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Regional and International Activities

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REGIONAL AND INTERNATIONAL ACTIVITIES

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ORGANIZATION OF AMERICAN STATES

GENERAL ASSEMBLY

The third regular session of the OAS General Assembly will be held in Washington, D. C., beginning April 3, 1973.

On November 1, 1972, the Preparatory Committee of the General Assembly studied the report on the preliminary draft agenda for the third regular session of the General Assembly, submitted by the Subcommittee on the Agenda and approved a preliminary draft agenda, with annotations.

The annotated draft agenda is divided into three chapters:

I. Matters deriving from provisions of the Charter or Article 29 of the Rules of Procedure of the General Assembly.

II. Matters that have their origin in decisions adopted by the General Assembly at previous sessions.

III. Matters, proposed by one or More Member States or by another organ, that the Preparatory Committee of the Assembly considers should be included in the agenda.

The preliminary draft agenda for the third regular session of the General Assembly, as approved by the Preparatory Committee, contains 28 topics, among which are the following: Consideration of the annual

*The opinions expressed in this report are those of the author in his personal capacity.

reports of the Permanent Council (CP), the Inter-American Economic and Social Council (CIES); the Inter-American Council for Education, Science and Culture (CIECC), the Inter-American Juridical Committee (CJI) and the Inter-American Commission on Human Rights (CIDH); election of members of the Inter-American Juridical Committee; consideration of the annual report of the Secretary General on the activities and financial condition of the Organization; annual reports of the Inter-American specialized organizations on the progress of their work and on their annual budget and accounts; annual reports presented to the General Assembly by other entities of the inter-American system; recommendations of CIES and CIECC concerning activities in the fisheries sector under the inter-American system; strengthening of the inter-American system for the maintenance of peace; consideration of the report of the Committee on Coordination among the three Councils and the other organs of the system; rules on reservations to multilateral inter-American treaties; consideration of the draft convention on extradition; review of inter-American cooperation for development, with a view to improving it and bringing it up to date, and thereby strengthening the action of regional solidarity in that field; revision of the system of representation of the Member States on the Permanent Executive Committees of CIES and CIECC; advisability of transferring to the Permanent Council the functions of the Committee on Coordination among the three Councils and the other organs of the system; measures for improving the ties of subordination of the three Councils (CP, CIES, CIECC) to the General Assembly.

The Preparatory Committee transmitted the preliminary draft agenda to the governments of the Member States, together with the report on the agenda, so that they may have an opportunity to make such observations as they deem appropriate or to propose the inclusion of additional topics, no later than December 20, 1972. The preliminary draft agenda was also transmitted to the other principal organs of the Organization for suggestions on additional topics. The Preparatory Committee also resolved to hold a meeting on December 21, 1972 in order to take cognizance of observations made and to refer them to its Subcommittee on the Agenda for consideration in the preparation of the draft agenda to be submitted to the General Assembly.

INTER-AMERICAN JURIDICAL COMMITTEE

The Committee held a regular meeting from July 25 to August 23, 1972 at its permanent headquarters in Rio de Janeiro, during which it prepared an opinion concerning the agenda for the Inter-American

Specialized Conference on Private International Law, and approved the Rules of Procedure of the Committee. It continued its consideration of the topic on the Law of the Sea, and approved a resolution appointing a new rapporteur, Doctor Jorge A. Aja Espil, the Argentinian Member of the Committee, who is to present a report at the next meeting of the Committee.

The next meeting of the Committee is scheduled to start on January 8, 1973. Its agenda contains, among others, the following topics: reports, studies and draft conventions for the Inter-American Specialized Conference on Private International Law, according to the agenda for the Conference prepared by the Permanent Council; legal means for the protection and conservation of historical and artistic property; Law of the Sea; legal aspects of foreign investments; nationalization and expropriation of foreign property under international law; jurisdictional immunity of States.

INTER-AMERICAN SPECIALIZED CONFERENCE ON PRIVATE INTERNATIONAL LAW

On July 12, 1972 the Permanent Council of the OAS took cognizance of the report of a Working Group of its Committee on Juridical and Political Matters, which had prepared a draft agenda for this Conference. The Working Group suggested that the Inter-American Juridical Committee be requested to present, if it so desired, proposals for additional topics on the draft agenda. The Permanent Council approved the suggestion.

During its regular meeting held in July-August 1972, the Inter-American Juridical Committee prepared a report on this matter, which was sent to the Permanent Council. This document was considered by the Working Group, which requested its Chairman to present a report on the subject to the Committee on Juridical and Political Matters of the Permanent Council which in turn presented its own report to the Council.

The Working Group revised its previous draft agenda, made a few modifications, and prepared, with the collaboration of the Department of Legal Affairs of the OAS General Secretariat, an annotated draft agenda.

As approved by the Permanent Council, the draft agenda contains topics on commercial companies including the multinational commercial companies; international sale of goods; bills of exchange, checks and

promissory notes of international circulation; international commercial arbitration, international maritime transportation, with special reference to bills of lading; letters rogatory; recognition and enforcemente of foreign judgments; taking of evidence abroad in civil and commercial matters; legal system for powers of attorney to be used abroad; action that should be taken for the development of other topics of Private International Law.

In the extensive annotated draft agenda there is information on the inter-American and world-wide treaties and conventions which contain provisions referring to the topics on the draft agenda. The studies made by the inter-American Juridical Committee and other agencies dealing with the said topics are also mentioned. On the other hand, some notes indicate the possible procedures that could be followed in the preparatory phase of the Conference.

For example, under the topic on commercial companies, after quoting an opinion of the Inter-American Juridical Committee on the matter, in which it indicates the convenience of preparing a convention on the subject, one annotation reads as follows: "Consequently, in keeping with the idea of the Committee itself, and in order to limit the scope of the subject within the context of the Specialized Conference, the advisability of preparing a draft convention to govern conflict of laws on commercial companies within the inter-American sphere should be considered during the stage of preparations for the Conference. To this end, the pertinent provisions of the Bustamante Code and the Montevideo Treaties could be studied, in order to adapt them, if necessary to the advances of the science of law, and to harmonize them whenever possible. . . By means of this procedure, a new inter-American convention on conflict of laws regarding commercial companies could be drafted, which could undoubtedly help to facilitate the solution of conflicts of laws arising from commercial relations among member states of the Organization, especially in view of the fact that such commercial relations are increasing considerably."

Another example is a note under bills of exchange, checks and promissory notes of international circulation, which reads: "During the preparatory phase of the Specialized Conference the possibility could be studied of preparing a draft inter-American convention on conflict of laws in the area of bills of exchange, checks, and promissory notes of international circulation, especially since there are rules on these subjects in the Bustamante Code and the Montevideo Treaties. It would be desirable, if possible, to promote harmonization of the rules found in those instruments, up-dating their principles, and preparing a new inter-American convention on rules on conflict of laws in this area."

MEETING ON IDENTIFICATION, PROTECTION, AND SAFEGUARDING OF THE ARCHEOLOGICAL, HISTORICAL AND ARTISTIC HERITAGE

This meeting was held at the city of São Paulo, October 23 through 27, 1972, under the auspices of the Inter-American Council for Education, Science and Culture (CIECC). Several specialists of American countries, including the Chairman of the Inter-American Juridical Committee, Doctor Adolfo Molina Orantes, participated in the meeting. There were also observers from different organizations interested in the subject.

The participating specialists formulated three conclusions and eighteen guidelines, which appear in the report of the meeting, submitted to the fourth meeting of CIECC held in Mar del Plata, Argentina, December 4 through 20, 1972.

The conclusions and some of the guidelines follow:

1. That it is advisable that the Member States of the Organization of American States ratify the convention on the steps that should be taken to prohibit the illegal importation, exportation and transfer of ownership of cultural objects, approved by the Sixteenth General Conference of UNESCO or adhere to it.

2. That the Inter-American Council for Education, Science and Culture entrust the Inter-American Juridical Committee with the preparation of a draft inter-American multilateral convention or treaty on identification, protection, and safeguarding of the archeological, historical, and artistic heritage of the Member States. This instrument should be primarily intended to prevent illegal traffic in cultural objects and allow for the recovery and return to the country of origin of such objects illegally removed from it.

3. That in preparing this draft convention or treaty the Inter-American Juridical Committee consider the following guidelines, which are hereby recommended:

A. For the purposes of the treaty, cultural property is that which possesses a special value due to its prehistoric, archeological, historical, artistic, or scientific importance and may be classified within one of the following categories:

1. Monuments, objects, fragments of ruined buildings and archeological material belonging to the pre-Columbian era and the American cultures prior to contacts with the

European culture, as well as human remains and those of flora and fauna related to those cultures.

2. Monuments; buildings; artistic, utilitarian, and ethnological objects, religious or profane, whole or damaged or fragmented, from the colonial era.

3. Libraries and archives; incunabula; manuscripts, books, publications, maps and documents published up to the year 1850.

4. All movable property of origin subsequent to 1850 that the signatory states have registered as cultural property, so long as notice of such registration has been given to all other parties to the treaty.

   All movable property which states signatory of the treaty should expressly agree to include within the terms of the treaty.

B. Items included within the categories established in the above recommendation should receive maximum protection on the international level. To this end the treaty shall declare illegal the importation and exportation of such objects, with the sole exception of cases in which the owner state authorizes the exportation for the purpose of promoting knowledge of the national cultures, such as temporary exhibitions and loans to museums or to scientific research institutions.

C. Other cultural objects considered as such by interational conventions and treaties for the purpose of preventing illegal traffic shall be the object of international protection, whereby the importation and exportation of such items shall be declared illegal only when they are not accompanied by the proper certificate of authorization issued by the owner states.

D. The preservation and defense of its cultural heritage is the responsibility of each state, and this tutelage shall be exercised by means of the following:

1. Administrative laws and regulations that can effectively protect against destruction through abandonment or conservation work that was poorly executed or undertaken for reasons of prestige, and against its impoverishment due to illegal exportation.

2. Technical agencies specifically charged with protection and safeguarding, staffed with experienced professional personnel and endowed with financial resources to be established as a percentage of the national budget of each state.
3. Preparation of an inventory and establishment of a register of cultural property subject to maximum protection, which will make it possible to identify and locate such objects.
4. The requirement that conservation work on movable and real property subject to maximum protection be done by experts holding certificates of competence and of recognized experience.
5. Measures for the protection of monuments, their content, and their surroundings.
6. The establishment of archeological zones reserved for future research.

E. Each state shall prohibit the exportation and importation of cultural objects not accompanied by a certificate authorizing their exportation.

. . . .

G. An inter-American register of movable and real cultural property of exceptional value should be established.

. . . .

I. The system of ownership of cultural property shall be established by each state. In the legislation governing that system or in that enacted for the protection of cultural property, the following measures shall be established, for the purpose of preventing illegal traffic therein:

1. Registration of private collections and of the transfer of ownership or possession of cultural property subject to maximum protection, as well as periodic inspection of such collections.
2. Registration of every transaction that takes place in the establishments engaged in purchase and sale of so-called antiquities and periodic inspection of those establishments.
3. Prohibiting public and private museums from acquiring cultural objects that form part of the cultural heritage of a state without the corresponding authorization by the state.

. . . .

M. Each state shall prohibit any archeological exploration or excavation that is not authorized by the agency responsible for the protection of its archeological heritage. Authority to conduct exploration or excavation may be granted only to national or foreign scientific institutions that will conduct it in collaboration with the agency responsible for the archeological heritage and that undertake to hand over all objects found and deliver a report on the results of the exploration or excavation."

N. The state's ownership of its cultural heritage as well as all corresponding actions for recovery are not subject to prescription. Each state may request the return of its cultural property illegally removed from its national territory. The state in whose territory the requested cultural property is found shall return it to the state of origin, without any need for compensating the person or entity in whose possession the object is found. The request for return shall be made through diplomatic channels. The requesting state shall provide proof of the illegal exit of the property in question, in accordance with its legal system, which shall be accepted by the requested state.

O. An agency established to this end by the treaty or an agency already existing within the inter-American system shall be entrusted with obtaining compliance with the treaty once it has come into force and with carrying out periodic evaluations in accordance with the information obtained or supplied by the states parties.

UNITED NATIONS

INTERNATIONAL LAW COMMISSION

The International Law Commission of the United Nations held its twenty-fourth session from May 2 to July 7, 1972. The Report on the work accomplished by the Commission during the session was published under the classification A/8710, as a provisional edition. It will be issued in final form as Supplement No. 10 to the Official Records of the twenty-seventh session of the General Assembly.

During this session the Commission considered two major topics: Succession of States and the protection and inviolability of diplomatic

agents and other persons entitled to special protection under international law.

1. *Succession of States*

This topic had been considered by the Commission in previous sessions. During the twenty-fourth session, the Commission finished the preparation of draft articles on the subject. The report explains that the final form of the codification of the law relating to succession of States with respect to treaties and its precise relationship with the Vienna Convention on the Law of Treaties adopted in 1969, are matters to be decided at a later stage, when the Commission has completed the second reading of the draft articles in the light of the comments and observations of the governments. It is explained that the Commission made its study of the succession of States with respect to treaties in the form of a group of articles as recommended by the General Assembly.

The Commission prepared thirty-one draft articles, with extensive commentaries. These articles and commentaries appear on pages 6 through 224 of the report.

Art. 1 to 9 contain general provisions. Art. 1 provides that the present articles apply to the effects of succession of States with respect to treaties between States. Art. 2 establishes certain definitions for the purposes of the draft articles. Art. 3 indicates the cases not within the scope of the articles. In Art. 4 it is provided that the present articles apply to the effects of succession of States with respect to: a) any treaty which is the constituent instrument of an international organization without prejudice to any relevant rules of the organization; b) any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

Art. 5 to 9 deal with obligations imposed by international law independently of a treaty, agreements for the devolution of treaty obligations, successor State's unilateral declarations, and treaties providing for the negotiation of a successor State.

With respect to transfer of territory, Art. 10 says that when territory under the sovereignty or administration of a State becomes part of another State: a) treaties of the predecessor States cease to be in force with respect to that territory from the date of the succession; and b) the treaties of the successor State are in force with respect to that terriory from the same date, unless it appears from the particular treaty or is otherwise established that the application of the treaty to that territory would be incompatible with its object and purpose.

Art. 10 to 26 are concerned with newly independent States. These articles are grouped in five different sections.

Art. 11 establishes that, subject to the provisions of the present articles, a newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that, at the date of the succession of States, the treaty was in force with respect to the territory to which the succession of States relates.

The participation in multilateral treaties in force is dealt with in the three paragraphs of Art. 12: 1. Subject to paragraphs 2 and 3, a newly independent State may, by notification of succession, establish its status as a party to any multilateral treaty which at the date of the succession of States was in force with respect to the territory to which the succession of States relates. 2. Paragraph 1 does not apply if the object and purpose of the treaty are incompatible with the participation of the successor State in that treaty. 3. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties, the successor State may establish its status as a party to the treaty only with such consent.

On the question of reservations, Art. 15 provides that, when a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession, it shall be considered as maintaining any reservations which was applicable with respect to the territory in question at the date of the succession of States, unless: a) in notifying its succession to the treaty, it expresses a contrary intention or formulates a new reservation which relates to the same subject matter and is incompatible with the said reservation; or b) the said reservation must be considered as applicable only in relation to the predecessor State.

According to Art. 19, paragraph 1: A bilateral treaty which at the date of succession of States was in force with respect to the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party in conformity with the provisions of the treaty when: a) they expressly so agree, or b) by reason of their conduct they are to be considered as having so agreed. Paragraph 2. A treaty considered as being in force under paragraph 1 applies in the relations between the successor State and the other party from the date of succession of States, unless a different intention appears from their agreement or is otherwise established.

Art. 26 to 28 dealt with the cases concerning union, dissolution and separation of States.

Problems relating to boundary regimes or other territorial regimes established by a treaty are dealt with in Art. 29 and 30. Art. 29 provides that a succession of States shall not as such affect: a) a boundary established by a treaty; or b) obligations and rights established by a treaty and relating to the regime of a boundary. According to Art. 30, paragraph 1, a succession of States shall not as such affect: a) obligations relating to the use of a particular territory, or to restrictions upon its use, established by a treaty specifically for the benefit of a particular territory of a foreign State and considered as attaching to the territories in question; b) rights established by a treaty specifically for the benefit of a particular territory and relating to the use, or to restrictions upon the use of a particular territory of a foreign State and considered as attaching to the territories in question. Under paragraph 2 of Art. 30, a succession of States shall not as such affect: a) obligations relating to the use of a particular territory, or to restrictions upon its use, established by a treaty specifically for the benefit of a group of States or of all States and considered as attaching to that territory; b) rights established by a treaty specifically for the benefit of a group of States or of all States and relating to the use of a particular territory, or to restrictions upon its use, and considered as attaching to that territory. Article 31 of the draft articles contains miscellaneous provisions.

2. *Protection and inviolability of diplomatic agents and other persons entitled to special protection under international law*

By resolution 2780 (XXVI) of December 3, 1971, the U.N. General Assembly, taking into account certain views of the International Law Commission in its report to the Assembly, requested that: a) the Secretary General invite comments from Member States before April 1, 1972 on the question of protection of diplomats and transmit them to the Commission at its twenty-fourth session; and, b) the Commission study as soon as possible, in the light of the comments by Member States, the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, with a view to preparing a set of draft articles on the subject for submission to the General Assembly.

At its twenty-fourth session (1972), the Commission had before it the observations from twenty-six Member States, as well as several other

documents, including the text of the Convention to Prevent and Punish the Acts of Terrorism taking the Form of Crimes against the Persons and related Extortion that are of International Significance, signed at Washington in February 1971 at the closing of the third special session of the OAS General Assembly.

According to the resolution of the U.N. General Assembly, the International Law Commission prepared a set of draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons. It is provided in the three paragraphs of Art. 1, that: 1. "Internationally protected person" means: a) a Head of State or a Head of Government, whenever he is in a foreign State, as well as members of his family who accompany him; b) any official of either a State or an international organization who is entitled, pursuant to general international law or an international agreement, to special protection for or because of the performance of functions on behalf of his State or international organization, as well as members of his family who are likewise entitled to special protection. 2. "Alleged offender" means a person as to whom there are grounds to believe that he has committed one or more of the crimes set forth in Art.2. 3. "International organization" means an intergovernmental organization.

Draft Art. 2 establishes in its three paragraphs that: 1. The intentional commission, regardless of motive of: a) a violent attack upon the person or liberty of an internationally protected person; b) a violent attack upon the official premises or the private accommodations of an internationally protected person likely to endanger his person or liberty; c) a threat to commit any such attack; d) an attempt to commit any such attack, and e) participation as an accomplice in any such attack, shall be made by each State party to a crime under its internal law, whether the commission of the crime occurs within or outside of its territory. 2. Each State party shall make these crimes punishable by severe penalties which take into account the aggravated nature of the offense. 3. Each State shall take such measures as may be necessary to establish its jurisdiction over these crimes.

According to Art. 3, States parties shall cooperate in the prevention of the crimes set forth in Art. 2 by: a) taking measures to prevent preparations in their respective territories for the commission of those crimes either in their own or in other territories; b) exchanging information and coordinating the taking of administrative measures to prevent the commission of those crimes. Under Art. 5, the State party in whose territory the

alleged offender is present shall take the appropriate measures under its internal law so as to ensure his presence for prosecution or extradition. Such measures shall be immediately notified to the State where the crime was committed, the State or States of which the alleged offender is a national, the State or States of which the internationally protected person concerned is a national and all interested States.

Art. 6 establishes the obligation for the State party in whose territory the alleged offender is present, in case it does not extradite him, to submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

In connection with extradition, Art. 7 contains several rules in its four paragraphs: 1. To the extent that the crimes set forth in Art. 2 are not listed as extraditable offences in any extradition treaty existing between States parties they shall be deemed to have been included as such therein. States parties undertake to include those crimes as extraditable offences in every future extradition treaty to be concluded between them. 2. If a State party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State party with which it has no extradition treaty, it may, if it decides to extradite, consider the present articles as the legal basis for extradition in respect to the crimes. Extradition shall be subject to the procedural provisions of the law of the requested State. 3. States party which do not make extradition conditional on the existence of a treaty shall recognize the crimes as extraditable offences between themselves subject to the procedural provisions of the law of the requested State. 4. An extradition request from the State in which the crimes were committed shall have priority over other such requests if received by the State party in whose territory the alleged offender has been found within six months after the communication required under paragraph 1 of Art. 5 has been made.

Fair treatment at all stages of the proceedings is guaranteed, under Article 8, to any person regarding whom proceedings are being carried out in connection with the crimes set forth in Art. 2.

According to Art. 10, States parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought with respect to the crimes set forth in Art. 2; this provision shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Art. 12 contains two alternative texts dealing with the solution of any disputes between the parties arising out of the application or interpretation of the present articles that is not settled through negotiations.

3. *Cooperation with other organizations*

The report on the twenty-fourth session of the International Law Commission contains a chapter with a resumé of the information presented to the Commission by the representatives of three other entities which maintain cooperative relations with the Committee: 1) the Asian-African Legal Consultative Committee, which was represented by its Secretary General, Mr. Sen; 2) the European Committee on Legal Cooperation, represented by Mr. H. Golzong, Director of Legal Affairs of the Council of Europe, and 3) the Inter-American Juridical Committee, represented by Dr. Adolfo Molina Orantes, then a member of the Committee, and now its Chairman.

4. *International Law Seminar*

The report also contains an account of the Seminar on International Law held between 5 and 23 June 1972. This was the eighth session of the Seminar, which is held during the sessions of the International Law Commission. The Seminar is intended for advanced students of international law and young officials of government departments, especially Ministries of Foreign Affairs.

According to the report, twenty-three students from twenty-two different countries participated in the eighth session of the Seminar; they also attended meetings of the Commission.

A judge of the International Court of Justice and seven members of the Commission gave their services as lecturers. The lectures dealt with several subjects connected with the past and present work of the International Law Commission. The Seminar was held without cost to the United Nations, which did not contribute to the travel or living expenses of the participants. As in previous sessions, the Governments of Denmark, Norway, Sweden, the Federal Republic of Germany, Finland, Israel and Switzerland made scholarships available to participants from developing countries. Thirteen candidates were selected to receive such scholarships, and holders of UNITAR scholarships were also admitted to the Seminar. A better geographical distribution of participants can be achieved through these scholarships, which also will help to bring from distant countries deserving candidates who would otherwise be prevented from attending the Seminar because of lack of funds.

INTERNATIONAL COURT OF JUSTICE

Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Interim Protection, Order of 17 August 1972, I.C.J. Reports 1972, p. 30.

Following are some excerpts from the text of this Order of the Court.

The International Court of Justice, having regard to the Application by the Federal Republic of Germany filed in the Registry of the Court on 5 June 1972, instituting proceedings against the Republic of Iceland with respect to a dispute concerning the proposed extension by the Government of Iceland of its fisheries jurisdiction, by which the Government of the Federal Republic asks the Court to declare that Iceland's claim to extend its exclusive fisheries jurisdiction to a zone of 50 nautical miles around Iceland has no basis in international law and could therefore not be applied to the Federal Republic and to its fishing vessels,

Makes the following Order:

1. Having regard to the request dated 21 July 1972 and filed in the Registry the same day, whereby the Government of the Federal Republic of Germany, relying on Article 41 of the Statute and Article 61 of the Rules of Court, asks the Court to indicate, pending the final decisions in the case brought before it by the Application of 5 June 1972, the following interim measures of protection:

(a) The Federal Republic of Germany and the Republic of Iceland should each of them ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court.

(b) The Republic of Iceland should refrain from taking any measure purporting to enforce the Regulations issued by the Government of Iceland on 14 July 1972 against or otherwise interfering with vessels registered in the Federal Republic of Germany and engaged in fishing activities in the waters of the high seas around Iceland outside the 12-mile limit of fisheries jurisdiction agreed upon in the Exchange of Notes between the Government of the Federal Republic of Germany and the Government of Iceland dated 19 July 1961.

(c) The Republic of Iceland should refrain from applying or threatening to apply administrative, judicial or other sanctions or any other measures against ships registered in the Federal

Republic of Germany, their crews or other related persons because of their having been engaged in fishing activities in the waters of the high seas around Iceland outside the 12-mile limit as referred to in paragraph 22(b) (of the request).

(d) The Federal Republic of Germany should ensure that vessels registered in the Federal Republic of Germany do not take more than 120,000 metric tons of fish in any one year from the "Sea Area of Iceland" as defined by the International Council for the Exploration of the Sea as area Va (as marked on the map annexed to the request as Annex B).

(e) The Federal Republic of Germany and the Republic of Iceland should each of them ensure that no action is taken which might prejudice the rights of the other party in respect to the carrying out of whatever decision on the merits the Court may subsequently render;

2. Whereas the Government of Iceland was notified of the filing of the Application instituting proceedings, on the same day, and a copy thereof was at the same time transmitted to it by air mail;

. . . .

4. Whereas the Application founds the jurisdiction of the Court on Article 36, paragraph 1, of the Statute and on an Exchange of Notes between the Governments of Iceland and of the Federal Republic of Germany dated 19 July 1961;

5. Whereas by a letter dated 27 June 1972 from the Minister of Foreign Affairs of Iceland, received in the Registry on 4 July 1972, the Government of Iceland asserted that the agreement constituted by the Exchange of Notes of 19 July 1961 was not of a permanent nature, that its object and purpose had been fully achieved, and that it was no longer applicable and had terminated; that there was on 5 June 1972 no basis under the Statute of the Court to exercise jurisdiction in the case; and that the Government of Iceland, considering that the vital interests of the people of Iceland were involved, was not willing to confer jurisdiction on the Court, and would not appoint an Agent;

. . . .

9. Noting that the Government of Iceland was not represented at the hearing;

. . . .

11. Whereas according to the jurisprudence of the Court and of the Permanent Court of International Justice the non-appearance of one of the parties cannot by itself constitute an obstacle to the indication of provisional measures, provided the parties have been given an opportunity of presenting their observations on the subject;

12. Whereas in its message of 28 July 1972, the Government of Iceland stated that the Application of 5 June 1972 was relevant only to the legal position of the two States and not to the economic position of certain private enterprises or other interests in one of those States, an observation which seems to question the connection which must exist under Article 61, paragraph 1, of the Rules between a request for interim measures of protection and the original Application filed with the Court;

. . . .

21. Whereas the decision given in the present proceedings in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the merits themselves and leaves unaffected the right of the respondent to submit arguments against such jurisdiction or in respect of such merits;

. . . .

24. Whereas it is also necessary to bear in mind the exceptional importance of coastal fisheries to the Icelandic economy as expressly recognized by the Federal Republic in its Note addressed to the Foreign Minister of Iceland dated 19 July 1961;

25. Whereas from that point of view account must be taken of the need for the conservation of fish stocks in the Iceland area;

. . . .

Accordingly, the Court, by fourteen votes to one,

1. Indicates, pending its final decision in the proceedings instituted on 5 June 1972 by the Federal Republic of Germany against the Republic of Iceland, the following provisional measures:

(a) the Federal Republic of Germany and the Republic of Iceland should each of them ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court;

(b) the Federal Republic of Germany and the Republic of Iceland should each of them ensure that no action is taken

which might prejudice the rights of the other Party in respect to the carrying out of whatever decision on the merits the Court may render;

(c) the Republic of Iceland should refrain from taking any measures to enforce the Regulations of 14 July 1972 against vessels registered in the Federal Republic and engaged in fishing activities in the waters around Iceland outside the 12-mile fishery zone;

(d) the Republic of Iceland should refrain from applying administrative, judicial or other sanctions or any other measures against ships registered in the Federal Republic, their crews or other related persons, because of their having engaged in fishing activities in the waters around Iceland outside the 12-mile fishery zone;

(e) the Federal Republic should ensure that vessels registered in the Federal Republic do not take an annual catch of more than 119,000 metric tons of fish from the "Sea Area of Iceland" as defined by the International Council for the Exploration of the Sea as area Va;

(f) the Government of the Federal Republic should furnish the Government of Iceland and the Registry of the Court with all relevant information, orders issued and arrangements made concerning the control and regulation of fish catches in the area.

2. Unless the Court has meanwhile delivered its final judgment in the case, it shall, at an appropriate time before 15 August 1973, review the matter at the request of either Party in order to decide whether the foregoing measures shall continue or need to be modified or revoked.

Done at The Hague, 17 August 1972.

Vice-Presidents Ammoun and Judges Forster and Jiménez de Aréchaga made a joint declaration, which was appended to the Order.

Judge Padilla Nervo appended a dissenting opinion to the Order of the Court. Following are excerpts from the text of his dissenting opinion.

"The claim of the Republic of Iceland to extend its fisheries jurisdiction to a zone of 50 nautical miles around Iceland, has not been proved to be contrary to international law. The question regarding the jurisdiction of the Court has not been fully explored. . . .

The claim of Iceland that its continental shelf must be considered to be a part of the country itself, has the support in the Convention on this subject, done at Geneva on 29 April 1958. This Court, in its judgment of 20 February 1969, stated: ". . . . the most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention . . . . . namely that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right. In order to exercise it, no special legal process has to be gone through, nor have any special legal acts to be performed. . . ."

The Government of Iceland in its information and documents sent to the Court, has given well-founded reasons and explanations of its sovereign right to extend its fisheries jurisdiction to the entire continental shelf area.

The coastal fisheries in Iceland have always been the foundation of the country's economy. The coastal fisheries are the *conditio sine qua non* for the Icelandic economy; without them the country would not have been habitable. Iceland rests on a platform or continental shelf whose outlines follow those of the country itself. . . .

The continental shelf is really the platform of the country and must be considered to be a part of the country itself. The vital interests of the Icelandic people are therefore at stake. They must be protected. . . .

In a system of progressive development of international law the question of fishery limits has to be reconsidered in terms of the protection and utilization of coastal resources regardless of other considerations which apply to the extent of the territorial sea. The international community has increasingly recognized that the coastal fishery resources are to be considered as a part of the natural resources of the coastal State. . . .

The most essential asset of the coastal States is to be found in the living resources of the sea covering their continental shelf and in the fishing zone contiguous to their territorial sea. The progressive development of international law entails the recognition of the concept of the *patrimonial sea*, which extends from the territorial waters to a distance fixed by the coastal State concerned, in exercise of its sovereign rights,

for the purpose of protecting the resources on which its economic development and the livelihood of its people depend. This concept is not a new one. It has found expression in declarations by many governments proclaiming as their international maritime policy, their sovereignty and exclusive fisheries jurisdiction over the sea contiguous to their shores."

In his last observation, Judge Padilla Nervo expresses that "The claim of irremediable damages to the Applicant has not, in my opinion, been proved. They are only allegations that the fishing enterprises would suffer financial losses and also allegations that the eating habits of people in the countries concerned will be disturbed. Such an argument cannot, in my opinion, be opposed to the sovereign right of Iceland over its exclusive jurisdiction and the protection of the living resources of the sea covering its continental shelf. The Order does not strike, in my view, a fair balance between the two sides as required by the relevant article of the Statute. The restrictions indicated in the Order are obviously against Iceland, interfering with its unlimited right to legislate over its own territory as it considers it essential. . . ."

Fisheries jurisdiction (Federal Republic of Germany v. Iceland), Order of August 18, 1972, I.C.J. Reports 1972, p. 188

Application by the Federal Republic of Germany filed in the Registry of the Court on 5 June 1972, instituting proceedings against the Republic of Iceland in the dispute which has arisen between the two Governments relating to the proposed extension by the Government of Iceland of its fisheries jurisdiction around Iceland.

The Government of Iceland asserted that there was no basis under the Statute of the International Court of Justice for exercising jurisdiction in this case.

The Court decided, by 9 votes to 6, that the first pleadings should be addressed to the question of the jurisdiction of the Court to entertain the dispute. The Court fixed the following time-limits for the written proceedings: 13 October 1972 for the Memorial of the Government of the Federal Republic of Germany; 8 December 1972 for the Counter-Memorial of the Government of Iceland.

Fisheries jurisdiction (United Kingdom v. Iceland), Interim Protection, Order of 17 August 1972, I.C.J. Reports 1972, p. 12.

This case is similar to the case on fisheries jurisdiction between the Federal Republic of Germany and Iceland, Order of the Court of 17 August 1972.

Similar provisional measures were also adopted in this case. Vice-President Ammoun and Judge Jiménez de Aréchaga appended a joint declaration, and Judge Padilla Nervo appended a dissenting opinion. The Court, furthermore, decided that in this case also the first pleading should be addressed to the question of the jurisdiction of the Court to entertain the dispute. Identical time-limits were fixed for the written proceedings (Order of 18 August 1972).

INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE

This convention, adopted at Brussels, December 18, 1971, is a supplementary convention to the International Convention on Civil Liability for Oil Pollution Damage, of November 29, 1969, the so-called Liability Convention.

The supplementary Convention is a long document with 48 articles, some of which contain detailed provisions. Art. 1 defines several words or expressions.

Art. 2 establishes the International Oil Pollution Compensation Fund, with the following aims: a) to provide compensation for pollution damage to the extent that the protection afforded by the Liability Convention is inadequate; b) to give relief to shipowners in respect of the additional financial burden imposed on them by the Liability Convention, such relief being subject to conditions designed to insure compliance with safety at sea and other conventions; c) to give effect to the related purposes set out in the present Convention. The Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Fund as the legal representative of the Fund.

Under Art. 3, the Convention shall apply: 1) with regard to compensation according to Art. 4, exclusively to pollution damage caused on the territory including the territorial sea of a Contracting State, and to preventive measures taken to prevent or minimize such damage; 2) with regard to indemnification of shipowners and their guarantors according to Art. 5, exclusively in respect to pollution damage caused on the territory including the territorial sea of a State party to the Liability Convention, by a ship registered in or flying the flag of a Contracting State and with respect to preventive measures taken to prevent or minimize such damage.

Art. 4 to 9 have detailed provisions on the question of compensation and indemnification.

Art. 4 provides, among other things, that for the purpose of fulfilling its function under Art. 2, paragraph 1(a), the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the Liability Convention: a) because no liability for the damage arises under the Liability Convention; b) because the owner liable for the damage under the Liability Convention is financially incapable of meeting his obligations; c) because the damage exceeds the owner's liability under the Liability Convention as limited pursuant to Art. 5, paragraph 1 of the Convention or under the term of any other international Convention in force or open for signature, ratification or accession at the date of this convention. (Person, according to the Liability Convention of 1969, means any individual or corporation or entity of public or private law including a State or any of its subdivisions.)

The Fund shall incur no obligation under the preceding paragraph if: a) it proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection, or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government noncommercial services; or b) the claimant cannot prove that the damage resulted from an incident involving one or more ships.

According to Art. 16, the Fund shall have an Assembly, a Secretariat headed by a Director, and an Executive Committee. The Assembly shall consist of all Contracting States to the Convention.

Art. 20 and 21 provide that the Executive Committee shall be established at the first regular session of the Assembly after the date on which the number of Contracting States reaches fifteen. The Executive Committee shall consist of one-third of the seven members of the Assembly but not less than seven or more than fifteen members. Where the number of members of the Assembly is not divisible by three the one-third shall be calculated on the next higher number which is divisible by three.

The Convention was to remain open for signature until December 31, 1972, by the States which signed or acceded to the Liability Convention of 1969, and by any State represented at the Conference on the Establishment of an International Fund for Oil Pollution Damage, held in 1971. The Convention is open for accession by States which did not sign it.

The Convention shall enter into force ninety days after the date on which the following requirements are fulfilled: a) at least eight States have deposited instruments of ratification, acceptance, approval or accession with the Secretary General of IMCO; b) The Secretary General of IMCO has received information concerning certain contributions pursuant to the Convention.

The Convention, however, shall not enter into force before the Liability Convention of 1969 has entered into force.

(The text of the Convention appears in International Legal Materials, Vol. XI, No. 2, March 1972, pages 284-302.)

AGREEMENT BETWEEN CANADA AND THE UNITED STATES ON GREAT LAKES WATER QUALITY

Done at Ottawa, April 15, 1972

Art. I provides for definitions of some words or expressions.

The water quality objectives for the boundary waters of the Great Lakes System are established in Art. II, according to which these waters should be: a) Free from substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life or waterfowl; b) free from floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or deleterious; c) free from materials entering the waters as a result of human activity producing colour, odour or other conditions in such a degree as to create a nuisance; d) free from substances entering the waters as a result of human activity in concentration that are toxic or harmful to human, animal or aquatic life; e) free from nutrients entering the waters as a result of human activity in concentration that create nuisance growths of aquatic weeds and algae.

As stated in Art. III, the specific water quality objectives for the boundary waters of the Great Lakes System are set forth in the Annex 1 to the Agreement. These objectives may be modified and additional objectives may be adopted by the Parties in accordance with the provisions of Art. IX and XII of this Agreement.

As provided in Art V, programs and other measures directed toward the achievement of the water quality objectives shall be developed and

implemented as soon as practicable in accordance with legislation in the two countries. Unless otherwise agreed, such programs and other measures shall be either completed or in process of implementation by December 31, 1975. They shall include programs for the abatement and control of: Pollution from municipal sources, pollution from shipping activities, from dredging activites, from onshore and offshore facilities, from industrial sources, from agricultural, forestry and other land use activities.

As provided in Art VI, the International Joint Commission is given powers, responsibilities and functions in connection with the water quality objectives. The Commission will have, among other, the following responsibilities: a) collection, analysis and dissemination of data and information supplied by the Parties and State and Provincial Government relating to the quality of the boundary waters of the Great Lakes System and to pollution that enters the boundary waters from tributary waters; b) collection, analysis and dissemination of data and information concerning the water quality objectives and the operation and effectiveness of the programs and other measures established pursuant to this Agreement; c) tendering of advice and recommendations to the Parties and to the State and Provincial Governments on problems of the quality of the boundary waters of the Great Lakes System, including specific recommendations concerning the water objectives, legislation, standards and other regulatory requirements, programs and other measures, and inter-governmental agreements relating to the quality of these waters; d) provision of assistance in the coordination of the joint activities envisaged by this Agreement, including such matters as contingency planning and consultation on special situations; e) provision of assistance in the coordination of Great Lakes water quality research, including identification of objectives for research activities, tendering of advice and recommendations concerning research to the parties and to the State and Provincial Governments, and dissemination of information concerning research to interested persons and agencies; f) investigations of subjects related to the Great Lakes water quality as the Parties may from time to time refer to it.

In the discharge of its responsibilities under this Agreement, the Commission may exercise all of the powers conferred upon it by the Boundary Waters Treaty and by any legislation passed pursuant thereto, including the power to conduct public hearings and to compel the testimony of witnesses and the production of documents.

There are eight Annexes to the Agreement which entered into force on April 15, 1972.

CONVENTION RELATING TO CIVIL LIABILITY IN THE FIELD OF MARITIME CARRIAGE OF NUCLEAR MATERIAL

This convention, signed at Brussels on December 17, 1971, was adopted under the auspices of the Inter-Governmental Maritime Consultative Organization (IMCO). It was prepared by the Conference on Maritime Carriage of Nuclear Substances, held in Brussels from November 29 to December 2, 1971.

The instrument contains 12 articles.

Art. 1 provides that any person who by virtue of an international convention or national law applicable in the field of maritime transport might be held liable for damage caused by a nuclear incident shall be exonerated from such liability: a) if the operator of a nuclear installation is liable for such damage under either the Paris or the Vienna Convention (Paris Convention on Third Party Liability in the Field of Nuclear Energy, of July 29, 1960, and its Additional Protocol of January 28, 1964; Vienna Convention on Civil Liability for Nuclear Damage, of May 21, 1963); or, b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Convention.

In Art. 2, paragraph 1, it is established that the exoneration provided for in Art. 1 shall also apply with respect to damage caused by a nuclear incident. Paragraph 2 of Art. 1 states that the provisions of paragraph 1 shall not, however, affect the liability of any individual who has caused the damage by an act or omission done with intent to cause damage.

Art. 3 stipulates that no provision of the present Convention shall affect the liability of the operator of a nuclear ship with respect to damage caused by a nuclear incident involving the nuclear fuel or radioactive products or waste produced in such ship.

As provided in Art. 4, the present Convention shall supersede any international Conventions in the field of maritime transport which, at the date on which the present Convention is opened for signature, are in force or open for signature, ratification or accession but only to the extent that such Conventions would be in conflict with it. However, nothing in this article shall affect the obligations of the Contracting Parties to the present Convention to non-Contracting States arising under such international conventions.

The Convention shall enter into force ninety days after the date on which five States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of IMCO.