark, France, Federal Republic of Germany, Greece, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Spain, Sweden, Switzerland, Turkey, United Kingdom.

The Protocol is divided into three small chapters, Articles 1 to 5, and the final clauses.

Article 1 provides that the Contracting Parties undertake to supply one another, in accordance with the provisions of the Convention, with information on their substantive law, procedural law, and judicial organization in the criminal field, including prosecuting authorities, as well as on the law concerning the enforcement of penal measures. This commitment applies to all proceedings with respect to the prosecution of those offenses which, at the time of the request for information, fall within the jurisdiction of the judicial authorities of the requesting Party.

Under Article 2, a request for information on questions in the field referred to in Article 1 may: a) Emanate from the court, as well as from any judicial authority having jurisdiction to prosecute offenses or execute sentences that have been imposed with final and binding effect; and b) be made not only when proceedings have actually been instituted, but also when the institution of proceedings is envisaged.

An alternative formula is contained in Article 3, which provides that the Contracting Parties agree that requests for information may emanate not only from a judicial authority, but also from any authority or person acting within official systems of legal aid or legal advice on behalf of persons in an economically weak position.

Article 5 stipulates that any State, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, may declare that it will only be bound by one or the other of these two alternatives.

The Protocol is open for signature by the Member States of the Council of Europe who have signed the above mentioned Conven-
tion. The Protocol enters into force three months after the date on which three member States of the Council of Europe become Parties to the Protocol.

Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

The additional Protocol was opened for signature at Strasbourg on March 17, 1978. It was adopted with the goal of facilitating the application of the European Convention on Mutual Assistance in Criminal Matters opened for signature at Strasbourg on April 20, 1959. States Parties to the Convention were the following: Austria, Belgium, Denmark, France, Federal Republic of Germany, Greece, Israel, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Sweden, Switzerland, and Turkey.

Article 1 of the Protocol modifies Article 2 (a) of the Convention and establishes that the Contracting Parties shall not refuse assistance solely on the ground that the request concerns an offence which is considered a fiscal offense by the requested party.

Under Article 2 of the Protocol, where a Contracting Party has made the execution of letters rogatory for search or seizure of property dependent on the condition that the offense motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party, this condition shall be fulfilled, with regard to fiscal offenses, if the offense is punishable under the law of the requesting Party and corresponds to an offense of the same nature under the law of the requested Party. The request may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the requesting Party.

The Protocol shall enter into force ninety days after the date of the deposit of the third instrument of ratification, acceptance, or approval.

Article 10 establishes that the European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of the Protocol and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of its execution.
European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters

The Convention was adopted at Strasbourg by the Council of Europe on March 15, 1978. It is stated in the preamble that the aim of the Council of Europe is to achieve a greater unity between its Members, to be based, in particular, on respect for the rule of law, as well as on human rights and fundamental freedoms, and that the creation of appropriate means of mutual assistance in administrative matters will contribute to the attainment of this aim.

This Convention is divided into the following major chapters: I. General provisions; II. Requests for information, documents and inquiries; III. Letters of request in administrative matters; and, IV. Final provisions.

According to Article 2 of the Convention, each Contracting State shall designate a central authority to receive and take action upon requests for assistance in administrative matters emanating from authorities of other Contracting States. Federal States may designate more than one central authority.

The Contracting States agree, in Article 13, to furnish each other with information on their laws, regulations, and customs in administrative matters whenever a request is made by an authority of the requesting State for an administrative purpose. In Article 14, the Contracting States agree to furnish each other with factual information in administrative matters which is in their possession and to issue certified copies, ordinary copies, or extracts of administrative documents whenever a request is made by an authority of the requesting State for an administrative purpose.

It is stipulated in Article 19 that an administrative tribunal, or any other authority exercising functions in administrative matters in one of the Contracting States, may, by a letter of request and in accordance with the provisions of the law of that State, ask the central authority of another Contracting State to obtain, through the competent authority, evidence in an administrative matter. Such action may be taken to the extent that a procedure for obtaining such evidence may be employed for the case in question in the requested State. The execution of the letter of request may be refused where the execution of the letter does not fall within the functions of an administrative tribunal or any other authority exercising judicial functions in administrative matters in the requested States.
The Convention shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance, or approval.

Second Additional Protocol to the European Convention on Extradition

On March 17, 1978, the Council of Europe approved a Second Protocol to the 1957 European Convention on Extradition.

Article 1 of the Protocol amends Article 2, paragraph 2, of the Convention and extends the application of the Convention to offenses which are subject to pecuniary sanctions.

Article 5 of the Convention was replaced by the following provision: With regard to offenses committed in connection with taxes, duties, customs and exchange, extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offense, under the law of the requested Party, corresponds to an offense of the same nature. Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the requesting Party.

Article 3 of the Protocol added a new provision to the Convention. The new provision deals with a delicate subject—the judgments in absentia—which is the subject of differing opinions among authors of works on extradition.

According to the new provision, where a Contracting Party requests the extradition of a person from another Contracting Party for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him in absentia, the requested Party may refuse to extradite if in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defense recognized as due to everyone charged with the criminal offense. However, extradition will be granted if the requesting Party sufficiently assures that the right to retrial will be guaranteed. This decision will authorize the requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, in the event that he does, to take proceedings against the person extradited.

Another provision was added to the Convention by Article 4 of the Protocol. The new provision states that extradition shall not be granted for an offense for which amnesty has been declared in the
requested State and for which that State had competence to prosecute under its own criminal law.

The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.