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THE ANDEAN CODE: A PRELIMINARY APPRAISAL*

ALAN C. SWAN**

From the viewpoint of lawyers concerned with transnational business affairs in Latin America, one of the more intriguing developments of recent years has been the promulgation in 1971 of the so-called Andean Foreign Investment Code. Issued under the aegis of the Agreement of Cartagena, the Code has been hailed in some quarters as a bold new effort at reconciling developing country dependence upon foreign sources of capital and technology with their understandable fear that this dependence entails yielding-up too much of national sovereignty. If this is so, it would be a welcome step forward. The increasing tendency of developing countries to seek independence by resort to expropriation and confiscation even as their requirements for foreign capital become more acute, is eloquent testimony to the fact that we have a serious problem. Nor must we forget that the desire for independence is a universal human impulse. Stop and reflect on what would occur in this country if we awoke one morning to find 50% of our banks, 70% of our petroleum production and 100% of our automobile manufacturing in foreign hands. I venture that the Burke-Harkte Bill would pale by comparison to the Xenophobic outcry that would sweep this nation. There is, I suggest, a problem, and a claim that the Andean Code offers a way to the solution of that problem. Our question is clear; is this so, or is the Code already or likely to become an illusion.

To the international lawyer this question is of considerable interest because, however much we resist recognizing it, the traditional postulates of international law have been among the chief casualties in the rising tempo of warfare between the politics of nationalism and the economics of global development. I know of no major seizure of foreign owned assets by a developing country since World War II, where the compensation met the traditional "full, prompt and adequate" standard so vigor-

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ously espoused by the State Department and its constituency in the American business community. And while I am prepared to acknowledge a value in this norm as a rhetorical device for Executive Branch negotiations, I can think of no greater folly than an attempt by the American courts to lend judicial dignity to its resurrection.

If the traditional norms of international law afford no solution to the problem, procedural devices such as the World Bank Convention and various investment insurance programs have emerged largely still-born or incapable of reaching those areas of the world where they are most critically needed, namely Latin America. Resolution of the problem has, in short, passed beyond the reach of traditional legal norms and of the procedural substitutes offered in their stead. And in this setting, it becomes preeminently the task of the international lawyer to examine each new departure in conflict resolution critically to gauge its prospects for success and, in success, for yielding up new and more viable norms. And so I return to my question. Does the Andean Code offer some such prospect, or is it an illusion?

In addressing our question, we should be aware that two antithetical approaches — ideologies they might be called — have characterized much of the current discussion of the Code. Both I trust, we shall avoid here.

One approach, invoking all the old conceptions of property rights codified in traditional international law, has tended to start on a high moralistic note of abhorrence to any politically inspired intervention in private economic decision making, and from this to leap uncritically to the assumption that the Andean Code, as violative of these precepts, will impose such costs on the private investor that he will either be driven away completely or that his decisions will be so distorted as to threaten the very objectives sought to be achieved by the Code in the first instance. The Code, in the mind of this school, has already been dismissed as a draconian monster; creature of a Xenophobic aberration in the Latin American mind.

Perhaps these predictions of dire consequence will prove correct. Certainly I shall be critical of the Code; sometimes harshly critical. But the method employed in reaching conclusions is decisively important. To predict dire consequences *a priori* from a given set of ideological postulates is dangerous. Few men are so ideologically pure as to be beyond the corrupting influence of experience. And if regulators are rarely pure ideologues, businessmen are even less often so. It is not regulation *per se*, that will drive investors away, but the interaction of particular regula-

tions with the basic rationality — the profit motive — that objectively dominates most economic decision-making. It is dangerous indeed to sweep under the rug of an ideological abhorrence to regulation all the considerable talent that businessmen have exhibited in dealing with regulators.

On the other hand, to argue that we must approach the Andean Code unencumbered by the baggage of outmoded notions of law and property rights, is not to justify embracing every expression of a resurgent Latin American nationalism. Moved in part by good-will and their desire to see Latin America progress, fearful lest their criticism be dismissed as North American chauvinism, suspicious of the more rigorous strictures of traditional economic thought, too many American commentators have become apologists for the Andean Code. They have professed to see in the Code a bright new promise of a reconciliation between Latin America's need for foreign capital and the debilitating effects of dependence upon the foreigner. This predisposition too we must avoid because it is false.

We may for any number of reasons dislike notions such as comparative advantage and profit maximization. We may shrink before the taxing job of tracing economic effects — intended and unintended — through the labyrinth of particular institutional arrangements. But comparative advantage is not a doctrine. It is a description of the world as it exists. And profit maximization is not a theory, but an observable fact concerning the behavior of the men who control the bulk of the world's capital resources. And the danger that out of particular political designs may emerge wholly unintended economic effects, is a danger that has plagued policy-makers since the beginning of political society.

Moreover, if the developing countries of the world would cast aside as outmoded any moral obligation to respect the foreign investor's property rights, those investors in turn have no obligation to forego more promising enterprises elsewhere merely out of some humanitarian concern for the people of a particular nation or region. If we must talk of humanitarian obligations, I suggest that the disparity between the world's material needs and its available resources is so great, that efficiency in the use of those resources becomes a matter of some considerable priority, even of humanitarian obligation. And I for one know few tests of efficiency in entrepreneurial stewardship more reliable than management's capacity to maximize shareholder's profits, a test which does not exclude but appropriately limits actions emanating from a social conscience or the

desire to be a good citizen. So I repeat, no foreign investor, however long and profitable his association with a particular developing country, has any obligation to forego more profitable enterprises elsewhere merely out of concern for the people of that country. And any action by the Andean nations that proceeds upon other assumptions courts failure and deep disappointment. Any refusal of the American commentator to base his evaluation of Andean policy first upon the predictable effects of some such rigorous model of international business behavior, serves only to discredit his work and mislead his friends.

In brief, our perspective is clear; we can neither embrace the Code uncritically on the basis of its own self-stated objectives nor dismiss it as some monstrous attack on all foreigners, their money and their technology. We must proceed, insofar as we can, to test its main features against certain objectively predictable determinants of private economic decision-making. Our task is not one of prediction, but of analysis; to identify the policy choices the Code's authors appear to have made and then assuming a rational investor response to suggest the main lines along which, in the light of experience, the final verdict on the Code must rest.

At this point, I would turn to a brief description of the main contours of the Code. In so doing, I have chosen to treat the text promulgated by the Andean Commission as definitive of the law in the member states of the Pact. This is not entirely accurate. The Code is intended as a minimal standard. Member states are generally permitted to be more restrictive although not less so. Also there are unresolved questions of supremacy in the event of conflict between the Code and national legislation and uncertainty as to whether the Code is as yet in force. A definitive survey of the Code as operative law, therefore, would require an answer to these questions and a review of the laws and regulations of each of the member states. But, for our purposes it is sufficient to note the five basic features of the Code, and to rely, in this description, upon the Commission text.

The *first* basic feature is the requirement that all foreign investments be registered with a designated national authority and that all "new direct foreign investments" not only register, but receive the approval of that authority. The *second* feature is the imposition of controls on capital movements. Here such diverse matters as the re-exportation of foreign capital upon sale or liquidation of an enterprise, profit remittances, re-investment of earning and foreign credit transactions are regulated. The *third*, and perhaps the most novel feature of the Code, is what I have

chosen to call the "fade-out" provisions. Passing, for the moment over some puzzling problems of textual interpretation, the Code in general terms distinguishes between existing and new foreign enterprises, the latter being any enterprise established after July 1, 1971. Except for firms in certain specified sectors, all existing foreign enterprises are given an election; they may remain under foreign ownership and control or they may become, in both ownership and management, a "national enterprise" — 80% owed by national investors — or "mixed enterprise" — 51% or more owned by national investors. If, and only if, they elect to convert to national or mixed status will they receive the right to sell their products in the Andean market duty free. If an existing firm elects to "fade-out" — an election which must be made within three years of the Code coming into force — the transformation is to occur through sales to national investors, including the government, in fixed steps within fifteen years in the case of companies in Colombia, Chile and Peru and twenty years in Bolivia and Ecuador. Companies electing to remain foreign will not only be denied the right to trade free of duty in the Andean market — a point that could raise difficulties under the GATT — but will also be subject to continuing regulation under the Code. Firms electing to become mixed enterprises will be subject to a separate regime yet to be formulated by the Commission.

Unlike existing enterprises, new firms — those established after July 1, 1971 — must by agreement with the designated national authority, convert to national or mixed status within fifteen or twenty years. Among other things, the agreement is to cover valuation of the enterprise. An exception to this requirement is provided for firms 80% of whose products are exported to third countries.

The *fourth* major feature of the Code is the regulation of contracts relating to the importation and use of technology, including patents and trademarks. All such contracts — presumably existing as well as new — must be submitted to the designated national authority for approval and must comply with a fairly extensive list of provisions concerning tying, price, exclusivity, exports and the like.

The *fifth* feature is the regulation of specific sectors. Firms in the public service sector, in insurance, banking, transportation, communications, information — including the media — and in marketing are subject to generally more restrictive "fade-out" requirements than are applicable to other foreign enterprises. Most notable is the relatively liberal treatment accorded firms in the extractive industries — a concession no doubt to Colombia, Ecuador and Peru's hopes of major oil discoveries.

Finally, of special interest to the international lawyer, is the fact that nowhere is anything said in the Code about the expropriation of foreign enterprises — certainly expropriations are not prohibited. Also, Art. 50 forbids member states from granting to foreign investors, treatment more favorable than that extended to national investors and Art. 51 outlaws any argument purporting to remove investment disputes from national jurisdiction or subrogating other Nations to the rights of their citizens. The “national treatment” provision in Art. 50 might be construed to prohibit all special concession agreements, although this effect might be mitigated for extractive industries by Art. 40. The matter is hardly free from doubt. Clearly, however, Art. 50 is a codification of the traditional Latin view that international law does not impose upon a Nation responsibility to treat aliens better than it treats its own citizens. Confiscate a foreigner and, according to this view, international law stands aside so long as you also confiscate your own nationals. The Art. 51 prohibition is a Calvo Clause *plus*, virtually eliminating any prospect for investment guaranty programs offered by individual developed nations such as the United States or Japan and perhaps also any future multilateral programs such as might be sponsored by the World Bank. The clause also forecloses Andean adherence to the World Bank Convention on the Settlement of Investment Disputes.

Against this background it seems appropriate to consider for a moment some of the interpretive problems of the Code; problems that must eventually be resolved if sense is to be made of that document. In embarking upon this discussion it is not my purpose simply to be critical; to cast doubt on the intellectual acuity of the draftsmen of the Code. I have no reason to doubt that they are men of learning and technical competence. Yet clearly their handiwork fails to measure-up to the high standards of craftsmanship that have come to be the pride of the Civilian. Nor do the problems to which I have made reference arise merely from the generality, even ambiguity, that is inevitable, and often wise, in a basic charter intended to last for a long time and to accommodate a wide and changing variety of human conditions. These examples are examples of contradiction and confusion and fairly raise, I submit, the issue of whether we are dealing with a serious legal document or with what is essentially a political directive. Is the Code a genuine effort to translate basic policy decisions into a series of neutral principles to which all men, both the regulators and the regulated, can refer and by a common rational process arrive at reasonably predictable conclusions to guide their conduct. Or, on the other hand, is the Code more an exercise in political rhetoric;

a general statement of political dogma whose basic purpose is to establish the outer limits of orthodoxy within which each national administration is free to decide according to whatever mixture of public or private reasons appear to it most compelling at the time. This is an important distinction. While law is rarely an exact science and men of law not always free from corruption, it is not difficult to perceive the difference between a society where the coercive power of government is subordinated to the rule of law and a society where this is not the case. Regrettably I think we must question in which direction the countries of the Andean Pact have determined to move, at least in this one, highly important, manifestation of their sovereign power; the more so since much of the national implementing legislation appears to preserve these contradictions uncorrected and unexplained.

Let me illustrate with a few examples. I invite the reader to examine the definition of "direct foreign investment" and to ask whether as a condition precedent to the inclusion of any new investment within this definition, the foreign owner must first sell-out to a national investor. If so, not until such sale occurs and the investor seeks to re-export his capital, is he subject to registration or to a compulsory "fade-out" agreement unless, of course, he establishes a new enterprise or comes within a specific sectoral provision. Surely careful reading of the language necessitates some such conclusion. In practical effect it means that a foreigner could elect to bring new capital into an existing enterprise, largely ignore the Code, and then take his chances of getting the investment out at a later date of his own choosing.

Obviously, this is not the way it was intended to be, and not the way it is being administered. But what is the authority for ignoring the plain language of the Code? And what else may administrators ignore in the name of carrying out the instrument's basic intent? Will they find it within their power to set aside the investor's right to re-export even when he does agree to "fade-out" and fulfills that agreement; will they deny his right to remit profits; will they change the Code's measurement of re-exportable capital or deny an existing enterprise the option to forego transformation? It is not difficult to imagine an administrator deciding that it was as necessary to ignore these investor's rights as to ignore the definition of a "direct foreign investment". And will the vision of what is necessary change with each change in administration? Other examples only add urgency to these questions. Consider the problem of breaking out of the circle that is the definition of "National Investor," or what variety of administrative choices are inherent in the inter-relationship of

Art. 1, 30, 31 and 35. Or, take the case of a foreign patent holder who licenses his patent to separate firms in Brazil and Peru. If the Peruvian licensee, by exporting to Brazil infringes the Brazilian patent and is sued by the Brazilian licensee, will the foreign licensor be held in violation of Art. 20 of the Code? It would seem to be so, unless an administrator — recognizing the likely fate of the Peruvian in a contest between the Peruvian and Brazilian markets — simply ignores the Article's prohibitions on export restraints. In short, are we here just witness to poor craftsmanship that will soon be corrected by a major revision of the Code. Or is the poor craftsmanship evidence that its authors were more intent on producing a political manifesto than a reasonably workable set of legal standards. And will this same spirit carry-over into the administration of the new regime?

Having raised the matter of the Code's underlying political and economic purposes, it is well to turn to its most innovative feature, the "fade-out" provisions, to examine these somewhat more systematically. I would put the question thus: Is this feature of the Code a deliberately designed effort by the Andean Governments to step-away from resort to the more drastic measures of confiscation and expropriation to which they might otherwise have been driven by the rising tides of nationalism within their own countries? Some such view underlies the thinking of many of the Code's apologists. On its face it is not an unreasonable explanation, if one excludes the present Government of Chile. It is, of course, an appealing idea for it casts the whole thing in the light of a deliberate and essentially wise and benevolent act of statesmanship; the work of a master politician who by blunting a people's more destructive instincts helps free them for more constructive pursuits. Yet before embracing this highly charitable—and quite tempting—viewpoint, we should recognize two things. It is probably much too soon to know. The political milieu in which the Code was born is far too complex for any sure answer and its actual administration will tell us much about the impulses that gave it birth. Moreover, too many of its particular provisions belie any such far-sighted purpose, and have to be explained away as so much political smoke-screen in order to warrant such an optimistic appraisal of the whole. Beyond this it must be recognized that even if the authors of the Code had some such creative, statesmanlike objective in mind they have taken risks of such magnitude that one must reasonably question whether this was in fact their purpose. It is to this latter point that I would now turn.

One important fact of recent Latin American history—and on this

we can safely take the risk of generalization—has been the growing intensity of what might be considered the region's central economic dilemma. When judged according to aggregate indices, Latin American countries are among the most highly developed of the less developed nations of the world. Yet nearly all—especially the Andean countries—are characterized by great internal disparities in the level of development; a highly modern industrialized sector with a well-trained, technologically sophisticated managerial class set side by side with a large, non-modern sector, of primitive technology, deep poverty and high levels of illiteracy. This has had two effects. It has meant on one hand that most countries have in the past and will continue to have the need for and the capacity to absorb large amounts of external capital, and to do so quite efficiently. In their modern sectors, these nations have offered foreign capital excellent opportunities for profitable investment. On the other hand, this very strength—this ability to employ large capital infusions—when coupled with the inability of the social system to broaden the modern sector, has served only to sharpen the divisions within the society, to exacerbate political tensions and to increase hostility to the very external resources that could otherwise do so much good. The irony of it all is plain and cruel. Of all the world's less developed regions, none should offer more promise of successful development than Latin America. Yet the very sources of that promise stand among the chief obstacles to its attainment.

In this setting it becomes particularly pertinent to observe what eminent Latin American economists have long recognized; namely that the form of external investment most likely to pass safely through the conflict between economic necessity and political pride, is debt capital. However demanding a creditor may be he is still not an owner; bankers if wise are not managers. A creditor, unlike a shareholder can be paid off in a fixed amount of time, has no claim on the growth in the value of an enterprise, and generally little protection against inflation. Debt in short, is the form of capital infusion that Latin America with its particular dilemma needs perhaps more than any other developing region of the world. The disadvantage of debt, is that it represents a fixed claim against a Nation's resources, and, indeed, the fear of incurring an unwarranted debt burden has become of increasing concern to Latin American governments in recent years, while inflation in certain countries—often a symptom of a Nation's internal political weakness — has virtually dried up private external debt financing.

Against this background then, what does the Code do? First, by the "fade-out" provisions it wholly eliminates the one and only advantage that

equity has over debt, while watering down most of the advantages of debt capital. It converts shareholders' equity into a fixed claim payable in installments over 15 to 20 years; assuming, of course, that the Andean Governments want "fade-out" to succeed and therefore will do whatever is necessary to facilitate the purchases. Second, by incurring a repayment obligation in connection with all new equity investments, the Code imposes costs upon the Andean nations greater than the costs that would be incurred from an equal amount of new debt investment. Because equity takes greater risks and shares in growth, it is nearly always more expensive than debt, particularly in an inflationary setting. It is also notable that the Code insists on paying existing firms for any growth they derive from regional integration but refuses any payment at all to firms that turn their back on this growth. Third, by placing what is potentially a monumental new repayment obligation on top of existing burdens, the "fade-out" provisions could have at least two major, and quite unintended, effects. They could make it much more difficult to obtain new debt financing, and hence increase the costs of that financing both because the risks are higher and because of the almost certain inflationary effect of "fade-out." Beyond this, by increasing debt, "fade-out" should certainly increase the risks to equity and make it much more difficult in an already underdeveloped capital market to mobilize the national capital needed. Fourth, the Code arbitrarily establishes ceilings on the price allowed to be paid for new debt financing. Apart from the question of whether these ceilings are realistic—three percent above the prime rate in the lending country market, does not appear very realistic—the Andeans might have learned from the United States just how quickly capital can fly from such arbitrary regulations and make fools of the regulators. Fifth, the fact that any national of one state, investing in another, will be treated as a foreign investor subject to the Code, unless the firm in which the investment is made, can qualify under Decision 46 on Multinational Enterprises, should serve to hamper the mobilization of the regional capital that it will so desperately need if "fade-out" is to work.

In broader terms the question is whether, even assuming that in the Code the Andean governments genuinely sought to reconcile their desires for independence with their need for external capital, they have turned to a political solution the unintended economic effects of which promise to frustrate their designs altogether. From the short catalogue given here, the danger would appear to be very grave. If it should occur, the folly will be complete. For then, anger, disillusionment and despair bid fair to force these governments into the very kinds of drastic confiscatory actions sought to be avoided, and on a scale heretofore undreamed of.

Yet there is always the chance that out of such a political gesture as the Code, and in spite of its costs, the Andean people will gain a new pride of nation, a new dedication to the tasks not only of economic development but of social reform and a new willingness for self sacrifice. Of course, the world will only know of this, if sometime soon there is new evidence of fiscal and monetary discipline, of tax reform, of use of the tax system to intelligently aid in capital formation, of educational and legal reform and a host of other unpleasant things. In short, when the Code is no longer needed.

AVIATION JURISDICTION IN THE AMERICAS

S. A. BAYITCH*

Jurisdiction vested in courts may be general, due to the broad sweep of their powers and, consequently, independent of the subject matter of the litigation. Or it may be limited to specific areas of the law involved in the proceedings. Such specialization *ratione materiae* supports the distinction between civil and criminal courts and is characteristic of administrative tribunals. Civil jurisdiction may further be divided into strictly civil, commercial and admiralty, responding to the needs of these particular kinds of human activities.

Traditionally, aviation has been divided between civil (private) and administrative (public) law. In most countries (private) aviation cases are litigated in civil courts of general jurisdiction. However, in some countries having a separate body of commercial law, aviation litigation may be heard in commercial courts. In others, aviation drifted into admiralty courts, not only because it borrowed many of the substantive rules from maritime law but also because these courts have reached, in some countries, far into aviation litigation. But as modern and as important as aviation may have become, it has only been granted the distinction of separate enactments, even of codes. It should be noted, however, that with regard to adjudication in aviation matters there is practically no country¹ which provides for special aviation courts, and only suggestions have appeared, on the international plane, advocating a World Aviation Court to unify rulings in private cases arising from international conventions.²

In regard to jurisdiction particular problems arise from the fact that aviation is prevailingly an international activity and therefore involves legal problems touching on more than one legal system. Thus, these problems may be solved unilaterally by municipal law or by international cooperation through treaties. Countries with a dual system of government, including the judiciary, face an additional problem, namely where to allocate jurisdiction: in national (federal) or local (state) courts. Finally, the interrelations between the judiciary and the administrative functions in aviation, including judicial review, must not be overlooked.

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This study is an attempt to present, in outline, the rules applicable to judicial jurisdiction both civil and criminal, in cases arising from civil aviation. It will show how common law and civil law traditions of the Hemisphere face jurisdictional problems created by the same technological phenomenon: the dynamic development of aviation.

I. UNITED STATES

ACCESS TO COURTS

Access to courts is the right of individuals or legal entities to appear in civil litigation as a party and to proceed under the rules of the forum. Before this right can become effective two requirements must be met: one, to be a person or legal entity recognized by the forum; second, to be granted the right to proceed. The *ius standi in iudicio* of physical persons is by now one of the human rights, although in some jurisdictions alienage still constitutes a limitation. The recognition of the existence of a legal entity, particularly of the corporate type, presents a more complex picture. In some jurisdictions the question of existence was solved by resorting to comity or to reciprocity. For many countries this question is regulated by treaties, mainly treaties of friendship and commerce.³ The treaty with Honduras (1937),⁴ for example, contains the following provision (art. XIII):

Limited liability and other corporations and associations whether or not for profit, which have been or may hereafter be organized in accordance with and under the laws, national, state or provincial, of either High Contracting Party and maintain a central office within the territories thereof, shall have their jurisdictional status recognized by the other High Contracting Party, provided they pursue no aims within its territory contrary to its laws.

A similar rule is included in the treaty with Nicaragua (1956).⁵ It reads (art. XXII, para. 3):

Companies constituted under the applicable laws and regulations within the territories of either Party . . . shall have their jurisdictional status (*personería jurídica*) recognized within the territories of the other Party.

The Convention of Establishment with France (1959),⁶ applicable also to Martinique, Guadeloupe and Guiana (art. XV, 1b) provides in art. XIV,

para. 5 that companies of either country "shall have their juridical status recognized within the territories of the other High Contracting Country," with the proviso that even though advantages under the Convention may be denied because the company is controlled by nationals of a third party, still the recognition of its status remains unaffected (art. XIII).

The second requirement concerns the particular right to proceed as a party litigant.⁷ In many instances this right is granted in derogation of the *lex fori*, by treaties. The previously mentioned treaty with Nicaragua, for example, provides that national and most-favored-nation treatment shall be accorded in "courts of justice and administrative tribunals and agencies . . . in all degrees of jurisdiction, both in pursuit and in defense of their rights" (art. V, para. 1).⁸ Essentially the same rule based on equal (national) treatment appears in the convention with France, but with two significant qualifications: one, providing that companies "not engaged in activities within the other's territory shall enjoy such access therein without any requirement of registration" (art. III, para. 1); and the other, that the access under the equal national treatment does not "affect the regulation of the forum concerning the *cautio judicatum solvi*" in France⁹ (Protocol, para. 3). Finally, the Inter-American Declaration of the Juridical Personality of Foreign Companies, signed at Washington in 1936¹⁰ provides that companies constituted in any of the contracting countries may "enter all appearances in the courts as plaintiffs or defendants, provided they comply with the laws of the country in question." The understanding added by the United States that such companies "shall be permitted to sue or defend suits of any kind without the requirement of registration or domestication" is apparently designed to prevent the application of such requirements by the *lex fori*, if the final proviso should be interpreted as a reservation in favor of local law.

(a) *State law.* In addition to proving its existence, a foreign legal entity must meet requirements of the *lex fori*,¹¹ unless such rule yields to treaty law. In Florida, for example, a foreign corporation (which term includes not only corporations established abroad but also those incorporated in a sister state) must, in order to sue, comply with the requirements of chapter 613 of the Florida Statutes, a provision mitigated in interstate situations by the standard of undue burden on interstate commerce.¹²

(b) *Federal law.* In federal courts the capacity of a foreign corporation to sue is "determined by the law under which it was organized" (Federal Rules of Civil Procedure, 17, B).¹³

CIVIL JURISDICTION

While rules granting or denying access to court affect mainly plaintiffs, individual or corporate, the amenability of party defendants is of interest primarily to corporate air carriers.¹⁴

(a) *State courts.* Foreign corporations are amenable to jurisdiction of state courts of general jurisdiction on a number of grounds. First, through incorporation in the state, and secondly through having been authorized by a state administrative agency to engage in business within the state. The jurisdictional effect of such permit is tantamount to their amenability to local courts regardless of where the cause of action arose (connexity). Jurisdiction may also be predicated on appearance in court, or by consent in advance (prorogation). A far-reaching method to establish jurisdiction over foreign defendants, including corporations, has been made available by long-arm statutes which vest jurisdiction on the basis of a variety of jurisdiction creating acts or activities on the part of the non-resident corporate defendant, as defined by such statutes, which — in most instances — require also connexity.

Long-arm statutes of interest to aviation litigation may rely specifically on activities related to aviation, or they may be more general in scope. An example of the former type is a Florida statute (§48.19) which supports jurisdiction based on “operation, navigation or maintenance by a non-resident of an . . . aircraft” in the state, provided the action arises out of “an accident or collision in which such non-resident may be involved”. Among other long-arm statutes available in aviation litigation are, again taking Florida as an example,¹⁵ those which require that a foreign corporation operate, conduct, engage in, or carry on a business or business venture, or which has an office or an agency within the state (§48.181), coupled again with connexity.¹⁶ Another long-arm statute of particular interest to aviation rests on the fact that damage to persons or property within the state was caused by a tortious act committed outside of the state, provided the non-resident defendant “expects or should reasonably expect the act to have consequences in this state, or in any other state or nation, and derives substantial revenue from interstate or international commerce” (§48.182 Fla. Stat.).¹⁷

The various long-arm statutes apply not only in interstate but also in international situations and may, as indicated, be used against carriers and manufacturers.¹⁸ They also apply in federal courts when sitting in diversity.¹⁹

There are additional bases for jurisdiction, among them quasi in rem²⁰ and in rem.²¹ It should be added that the *forum non conveniens* doctrine frequently appears in aviation litigation.²²

(b) *Federal courts.* Generally, federal jurisdiction is based on the federal origin of the rule by which the demand is to be decided, i.e., federal question jurisdiction; or on the nature of the parties involved in the litigation as, for example, diversity of citizenship or when the United States is a party.

Federal question jurisdiction — in most instances exercised concurrently with state courts — is present whenever the decisive substantive rule²³ comes from the federal Constitution, from federal laws or from treaties (28 U.S.C. §1331a).²⁴ Bypassing the first alternative as largely impractical in aviation litigation, federal question jurisdiction rests, for example, on the Federal Aviation Act (49 U.S.C. §1301 ss.);²⁵ or the Federal Tort Claims Act (28 U.S.C. §1346 ss.),²⁶ or the Death on the High Seas Act (46 U.S.C. §761 ss.). Federal jurisdiction may also rely on the Federal Railway Act (45 U.S.C. §151 ss.)²⁷ which applies to “every common carrier by air engaged in interstate or foreign commerce . . . and every pilot or other person who performs any work as an employee or subordinate official of such carrier” (§ 181).

It may be added that federal jurisdiction under §1333(a) presupposes a claim in excess of \$10,000; however, federal question cases “arising under any act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies” do not (§1337).²⁸

The third basis for federal jurisdiction are treaties ratified by the United States, provided their provisions are fundamental for the decision²⁹ and not only collateral in nature as qualifying the demand or offering defenses. In aviation cases this class of federal jurisdiction was frequently tested in suits involving the Warsaw Convention. Since courts uniformly hold that the Convention did not create a new cause of action³⁰ but only modifies substantive rules applicable under the *lex fori*, the mere fact that the flight qualifies as an international flight under art. 1 of the Convention or that recoverable damages are subject to limitations established in art. 22, does not bring the litigation within federal jurisdiction.³¹ In any case, in most instances diversity jurisdiction is available.³²

Another basis for federal jurisdiction frequently used in aviation cases is diversity of citizenship of the parties, individual or corporate, provided the value exceeds \$10,000. Such cases may arise from interstate as well as international situations, and in both cases state long-arm statutes may apply.

Aviation litigation may experience removal from state to federal courts (28 U.S.C. §1441, b), transfer and remand (§1404, a).³³ The doctrine of *forum non conveniens*³⁴ may be invoked by the defendant. An opportunity also exists to take advantage of provisions regulating multi-district litigation (28 U.S.C. §1407) to consolidate actions brought in various districts but arising from the same aviation accident.³⁵

Finally, federal courts have "exclusive of state courts" jurisdiction in "any civil case of admiralty or maritime jurisdiction" (28 U.S.C. §1333).³⁶ Generally, such jurisdiction depends on the locality or on the nature of the claim involved. It is granted specifically by the Federal Death on the High Seas Act which established federal jurisdiction over claims arising from deaths caused by a wrongful act "on the high seas beyond a marine league from the shore of any State" (46 U.S.C. §761). This jurisdictional grant is interpreted to include aviation accidents over and on the surface of the high seas.³⁷ Difficulties which developed regarding aviation accidents within the one marine league area have been recently clarified.³⁸

(c) *Prorogation*. Contractual selection of a forum has not been "favored by American courts. Many courts, federal and state, have declined to enforce such clauses on the ground that they were 'contrary to public policy' or that their effect was to 'oust the jurisdiction' of the court", an attitude bound to change in view of a recent decision by the Supreme Court holding that such forum selecting clauses, if properly negotiated, shall be given effect.³⁹

Prorogation is limited under art. 32 of the Warsaw Convention. It makes "null and void" any agreement "contained in the contract" underlying the international transportation as well as "all special agreements by which parties purport to infringe the rules laid down by this convention . . . by altering the rules as to jurisdiction," but only if such agreements have been entered into "before the damage occurred". It would seem that prorogation is effective after the damage to be litigated has occurred. It is interesting to note that the qualification grafted on arbitration in the following sentence, namely that it must be subject to the Convention and take place within one of the "jurisdictions referred to in the first paragraph of article 28" apparently does not apply.

(d) *Arbitration*. The effects of agreements to arbitrate and of the resulting awards are regulated by state or federal law. Turning again to Florida as an example, the Arbitration Code (ch. 682 Fla. Stat.) gives such agreements as well as awards thereunder validity. As to federal law,

arbitration is regulated by statute (9 U.S.C.). This title was implemented (§200 to 208) in pursuance of the ratification of an international convention to be mentioned later. It may be added that voluntary arbitration of labor disputes in aviation is provided in the Railway Labor Act (45 U.S.C. §157).

Provisions dealing with agreements to arbitrate and with arbitral awards appear in some treaties of friendship and commerce.⁴⁰ The Warsaw Convention (art. 32) provides that in regard to transportation of goods arbitration clauses "shall be allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of article 28."

International regulation of arbitration was achieved by the Convention for the Recognition and Enforcement of Foreign Arbitral Awards signed at New York in 1958,⁴¹ ratified by the United States and implemented by federal statute.⁴² This statute also includes arbitration arising from commercial transactions with the proviso that an arbitration agreement or award which is "entirely between citizens of the United States shall be deemed not to fall under the Convention, unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign countries" (§202).

(e) *International law.* In addition to the basic principles of international law governing jurisdictional powers as emanating from sovereignty, further rules originate in multilateral treaties, among them the widely discussed provision of the Warsaw Convention⁴³ (art. 28) which reads as follows:

(1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court of the place of destination.

The Convention⁴⁴ provides both bases for jurisdiction: the subject matter, namely actions for damages, apparently insofar as affected by the Convention, and the jurisdictional contacts, four in number. Based on these factors the Convention provides that any action of this kind "shall be brought in the territory" of the member country identified by one of the jurisdictional contacts. Thus, jurisdiction appears to be exclusive

without the Convention indicating the consequences of actions and effects of judgments recovered in member countries not so identified or in non-member countries. However, the main difficulty in interpreting this provision lies on whether the four contacts are designed only to identify the country, i.e., allocate jurisdiction on the international plane to a particular country as a whole or to function also as an internal jurisdictional rule⁴⁵ and as such implement or even eliminate the forum's jurisdictional law. Recently this alternative was clearly identified.⁴⁶ In Warsaw cases

there are two levels of judicial power that must be examined to determine whether suit may be maintained. The first level . . . is that of jurisdiction in the international or treaty sense under art. 28 (1). The second level involves the power of a particular . . . court, under federal statutes and practice, to hear a Warsaw Convention case — jurisdiction in the domestic sense.

Opinions supporting the exclusively international scope⁴⁷ of art. 28, para. (1) rely on the language of the article by pointing out that it refers initially to the "territory of one of the High Contracting Parties". However, this argument weakens in the light of the subsequent language which refers to the "court of the domicile of the carrier" and continues the same reference to the principal place of business and to that of destination, while omitting it only in relation to the third contact.

Such inconsistencies may be attributed to poor drafting, but this does not help solve the problem. Courts have by now accepted the international thrust of the provision and reserved internal jurisdictional aspects to the *lex fori*. Consequently, the logical procedure would dictate that first the international allocation of jurisdiction be explored and, if found, jurisdictional requirements of the forum be considered. However, in a recent case the court started out with the latter task by exploring jurisdiction *in personam* against a foreign carrier under the controlling state long-arm statute, and only when it found that such jurisdiction existed, turned to the discussion of the international contact. Fortunately, the court found the contact effective by an extensive interpretation of the "place of business through which the contract has been made".

These difficulties have been encountered mainly in countries with a dual judicial system, particularly the United States. Bypassed by the conferences in The Hague (1955) and in Guadalajara (1961), the problem was taken up in Guatemala (1971).⁴⁸ This last conference re-

tained para. (1) of art. 28 unchanged, added a new para. (2) and relegated the original para. (2) to para. (3). The new para. (2) reads as follows:

In respect to damages resulting from death, injury or delay of a passenger or the destruction, loss, damage or delay of baggage, the action may be brought before one of the courts mentioned in para. (1) of this article, or in the territory of one of the High Contracting Parties, before the court within the jurisdiction of which the carrier has an establishment if the passenger has his domicile or permanent residence in the territory of the same High Contracting Party.

The new para. (2) consists of a two part sentence connected with an "or". Turning to the first part, it would appear at first glance that it contains only an unnecessary repetition when referring to para. (1) since this paragraph was retained in full. However, upon closer examination two innovations appear. The first is the limitation of the subject matter of litigation, as compared with para. (1), namely that para. (2) applies only in actions for damages to passengers and not shippers.⁴⁹ The second innovation is the reference to "courts mentioned in para. (1)." Such language is hardly proper since, as it was just shown, para. (1) makes such reference only in conjunction with three out of the four contacts. One may speculate that this language intends to make contacts retained in para. (1) effective on both the international and internal level aiming them directly to the courts and thus by-passing the territory. But such interpretation overlooks that no change occurred in the original language of the retained para. (1) and that, probably, such intent would have been expressed by a change in para. (1).

In analyzing the second part of the sentence contained in para. (2) it should be noted that the contacts of domicile and of the principal place of business of the carrier not only are reasonably clear but also ascertainable in fact and, moreover, in most countries paralleled by contacts used by internal jurisdictional rules. Only the remaining two contacts cause difficulties, particularly the place of destination which has no parallel in most fora. Nevertheless, the amendment deals only with the third contact (establishment), but at the same time retains the notion of business and thus ineptly continues an unsatisfactory terminological difficulty. The main problem, however, still lies in the two ways to interpret art. 28, the international or the internal, the latter subordinate to the former. The prevailing international interpretation leads, in many instances, to un-

expected results. One, that the internationally competent country cannot take advantage of art. 28 because the *lex fori* does not conform to the jurisdictional rules of the Convention. Or it may happen that the Convention denies jurisdiction to a particular country which, under its own jurisdictional rules, has the power to take cognizance of the case.⁵⁰

It seems that these difficulties have triggered the demand to amend art. 28. While the first part of the new para. (2) does not respond to this need, the second part might have been influenced by such considerations, as poorly as they have been understood or, if understood, badly expressed in the text. As stated, the amended para. (2) uses the third of the four contacts, available in para. (1), as the vehicle for the reform, namely carrier's establishment which, in the original version retained in para. (1), remains unchanged and continues in force as the establishment "through which the contact has been made". The additional version adopted in para. (2) waived—within the scope of this paragraph—the requirement of having been instrumental in contracting. Instead, it imposes a new alternate qualification on the contact of establishment and introduces an additional contact related this time to the plaintiff. The former modification requires that the carrier have an establishment within the jurisdiction of the particular court and not within the "territory" of the respective country, according to para. (1). The supplemental contact is the domicile or residence of the plaintiff within the respective country and not necessarily within the particular jurisdiction of the court. The result may be summarized by stating that now the contact of carrier's establishment will be, under the Convention, effective under two conditions: one, that it was instrumental in contracting (para. 1), or as being located in the jurisdiction of the particular court, with the plaintiff domiciled or residing in the same country (para. 2). However, in spite of these innovations the chances that plaintiffs may avoid the unwanted consequences of the international interpretation have not been enhanced. It is quite possible that the forum's law might not consider plaintiff's contacts with the forum material to support jurisdiction over the defendant based on the contact of his establishment within the forum. This is particularly true in countries where the operation of an establishment is, as in most long-arm statutes in this country, only partly adequate to support jurisdiction in view of the fact that, in most instances, connexity is a decisive constitutional (due process) requirement.⁵¹

A few additional remarks are in order. The Convention on the International Recognition of Rights in Aircraft (Geneva, 1948)⁵² contains no jurisdictional rules. Such rules are included in the Convention on Dam-

age Caused by Foreign Aircraft to Third Persons on the Surface (Rome, 1952)⁵³ which has not been ratified by the United States. Two procedural conventions may be of interest to aviation litigations: the Convention of Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague, 1965),⁵⁴ and the Convention on the Taking of Evidence Abroad in Civil and Commercial Matters (Hague, 1970), both ratified by the United States.

(f) *Immunity from jurisdiction.* According to a traditional common law rule, one's own sovereign is immune from judicial jurisdiction unless the sovereign waives this privilege. In regard to the states, the rule varies but seems to be on the way out. In regard to the federal government,⁵⁵ sovereignty is waived within the scope of the Federal Tort Claims Act, frequently applied to aviation cases. In essence the Act provides that the government is liable for torts committed by its agents acting (within the territorial limits of the United States) within the scope of their employment as private tortfeasors would be liable "under the law of the place where the act or omission occurred".⁵⁶

Concerning foreign countries, the traditional immunity was restricted by the United States in the Tate Letter (1952)⁵⁷ which, distinguishing between acts *iure imperii* and acts *iure gestionis*, denied immunity in regard to the latter. The limited doctrine found expression also in treaties of friendship and commerce as, for example, in the Nicaraguan treaty⁵⁸ which provides (art. XVIII, para. 3) :

No enterprise of either Party, including corporations, associations and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial shipping or other business activities within the territories of the other Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.

There is also in force, in relation to the Netherlands, a convention on the waiver of such immunity (1953).⁵⁹ Finally, a waiver of sovereign immunity is as a matter of routine included in licenses granted to foreign carriers.⁶⁰

It may be added that a bill is presently before Congress to regulate the question of sovereign immunity due to foreign countries.⁶¹

(g) *Judicial v. administrative jurisdiction.* By now the principle is "firmly established that in certain cases raising issues of fact not with-

in the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over.”⁶² This principle of primary administrative jurisdiction applies also to administrative authorities dealing with aviation even though such power may impinge on the jurisdiction of the courts as, for example, in cases involving antitrust laws in which area the Civil Aeronautics Board has statutory functions (49 U.S.C. § 1382).⁶³

The review by courts of administrative rulings is based on the administrative record (49 U.S.C. § 1006, e); nevertheless, the court may remand the case for further proceedings where additional facts are needed.⁶⁴ Final orders of the Civil Aeronautics Board or of the Secretary of Transportation are subject to review⁶⁵ by federal appellate courts (49 U.S.C. § 1006, b), vested with exclusive jurisdiction to “affirm, modify, or set aside in whole or in part” the orders under review (§ 1006, d), except orders involving foreign carriers subject to approval by the President (§ 1372, 1461).⁶⁶ Decisions by the appellate courts are subject to review by the Supreme Court upon certiorari (§ 1006, f).

The enforcement of “any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, and the punishment of all violations thereof,” including the Federal Aviation Act, is vested in the federal district court “wherein such person carries on his business or wherein the violation occurred” (§ 1007).⁶⁷

CRIMINAL JURISDICTION

In civil litigation the controlling law — except in federal question cases — does not determine jurisdiction. In principle, the opposite is true in criminal cases. In other words, a court will take jurisdiction in a criminal case only where the substantive criminal law of the forum applies, namely to acts committed within its territorial jurisdiction except in cases where extraterritorial application of its criminal law is proper.

(a) *State courts.* Criminal law, statutory and common law, in force in the several states supports jurisdiction of state courts insofar as, in crimes involving aviation, the matter is not preempted by federal law.

(b) *Federal courts.* Federal courts exercise “original jurisdiction, exclusive of the courts of the states, of all offenses against the laws of the United States” (18 U.S.C. § 3231).

Criminal acts involving aviation may be common crimes committed in relation to aviation or they may be specific crimes covering particular situations in aviation, for example, those involving destruction of aircraft (18 U.S.C. § 32), or air piracy (49 U.S.C. § 902, i). Related to aviation are also crimes committed on board aircraft. In this respect an enactment in 1952 created the "special maritime and territorial jurisdiction of the United States" (18 U.S.C. § 7, para. 5)⁶⁸ which includes:

Any aircraft belonging in whole or in part to the United States or any citizen thereof or to any corporation created under the laws of the United States, or any State, Territory, District or possession thereof, while such aircraft is in flight over the high seas, or over any waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

In these cases jurisdiction is based on two contacts: first, that of property of the aircraft (not nationality), and the second, the location of the aircraft at the time of the commission of the crime. The crimes falling into this jurisdiction are marked as such throughout the Criminal Code.

In 1964 new federal crimes were added, not to the Federal Criminal Code but to the Federal Aviation Act (49 U.S.C. § 902, i to m). Some of these crimes were punishable if committed in flight (e.g., air piracy, § 902, i; interference with the crew 902, j; and a list of crimes punishable under the Federal Criminal Code when committed within the "special maritime and territorial jurisdiction of the United States", § 902, k). Other crimes added include carrying weapons aboard aircraft (§ 902, l), and false information (§ 902, m). The flight involved had to be a "flight in air commerce" which includes "interstate, overseas, or foreign air commerce" as well as transportation of mail "within the limits of any Federal airway", as well as "any operation or navigation of aircraft which directly affects . . . safety in, interstate, overseas, or foreign air commerce" (§ 101, para. 20).

In pursuance of the ratification of the Tokyo Convention (1963) by the United States, a federal statute⁷⁰ has changed the qualification of the three in-flight crimes (air piracy, interference with the crew and crimes punishable within the "special maritime and territorial jurisdiction of the United States") to "special aircraft jurisdiction of the United States" (49 U.S.C. § 101, para. 32), but not with regard to the two remaining crimes which remain punishable if committed "aboard an aircraft being operated by an air carrier in air transportation". Consequently, the first three crimes belong to the federal courts whenever committed in flight

within such "special jurisdiction", i.e., from the moment power is applied for the purpose of takeoff until the moment when the landing run ends. This jurisdiction encompasses American registered aircraft regardless of their location at the time of the crime and foreign registered aircraft when the crimes listed have been committed on a flight

- (i) within the United States, or
- (ii) outside of the United States with its next scheduled destination or last point of departure in the United States, provided that in either case it actually next lands in the United States.

(c) *International law.* An ever increasing number of international conventions deal with what is called criminal law of the air, both with regard to common crimes committed in flight as well as with specific crimes particular to aviation.

Among the conventions to which the United States is a party, the Convention of the High Seas (Geneva, 1958)⁷¹ may be mentioned since it deals with air piracy (art. 15 and 17), and allocates jurisdiction to courts of the state which "carried out the seizure" of the piratical aircraft (art. 19). Jurisdictional rules are also included in the Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963).⁷² This Convention deals with criminal acts as well as "acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board" (art. 1, para. 1, a and b), provided they are committed on board an aircraft registered in a member country, while such aircraft was in flight as defined (art. 1, para. 3), or "on the surface of the high seas or of any other area outside the territory of any State". The state of registration has the authority to "exercise jurisdiction over offenses and acts committed on board" (art. 3), and is bound to "take such measures as may be necessary to establish jurisdiction as the State of registration over offences committed on board aircraft registered in such State" (art. 3, para. 2). However, the Convention does not prevent any other criminal jurisdiction being available under the domestic laws of a member state (art. 3, para. 3).

A special provision regulates the jurisdiction of member states in regard to criminal acts committed on board aircraft registered in another country by limiting it to a number of specific situations: (a) the offence has effect on the territory of the state resolved to interfere; (b) the

offence has been committed by or against a national or permanent resident of such state; (c) the offence is against the security of such state; (d) the offense violates rules regarding flight or operations therein; or (e) the exercise of such jurisdiction is "necessary to ensure the observance of any obligation of such State under a multilateral international agreement" (art. 4).

Further jurisdictional provisions are found in the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague, 1970),⁷³ and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971),⁷⁴ both ratified by the United States. The former convention requires member countries to establish jurisdiction not only over the particular offence of air piracy⁷⁵ as defined in art. 1, but also over other acts of violence against passengers or crew committed in connection with piracy (art. 4, para. 1), provided (a) such acts have been committed on board aircraft registered in the same state; or (b) the aircraft lands in the state with the offender on board, or (c) in case of a lease of aircraft without crew and the lessee has his principal place of business, or at least he is a permanent resident of such state (art. 4).

The Montreal Convention adopted in essence the same jurisdictional contacts used in The Hague Convention under (c) and (d), and added those instances in which the offence has been "committed in the territory of that State" (i.e., exercising jurisdiction), or has been "committed against or on board an aircraft registered in that State" (art. 5, b), an extension included also in art. 5 (d).

In connection with these conventions the question arises whether or not their provisions, at least some of them, are self-executing, meaning effective without additional federal statute. In any case, there can be no doubt that jurisdiction exists with regard to crimes as defined and within the protection of federal courts according to their criminal choice-of-laws rules, and identical with those dealt with by the conventions.

II. CANADA

Even though aviation matters are within the legislative powers of the national Parliament,⁷⁶ judicial jurisdiction in aviation cases is vested, with few exceptions involving the Federal Court, in provincial courts of general jurisdiction.⁷⁷ There, jurisdiction is perfected according to general, statutory as well as decisional requirements. Service on non-resident individual and corporate defendants (*ex juris*) must be authorized by

court on *ex parte* application, supported by affidavit showing reasons for granting it. The leave to serve a writ out of the jurisdiction remains discretionary with the court. Once served, the defendant may, by leave of court, enter a conditional (special) appearance.

The jurisdiction of the Federal Court of Canada, being a "court of law, equity and admiralty, continued from the Exchequer Court" (Sec. 3)⁷⁸ includes within its maritime jurisdiction some matters involving aviation (sec. 22). A federal trial court has original jurisdiction, concurrent with provincial courts, of the following claims (sec. 22): for "salvage of life, cargo, equipment or other property of, from or by an aircraft to the same extent and in the same manner as if such aircraft were a ship" (sec. 22, j); for "towage in respect . . . of an aircraft while such aircraft is waterborn" (sec. 22, k), and for "pilotage in respect of . . . an aircraft while such aircraft is waterborn" (sec. 22, l). This jurisdiction is available (sec. 22, para. 3, b) in regard to aircraft where the cause of action arises from the three instances just listed, regardless of "whether those aircraft are Canadian or not and wherever the residence or domicile of the owners may be", and whether these claims arise "on the high seas or within the limits of the territorial, internal or other waters of Canada or elsewhere and whether such waters are naturally navigable or artificially made so, including . . . in case of salvage, claims in respect to cargo or wreck found on the shore of such waters" (sec. 22, 3, c).

This jurisdiction may be exercised *in personam* (sec. 43), also *in rem* (art. 43, para. 2) against an aircraft, except in cases under sec. 22 (k), involving towage, unless "at the time of the commencement of the action, the . . . aircraft . . . that is the subject of the action is beneficially owned by the person who was the beneficiary owner at the time when the cause of action arose" (sec. 43, para. 3).

It may be added that the same court has jurisdiction against the Crown in situations analogous to those within the Federal Tort Claim Act in this country. The process of the court "shall run throughout Canada, including its territorial waters, and any other place to which legislation enacted by the Parliament of Canada has been made applicable" (sec. 55).

Canada has ratified two conventions containing jurisdictional rules pertaining to aviation. One is the Warsaw Convention enacted in Canada as the Carriage by Air Law,⁷⁹ with its art. 28 and 32. The other is the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome, 1952), enacted as the Foreign Aircraft Third Party

Damage Act.⁸⁰ Actions based on this Convention are within the exclusive jurisdiction of the courts of the member country "where the damage occurred" (art. 20, para. 1). However, litigants are free to prorogate a forum in another member country, but proceedings there shall have no "effect of prejudicing in any way the right of persons who bring actions in the State where the damage occurred". Parties may also agree to submit their disputes to arbitration provided arbitration takes place in a member country (art. 20). Member countries promise to take all necessary measures to ensure that defendants and other parties are notified and have "a fair and adequate opportunity to identify their interests" (art. 20, para. 2), as well as "ensure . . . that all actions arising from a single incident and brought in accordance with para. (1) of this article, are consolidated for disposal in a single proceeding before the same court" (art. 20, para. 3).

Canada has ratified the three conventions dealing with crimes of the air: Tokyo (1963), The Hague (1970), and Montreal (1971). Their pertinent provisions are discussed elsewhere in this study.

The Act to amend the Criminal Code dealing with offences committed on board aircraft (art. 6) grants Canadian courts jurisdiction over such acts if punishable by indictment; they are then deemed to have been committed in Canada whenever they occurred on or in respect to an aircraft registered in Canada, or leased without crew and operated by a person qualified under the Aeronautics Act to be registered as an owner of an aircraft while it is in flight, or on an aircraft whose flight terminates in Canada. The same Act also enacted crimes of piracy, endangering the safety of an aircraft and taking offensive weapons and explosive on board.⁸¹

Administrative powers vested under the Act to Authorize the Control of Aeronautics⁸² in the Minister of Transportation, include authority to issue regulations (sec. 6, para. 4). Their violation, when committed outside of Canada and involving Canadian aircraft, will be punished by the court "having jurisdiction in respect to similar offences in the judicial division of Canada where that person is found, in the same manner as if the offence had been committed in that judicial division" (sec. 6, para. 6).

III. LATIN AMERICA

Some of the fundamental rules on recognition of foreign legal entities and their access to courts may be gleaned from multilateral conventions,

signed in Montevideo in 1889, supplemented in 1940,⁸³ and in Havana, the later known as the *Código Bustamante* (1928).⁸⁴

The Bustamante Code refers the question of recognition of foreign legal entities to the "territorial law" (art. 32), i.e., to rules "binding alike on all persons residing within the territory, whether or not they are nationals" (art. 3, para. III). Instead of such choice-of-law solution, the Treaty on the International Terrestrial Commercial Law (1940, art. 8) supplies a combined rule that "Commercial associations shall be governed by the laws of the State of their commercial domicile, [i.e., principal place of business, art. 3], shall be accorded full legal recognition in the other contracting States, and shall be considered qualified to perform acts of commerce and appear in law suits."

The previously mentioned Inter-American Declaration (Washington, 1936), as well as bilateral treaties supply additional rules together with domestic enactments. The recent Business Associations Law of Argentina (1972),⁸⁵ for example, provides that "associations established abroad are governed in regard to their existence and form by the law of the place where they have been constituted". If these requirements are met the companies may engage in isolated acts and appear in courts in Argentina (art. 118).

It will be noticed that in terms of legislation and judicial jurisdiction aviation faces, in some Latin American countries, a dual system similar to the one in the United States. In three such countries authority to legislate on aviation is vested in national (federal) legislatures. In Argentina the rule appears in both aviation codes (art. 182 of the Code of 1954, Law No. 14.307, and art. 197 of the Code of 1967, Law No. 17.285). The same policy found expression in the Brazilian Constitution (1967, art. 8, XV, c). In Mexico such power is vested in the national Congress pursuant to art. 73 (XVII) of the 1917 Constitution as a matter pertaining to "general means of communication".

This position is reflected in the allocation of judicial powers in Argentina and in Brazil. In Argentina courts have since the 1940's ruled that litigation involving aviation belongs in national (federal) courts.⁸⁶ In 1950 this decisional rule was enacted as an amendment (Law No. 13.998, art. 42, b) which provided that national courts shall have cognizance of cases "governed by the . . . law of aviation". The rule was continued in the first (1954, art. 183) and retained in the second Aviation Code (1967, art. 198) where it reads:

The cognizance and decision of cases involving aviation and air commerce generally and of crimes which may affect them, is vested in the Supreme Court of Justice and in subordinate courts of the Nation.

In Brazil the jurisdictional grant to the federal judiciary is included in the Constitution (1967, art. 119, IX) by referring to "questions of maritime law and navigation, including air navigation". In Mexico, by contrast, such jurisdiction is exercised by federal courts concurrently with state courts. According to art. 104(I) of the Constitution, federal courts shall have civil jurisdiction whenever federal laws or treaties apply, adding that "whenever such controversies affect private interests", the controversies may be adjudicated, at the election of the plaintiff, by "local", i.e., state courts. This rule was refined by the subsequent Organic Law of the Judicial Power of the Federation (1936) which vested jurisdiction regarding controversies "between private persons" and involving federal laws in federal courts, at the election of the plaintiff (art. 43, I).

There is only one country in the Western Hemisphere with special aviation courts and the only where aviation litigation is vested in military tribunals. This *mayor absurdo jurídico*⁸⁷ appears in Chile where the Law on Air Navigation (1931) established *tribunales aeronáuticos* (art. 76 to 91, as amended in 1944). These tribunals are manned by military officers and exercise jurisdiction not only with regard to violations by military personnel related to aviation but also in criminal cases against persons who are not members of the armed forces; also in civil actions arising from violations within military jurisdiction "in order to recover things or their value" (art. 5, No. 4 of the Code of Military Justice). Appeals belong before a *Corte Marcial*⁸⁸ composed of two justices of the appellate court in Santiago and one member of the following services: Army, Air Force and *Carabineros*.

In most Latin American countries aviation litigation belongs in civil courts of general jurisdiction. An express provision to this effect appears in the Law on Civil Aeronautics in force in El Salvador (1955). This law grants courts of general jurisdiction (*tribunales comunes*) the power to "adjudicate in summary proceedings cases involving aviation or air commerce in general" (art. 6, general and transitory provisions). The Peruvian Law of Civil Aeronautics (1965) allocates actions for damages brought by passengers or by members of the crew (art. 108) to *juicios de menor cuantía* (art. 109).

Alternatives are open in countries where commercial courts are charged with matters within the scope of the commercial codes, provided they include aviation among commercial activities. However, there are countries where aviation is included in the commercial code, e.g., in Costa Rica, but because there are no commercial courts, courts of general jurisdiction administer the Code and related aviation regulations. On the contrary, the Venezuelan Commercial Code (1942, art. 2) does not list aviation among commercial activities; nevertheless, aviation cases are litigated before commercial courts.

Jurisdiction so allocated must be defined further. In countries with a single system of courts the delimitation must draw the line in international situations. In countries with a dual court system another line of jurisdictional demarcation is needed to separate aviation litigation vested in one system of courts from the jurisdictional powers of the other. This is done in a number of Latin American countries in two ways: by a general clause and by jurisdictional rules dealing with events on board aircraft. Taking Argentina again as an example of countries with a dual system of courts, the previously quoted general jurisdictional grant confers upon national courts, civil and criminal, jurisdiction in matters of aviation and air commerce.⁸⁹ This general clause does not limit jurisdiction to cases where the Aviation Code applies but allows also jurisdiction in cases where, under the choice-of-law rule of the Argentine forum foreign contract or tort law might apply. On the contrary, with regard to events (civil and criminal) on board aircraft, Argentine judicial jurisdiction is coextensive with the application of Argentine substantive civil or criminal law. These rules deal — limiting this survey to non-public aircraft — with domestic and foreign aircraft in a variety of situations, namely when in flight within their own sovereignty, in areas without sovereignty, and within foreign sovereignty at the time when the event occurs. In essence, Argentine courts will exercise jurisdiction with regard to events on board Argentine aircraft whenever they occur within Argentine sovereignty or in areas under no sovereignty (art. 199, para. 1); or within foreign sovereignty, provided the "legitimate interests" of Argentina or of persons domiciled there have been affected, or if the aircraft landed in Argentina immediately after the event (art. 199, para. 2). With regard to events on board foreign aircraft, Argentine courts will have jurisdiction only over events which occurred in their flight within Argentine sovereignty and if the acts violate laws concerned with safety, military or fiscal laws; or air traffic rules, or endanger public safety and order or interests of Argentina or persons domiciled there or if the first

landing took place there after the event and no extradition is requested (art. 200). Similar jurisdictional rules appear in the Law of Civil Aeronautics of Peru (1965, art. 5) except, that for events on board foreign aircraft in flight within Peruvian sovereignty, the law contains a choice-of-law rule but refrains from including jurisdiction (art. 6); in the Aviation Code of Paraguay (1957, art. 156 and 157), and in the recently enacted but vetoed Costa Rican General Law of Civil Aviation (1973, art. 23).

Nicaragua has provisions all its own. Art. 259 of the Code of Civil Aviation (1956) confers jurisdiction on domestic courts over claims against Nicaraguan air carriers arising from international transportation as well as against foreign carriers for personal injuries to Nicaraguan passengers or aliens domiciled in Nicaragua; for the loss, average or delay affecting goods or baggage belonging to the same kind of persons, provided the goods or baggage have been shipped from Nicaragua or were destined to arrive there, and for damages to persons or goods located on the ground in Nicaragua. Jurisdiction includes (art. 250, c) "all other cases not here included nor excluded" by these provisions.

Other Latin American aviation laws use the term *jurisdicción* without specifying that it includes also judicial powers. In the Dominican Law of Civil Aeronautics (1969, art. 6) this term is used for events on board aircraft. Similarly, the Regulation of Civil Aviation in force in Panama (1963, art. 3) uses the term "Panamanian jurisdiction" when referring to events on board aircraft. The Guatemalan Civil Aviation Law (1949, art. 3) subjects all aircraft within Guatemala to the laws of the Republic and to the "jurisdiction of her authorities". Other republics use the term *jurisdicción y competencia*, followed by choice-of-laws provisions regarding events on board aircraft (Venezuela, art. 4) with an additional article specifically referring to civil or commercial acts there (art. 5). The same rules are adopted in the Law on Civil Aeronautics of Honduras (1957, art. 3 to 5).

In countries which ratified the Warsaw (1929) and Rome (1952) conventions, their art. 28⁹⁰ and 20, respectively, apply. However, from available materials their real impact is difficult to assess.

The effect of forum selecting clauses (*prórroga*) is regulated in two international conventions, the Warsaw Convention (art. 32), and the Rome Convention on Damages on the Ground (art. 20), discussed elsewhere in this study. Two aviation acts contain provisions related to aviation litigation. The Code of the Air in force in Brazil (1966, art. 7)

denies effect unless the *forum prorogatum* is that of the place of destination. Nicaragua, on the contrary, allows an unrestricted choice (art. 259, b). In other countries prorogation is regulated by the codes of civil procedure which, as a rule, allow only agreements involving changes in venue (*competencia territorial*).

As it was shown, in many countries the same jurisdictional rules apply to civil and criminal jurisdiction, e.g., in Argentina. There are, in some aviation acts, particular provisions for criminal jurisdiction. Brazil, for example, has allocated to federal courts jurisdiction over crimes "covered by an international treaty or convention and those committed on board . . . aircraft, taking into account the jurisdiction of military justice" (Constitution, 1967, art. 119, V). Panama allocates to regular courts the adjudication of crimes included in the Regulation of National Aviation (1963, art. 218 and 219). In Mexico, the federal Criminal Code (art. 5, IV) grants federal courts jurisdiction over crimes "committed on board national or foreign aircraft within the territory or airspace or national or foreign territorial waters in cases analogous to these contained in the previous section dealing with vessels."

In all cases the jurisdiction (*competencia*) of courts has to be perfected according to the respective *lex fori*. This is done, in most instances, along the maxim of *actor sequitur forum rei* and contacts derived therefrom. Among contacts of most interest to this study will be those which would make non-resident carriers amenable to foreign courts. This is achieved in two ways: by using as a jurisdictional contact the fact that a non-resident acted within the court's jurisdiction or through local representatives who must be appointed with sufficient authority to make their non-resident principal amenable to local jurisdiction.

A general provision of the first kind is adopted in the Treaty on International Terrestrial Commercial Law (Montevideo, 1889, art. 7, and 1940, art. 11) which provides that with regard to a "business association domiciled in one contracting country and engaged in business in another, the latter's courts will have jurisdiction in regard to claims arising therefrom." This typical long-arm statute found no general acceptance, in spite of the fact that in some countries decisional law moves in its direction.⁹¹ There are two ways to bring foreign corporate carriers into local courts. One is indicated in some of the aviation codes; the other is shown in general enactments dealing with business associations, i.e., in commercial codes or enactments regulating business associations generally. An example for the first type is found in the Panamanian Regulation of

National Aviation (1963, art. 93). It charges foreign aviation enterprises with maintaining permanently in Panama a "representative with sufficient authority to appear before administrative and judicial authorities . . . in order to litigate any demand or claim which may be pressed for acts or omissions related directly or indirectly to air transportation or acts". Similar provisions appear in the aviation laws of El Salvador (art. 141), Nicaragua (art. 113) and Honduras (art. 118). The recently vetoed Costa Rican General Law on Civil Aviation (1973) provides not only that foreign aviation enterprises must "submit expressly to this law and to the jurisdiction of Costa Rican authorities in case of damage to passengers, cargo or baggage, or to persons or goods on the ground" and waive diplomatic intervention (art. 145, c), but also appoint in Costa Rica a permanent representative with full powers (*poder generalisimo*) "sufficient to attend to business of the company" (art. 178).

As indicated, further provisions emanate from rules applicable to foreign business associations generally. The Argentine Law on Business Associations (1972), for example, makes foreign business associations amenable to Argentine courts on the basis of an "isolated act through the person of an agent (*apoderado*) who intervened in the act or contract out of which the cause of action arose (*motive el litigio*)" or where there is a subsidiary or establishment (*asiento*) or other kind of representation (art. 122)⁹² Similarly, the Commercial Code of Colombia (1971) requires that in order to transact business there, a foreign business association must, among other requirements, designate a general agent (*mandatario general*) authorized to conduct business within the scope of the charter and to "represent the subsidiary for all legal purposes" (art. 472).

In some Latin American countries additional functions in aviation matters are given to the judiciary. In Argentina, for example, records executed by administrative authorities in cases of damages caused by aircraft will be forwarded to judicial authorities (art. 203); for their part, courts as well as police and security forces which intervene in matters involving aircraft or aviation are bound to inform proper administrative authorities (art. 207). The investigation of aviation accidents is generally within the functions of administrative authorities. However, the Ecuadorean Law of Air Transit (1950) makes it a judicial function (art. 32) and courts at the *locus delicti* will take jurisdiction of actions for damages caused to persons or things by aircraft, domestic or foreign (art. 34, para. 1).

Administrative decisions in aviation matters are, in most Latin American countries, subject to administrative review in three ways: by

the respective Ministry or by administrative tribunals or both. In Paraguay (art. 170) and in Uruguay (art. 171) appeals go to the Ministry which in both countries "closes the administrative way". In Uruguay the administrative decision may also be attacked for illegality before courts of general jurisdiction until an administrative tribunal has been established (art. 182). In other republics judicial review is available in cases of high fines as, for example, in Venezuela (art. 83). Peru allows review by the Supreme Court of administrative rulings involving not only penalties but also suspensions or cancellations of permits (art. 113, para. 2). In Colombia recourse against administrative acts is limited mainly, even though not exclusively, to administrative tribunals.⁹⁴ In many Latin American countries there is a possibility for judicial review of legislative⁹⁵ as well as administrative regulatory acts on constitutional grounds. In Mexico, for example, individual administrative acts may be contested through *amparo* whenever they violate civil rights guaranteed by the Constitution (art. 2 to 28).⁹⁶

In conclusion, the following general impressions may be registered. A strong adherence to traditional jurisdictional principles persists in the Hemisphere coupled with a lack of domestic jurisdictional rules designed to cope with international situations, except those applicable to specific situations as, for example, to events on board aircraft. National interests prevail not only in developing aviation policies but also in the legislative and judicial powers being vested in national authorities in countries with a dual system of government. Even though in some countries administration of aviation is entrusted to military departments, civil courts, with one exception, prevail. And finally, the contribution by treaties to international jurisdictional problems arising in aviation is rather limited, due not only to a small number of ratifications of the respective treaties but also to difficulties in their application.

NOTES

¹For exception, see *infra* III, at n. 87.

²Drion, *Toward a Uniform Interpretation of Private Air Law Conventions*, 19 J. Air L. & Comm. 423 (1952); Margeloth, *A Unified System for the Interpretation of Private Air Law Conventions*, 3 *Il Diritto Aereo* 221 (1964); 1 Videla Escalada, *Derecho Aeronáutico* 239 (Buenos Aires, 1969).

³Bayitch, *Conflict Law in United States Treaties* 28 (1955).

⁴45 Stat. 2618.

⁵9 U.S.T. 449.

⁶11 U.S.T. 2398.

⁷Wilson, Access to Court Provisions in United States Treaties, 47 Am. J. Int'l L. 20 (1953).

⁸Free access to courts under the equal national treatment is guaranteed in a number of treaties with Latin American countries, e.g., with Bolivia (1858, art. 13); Costa Rica (1851, art. VII) and Chile (1832, art. 10). The treaty with El Salvador (1926, art. XII) refers to the *lex fori*.

⁹This security has been abolished (61 Revue Critique de Droit International Privé 797, 1972).

¹⁰55 Stat. 1201, ratified also by Chile, Dominican Republic, El Salvador, Nicaragua and Venezuela.

¹¹Argentine Airlines v. Aircraft Dynamics Corp., 170 N.Y.S. 2d 600 (1957). Cases cited are for illustration rather than for documentation.

¹²Bayitch, Conflict of Laws: Florida, 1968-69, 24 U. Miami L. Rev. 433, 460 (1970).

¹³Joseph Muller Corp. Zurich v. Société Anonyme de Gerance, 451 F.2d 727 (1971).

¹⁴Davidson, Factors Influencing Choice of Forum in Aircraft Disasters, 37 J. Air L. & Comm. 309 (1971); Walker, Foreign Corporation Laws: a Current Account, 47 N. Car. L. Rev. 733 (1969).

¹⁵Bayitch, Conflict of Laws (1967-68), 22 U. Miami L. Rev. 517 (1968).

¹⁶Savage v. Transportes Aereos Centro Americanos, 66 N.Y.S. 2d 280 (1956); Hayes v. Aeronaves de Mexico, 222 N.Y.S. 2d 470 (1961), *aff'd* 230 N.Y.S. 2d 291 (1962); Bryant v. Finnish National Airline, 203 N.E. 2d 439 (1965); Taca International Airlines, S.A. v. Rolls-Royce of England, Ltd., 204 N.E. 2d 329 (1965); Falk Corp. v. United States Aviation Underwriters, 304 F. Supp. 140 (1969).

¹⁷Bayitch, Conflict of Laws: Florida, 1970-71, 26 U. Miami L. Rev. 25 (1971).

¹⁸Mooney Aircraft, Inc. v. Donnelly, 402 F.2d 400 (1968); Goldenaire v. Lycoming Division of Arco Corp., 290 F. Supp. 349 (1968); Gill v. Fairchild Hiller Corp., 312 F. Supp. 916 (1970); Federal Insurance Co. v. Piper Aircraft Corp., 314 F. Supp. 855 (1972).

¹⁹Hoffman v. Air India, 393 F.2d 53 (1968); Donnelly v. Kellog Co., 293 F.Supp. 53 (1968); Miller v. Trans World Airlines, Inc., 302 F.Supp. 174 (1969); Giuliano v. Alitalia Airlines, Inc., 218 F. Supp. 78 (1963).

²⁰Commercial Air Charterers, Inc. v. Sundorph Aeronautical Corp., 57 F.R.D. 84 (1972, fraudulent); Barrios v. Dade County, 310 F. Supp. 744 (1970).

²¹Berlanti Construction Co. v. Republic of Cuba, 145 So. 2d 256 (1962); Cuba Aeropostal Agency, Inc. v. Kane, 145 So. 2d 764 (1962).

²²Faulkner v. S.A. Empresa de Viacao (VARIG), 222 So. 2d 805 (1969); Varkonyi v. S.A. Empresa de Viacao Aerea Rio Grandense, 277 N.Y.S. 2d 577; 281 N.Y.S. 2d 354, 292 N.Y.S. 2d 670 (1968).

²³Gully v. First National Bank, 299 U.S. 109 (1936).

²⁴Yelinek v. Wortley, 284 F. Supp. 679 (1968).

²⁵Mortimer v. Delta Airlines, 302 F. Supp. 276 (1969).

²⁶Richards v. United States, 369 U.S. 1 (1962). Otten, The Federal Tort Claims Act and Other Statutes Relating to Government Liability Exemplified by Government

Aircraft Accidents, 65 Dick. L. Rev. 35 (1960); Shapiro, Federal Tort Claims Act: Claims Arising out of Operation by Aircraft, 5 A.L.R. (Fed.) 440 (1970). *Four Star Aviation, Inc. v. United States*, 409 F.2d 292, 1969 (release of aircraft to Venezuelan authorities, 24 U. Miami L. Rev. 498, 1970).

²⁷*Rutas Aereas Nacionales, S.A. v. Edwards*, 244 F. 2d 784 (1957); *Decker v. Linea Aeropostal Venezolana*, 258 F. 2d 153 (1958); *Rossi v. Trans World Airlines*, 350 F. Supp. 1263 (1972). *Air Line Stewards Int'l v. Northwest Airlines*, 162 F. Supp. 684, aff'd 267 F.2d 170, cert. denied, 361 U.S. 901 (1958); *Air Lines Stewards Int'l v. Trans World Airlines, Inc.*, 173 F. Supp. 369, aff'd 273 F. 2d 69 (1959).

²⁸*Mortimer v. Delta Airlines*, 302 F. Supp. 276 (1969); *Gabel v. Hughes Air Corp.*, 250 F. Supp. 612 (1972).

²⁹*In Aerovias Interamericanas de Panama, S.A. v. Board of County Commissioners* (197 F. Supp. 230, rev'd on other grounds, 307 F. 2d 802, 1962) the action was held by the court to have been brought under the Convention on Civil Aviation (Chicago, 1944, art. 15) and under various bilateral conventions (at 236).

³⁰*Komlos v. Companie Nationale Air France*, 209 F. 2d 436 (1953); *Noel v. Linea Aeropostal Venezolana*, 247 F. 2d 677, cert. denied, 355 U.S. 907 (1957).

³¹*Winsor v. United Airlines*, 159 F. Supp. 856 (1958); *Zousmer v. Canadian Pacific Air Lines, Ltd.*, 307 F. Supp. 892 (1969).

³²*Gilles v. Aeronaves de Mexico*, 468 F. 2d 281 (1972); *Boryk v. deHavilland Aircraft Co.*, 341 F. 2d 666 (1965).

³³*Glenn v. Trans World Airlines*, 210 F. Supp. 31 (1962); *Quandt v. Beach Aircraft Co.*, 317 F. Supp. 1009 (1970).

³⁴*Ciprari v. Servicos Aereos Cruzeiro do Sul, S.A.*, 232 F. Supp. 433 (1964).

³⁵*Peterson & McDermott, Multidistrict Litigation: New Form of Judicial Administration*, 36 A.B.A.J. 737 (1970); *McDermott, The Judicial Panel on Multidistrict Litigation*, 57 F.R.D. 215 (1973); symposium in 38 J. Air L. & Comm. 159 (1972).

³⁶*Currie, Federalism and the Admiralty: the Devil's Own Mess*, 1960 Sup. Ct. Rev. 158.

³⁷*D'Aleman v. Pan American World Airways*, 259 F. 2d 493 (1958).

³⁸*Executive Jet Aviation, Inc. v. City of Cleveland, Ohio* 93 S. Ct. 493 (1972); *Hark v. Antilles Airboats, Inc.*, 355 F. Supp. 683 (1973). On jurisdiction of actions against manufacturers, *Middleton v. Universal Air Corp.*, 204 F. Supp. 650 (1960), but see *Noel v. United Aircraft Corp.*, 204 F. Supp. 929 (1962).

³⁹*M/S Bremen v. Zapata Off-Shore Co.*, 92 S. Ct. 1907 (1972).

⁴⁰*Bayitch, Treaty Law of Private Arbitration*, 10 Arb. J. 188 (1955).

⁴¹21 U.S.T. 2517, summarized in *Bayitch, Conflict of Laws: Florida, 1970-71*, 26 U. Miami L. Rev. 1, 31 (1971). In the Western Hemisphere the Convention is ratified also by Ecuador, Mexico, Trinidad and Tobago, and by the Netherlands for Surinam and Netherlands Antilles.

⁴²84 Stat. 692.

⁴³49 Stat. 3000. In the Western Hemisphere ratified also by Argentina, Barbados, Brazil, British dependencies, Canada, Colombia, Cuba, Dominican Republic, Ecuador, Guyana, Jamaica, Mexico, Netherlands for Surinam and Curacao, Paraguay, Trinidad and Tobago, and Venezuela.

⁴⁴McKenry, *Judicial Jurisdiction under the Warsaw Convention*, 29 *J. Air L. & Comm.* 205 (1963); Deddish, *Judicial Jurisdiction: a Study in International and Comparative Law*, 6 *Comp. Jur. Rev.* 55, 83 (1969). Robbins, *Judicial Jurisdiction under Art. 28 of the Warsaw Convention*, 9 *McGill L.J.* 352 (1963); Comment, *Art. 28 of the Warsaw Convention: a Suggested Analysis*, 50 *Minn. L. Rev.* 697 (1966).

⁴⁵*Dunning v. Pan American World Airways*, 4 *Av. Cas.* 17.394 (1954).

⁴⁶*Smith v. Canadian Pacific Airways, Ltd.*, 452 *F. 2d* 798 (1971), noted 13 *Harvard Int'l L.J.* 518 (1972); *Eck v. United Arab Airlines*, 360 *F.2d* 804 (1966).

⁴⁷*Martens v. Flying Tiger Line, Inc.*, 341 *F. 2d* 851, cert. denied 382 *U.S.* 816 (1965).

⁴⁸FitzGerald, *The Guatemala City Protocol to Amend the Warsaw Convention*, 9 *Can. Yb. Int'l L.* 217, 241 (1971); Mankiewicz, *The 1971 Protocol of Guatemala City to Further Amend the 1929 Warsaw Convention*, 38 *J. Air L. & Comm.* 519 (1972).

⁴⁹Archinard, *Quelques Réflexions Concernant l'Application des Art. 28 et 32 de la Convention de Varsovie dans le Transport Contractuel par Air de Merchandises*, 10 *Il Diritto Aereo* 314 (1971).

⁵⁰*Calli v. Re-Al Brazilian International Airlines*, 211 *N.Y.S. 2d* 206 (1961).

⁵¹In *Varkonyi v. S. A. Empresa de Viacao Rio Grandense*, 336 *N.Y.S. 2d* 193 (1972), the court followed the international interpretation of art. 28, using the Guatemala Protocol as an argument. However, it is misplaced since the United States proposal quoted in the opinion that the "defendant carrier has a place of business and is *subject to jurisdiction in that State*" was, in regard to the critical (emphasized) part, not adopted.

⁵²4 *U.S.T.* 1830.

⁵³Text in 19 *J. Air L.* 447 *L.* 447 (1952); see note 80, *infra*.

⁵⁴20 *U.S.T.* 361, summarized in Bayitch, *Conflict of Laws: Florida, 1968-69*, 24 *U. Miami L. Rev.* 433, 465 (1970).

⁵⁵*Shapiro, Federal Tort Claims Act: Claims Arising out of Operation of Aircraft*, 5 *A.L.R. (Fed.)* 440 (1970). *Civil Aeronautics Board v. Alitalia*, 328 *F. Supp.* 795 (1971).

⁵⁶28 *U.S.C.* 1346 (b).

⁵⁷26 *Dep't State Bull.* 984 (1952). Seltzer, *The Immunity Waiver for State-Controlled Business Enterprises in United States Treaties*, *Proceedings of the American Society of International Law* 89 (1961).

⁵⁸See *supra* note 5.

⁵⁹4 *U.S.T.* 1610.

⁶⁰Bayitch, *International Law*, 16 *U. Miami L. Rev.* 240, 269 (1961).

⁶¹68 *Dep't State Bull.* 149 (1973); text in 12 *Int'l Leg. Mat.* 122 (1973), summarized in the present issue under *Interamerican Legal Developments*.

⁶²*Far East Conference v. United States*, 342 *U.S.* 570 (1952).

⁶³*Breen Air Freight, Ltd. v. Air Cargo, Inc.*, 470 *F. 2d* 767 (1972); *Lavenson v. Trans World Airlines*, 471 *F. 2d* 76 (1972).

⁶⁴*American Importers Association v. Civil Aeronautics Board*, 473 *F. 2d* 168 (1972).

⁶⁵14 A.L.R. (Fed.) 725 (1972).

⁶⁶British Overseas Airways Corp. v. Civil Aeronautics Board, 304 F. 2d 952 (1962).

⁶⁷Civil Aeronautics Board v. Donaldson Line, Ltd., 343 F. Supp. 1059 (1972).

⁶⁸Bayitch, *International Law*, 16 U. Miami L. Rev. 240, 260 (1961); Brown, *Jurisdiction of United States Courts over Crimes in Aircraft*, 15 Stanford L. Rev. 45 (1962).

⁶⁹Included are: assaults (§ 113), maiming, etc. (§ 114), theft (§ 661), receiving stolen property (§ 662), murder (§ 1111), manslaughter (§ 1112), including attempts (§ 1113), sexual offenses (§ 2031 and 2032), robbery (§ 2111) and sec. 22-1112 of the D.C. Criminal Code.

⁷⁰84 Stat. 921 (1970). Attempted air piracy on ground is not within federal jurisdiction, *United States v. Pliskow*, 354 F. Supp. 369 (1973).

⁷¹13 U.S.T. In the Western Hemisphere ratified also by Costa Rica, Dominican Republic, Guatemala, Haiti, Jamaica, Mexico, Trinidad and Tobago and Venezuela.

⁷²20 U.S.T. 2941. In the Western Hemisphere ratified also by Argentina, Barbados, Brazil, Canada, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Mexico, Panama, Paraguay, and Trinidad and Tobago. Denaro, *In-Flight Crimes, the Tokyo Convention, and Federal Judicial Jurisdiction*, 35 J. Air L. & Comm. 171 (1969).

⁷³22 U.S.T. 1641. In the Western Hemisphere ratified also by Argentina, Brazil, Canada, Colombia, Chile, Costa Rica, Ecuador, El Salvador, French dependencies, Guyana, Mexico, Panama, Paraguay, Trinidad and Tobago.

⁷⁴T.I.A.S. No. 7570. In the Western Hemisphere ratified also by Brazil, Canada, Guyana, Panama, and Trinidad and Tobago.

⁷⁵Gjidara, *La Piraterie Aérienne en Droit International et en Droit Comparé*, 24 *Revue Internationale de Droit Comparé* 791 (1972); McWhinney, *Aerial Piracy and International Law* (1971).

⁷⁶Reference re *Aeronautics in Canada*, 1 D.L.R. 58 (1932); *Johannesson v. West St. Paul*, 4 D.L.R. 609 (1952). McNairn, *Aeronautics and the Constitution*, 49 *Can. B. Rev.* 411 (1971).

⁷⁷Castel, *Assumed Jurisdiction of Canadian Common Law Courts*, 35 *Sask. L. Rev.* 146 (1970), also *Procedure and the Conflict of Laws*, 16 *McGill L.J.* 603 (1970).

⁷⁸An Act respecting the Federal Court of Canada, 1970-71-72, c. 10.

⁷⁹R.S. c. 45; c. C-14 R.S.C. (1970) including in Schedule I the text of the Warsaw Convention and in Schedule III the Hague Protocol. Sec. 3 of the Act provides in regard to the Protocol added to the Convention, dealing with the application of the Convention to international carriage by states, that member countries who had not taken advantage of this Protocol shall "for the purposes of any action brought in a court in Canada in accordance with the provisions of art. 28 . . . to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which any such action is to be commenced and carried on, but nothing in this section shall authorize the issue of any execution against the property of any High Contracting Country". Cf. Castel, *Exemptions from the Jurisdiction of Canadian Courts*, 11 *Can. Yb. Int'l L.* 159 (1971).

Schedule II to this Act contains provisions establishing persons entitled to press claims as members of passenger's family (para. 1), regarding plaintiffs in such actions (para. 2) and related procedural rules (para. 3).

⁸⁰1955, c. 15; c. F-28 R.S.C. (1970). In the Western Hemisphere ratified also by Argentina, Brazil, Cuba, Dominican Republic, Ecuador, Haiti, Honduras, Mexico and Paraguay. Toepper, Comments on Article 20 of the Rome Convention of 1952, 21 *J. Air L. & Comm.* 420 (1954).

⁸¹Bayitch, *Interamerican Legal Developments*, 4 *Law, Am.* 487 (1972).

⁸²Ch. A - R.S.C. (1970).

⁸³Translation in 37 *Am. J. Int'l L. (supp.)* 95 (1943).

⁸⁴Text in 4 *Hudson, International Legislation* 2283 (1931).

⁸⁵Bayitch, *Interamerican Legal Developments*, 4 *Law, Am.* 476 (1972).

⁸⁶*Horowicz v. Cruzeiro do Sul, Ltd.*, 51 *La Ley* 691 (1948).

⁸⁷Hamilton, *Manual de Derecho Aereo* 374 (Santiago, 1960).

⁸⁸*Id.* 377.

⁸⁹*Ini v. Iberia* (1964), Maciel, *Interpretación Judicial de la Ley Aeronáutica* 12 (Buenos Aires, 1968).

⁹⁰*Telschow v. Flota Aerea Mercante Argentina* (Supr. Ct. of Justice, 1952), Foglia-Mercado-Mellone, *Jurisprudencia Aeronáutica Argentina* 100 (Buenos Aires, 1968).

⁹¹The Court of Justice in Guanabara (Brazil, No. 7.511, 1972) held that a foreign corporation may be served in Brazil through its local representative in actions for claims arising from business in Brazil carried on by the same representative.

⁹²Kaller de Orchansky, *Las Sociedades Comerciales en el Derecho Internacional Privado Argentino*, 36 *La Ley* 7 (August 24, 1972).

⁹³Bayitch. *Interamerican Legal Developments*, 3 *Law, Am.* 528 (1971).

⁹⁴Uprimny, *Der Gerichtliche Rechtsschutz des Einzelnen gegenüber der vollziehenden Gewalt in Kolumbien*, in Max Planks Institute (ed.), *Judicial Protection against the Executive* 635 (1970).

⁹⁵Eder, *Judicial Review in Latin America*, 21 *Ohio S.L.J.* 570 (1960).

⁹⁶Baker, *Judicial Review in Mexico: a Study of the Amparo Suit* 92 (1971); Fix Zamudio, *Judicial Protection of the Individual against the Executive in Mexico*, *op. cit.* n. 94, 713, 744 (1970).

DISCRIMINATION IN FOREIGN BANKRUPTCY LAWS AGAINST NON-DOMESTIC CLAIMS

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In the field of international trade, when things do not go according to plan, baffling complications may arise. What goes under the name of international bankruptcies, furnishes an illustration. When a debtor with assets and creditors in more than one country becomes insolvent, however high the profession of adherence to the principle of equal treatment for all creditors, at some places in some way the local assets land in the hands of local creditors. The fact is no secret. When an English enterprise of world-renown developed financial difficulties recently, the run on assets outside the United Kingdom started promptly. Had the situation not been straightened out,¹ the world would have watched a financial as well as a legal disaster, a demonstration of the breakdown of international legal cooperation in an important field.

Thus the governments of the Six who in 1957 formed the European Economic Community used sound judgment when, in 1963, they decided to work on a bankruptcy convention which would secure effect in all states of bankruptcy adjudications made in one of them. The equal distribution of the assets located in the Market would be secured. But drafting of the Convention proved difficult. Rules on assumption of jurisdiction had to be agreed upon and problems of choice of law settled. The legal systems of the Six differ considerably. For example, the rules on voidance of preferences obtained by individual creditors after the debtor had become insolvent are not the same and agreement on which of the involved laws to apply proved impossible. An effort had to be made to unify the substantive rules, which was not found easy either. After eight years of work, the Committee of Experts which had been appointed released a draft² which was sent to the governments for their comments. Today the draft's future is not clear. Further work may make it acceptable to all Six,

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but the system used may not be suitable for application to the relations with one new member, the United Kingdom. Leaving aside problems arising from the great differences between the Continental and English, Scottish and Irish bankruptcy systems,³ in the past the United Kingdom has been opposed to a single administration in all cases, insisting on a more flexible approach.⁴ Through marshalling of the assets the equal treatment of all creditors can be secured also in multiple administrations.⁵

If regional work on a treaty is difficult, drafting a bankruptcy convention for international application would be still harder. The many attempts made all have failed.⁶ Where, however, the substantive law is homogeneous, experience has shown success in elaboration of bilateral treaties and regional conventions.⁷ More recently, from various sides the suggestion has come to work on a treaty between Canada and the United States.⁸ While closer cooperation between the neighbors can be secured by better coordination of the rules on assumption of jurisdiction,⁹ the possibility is certainly worth exploring.¹⁰

The more difficult question is how to produce more satisfactory conditions on the international level. The most serious problems arise from rules allowing local creditors to obtain more than their equal share.¹¹ Such rules may be open or concealed. If the local law denies effects to a foreign bankruptcy, the preference may come from lack of a proceeding to bring the local assets to equal distribution.¹² If the local law allows the foreign trustee to claim local assets, a condition may be payment of attachments or garnishments obtained before receipt of the trustee's request.¹³ Straight priority rules for domestic claims continue to exist. They are found primarily in the laws of some Latin American States. Many variations exist. For example, priority may be granted to local claims when bankruptcy is declared abroad as well as at home.¹⁴ Priority may go to branch creditors in the case of the bankruptcy of a local branch of a foreign enterprise.¹⁵ Whether the local branch was run as a separate enterprise, may or may not make a difference. A recent development in the field requires reexamination of the entire situation.

In April 1972, Argentina enacted a new law on bankruptcy, Law No. 19,551.¹⁶ The law provides that a bankruptcy declaration abroad is a sufficient basis for a bankruptcy declaration in Argentina. The debtor, or a creditor with a claim due in Argentina may request it.¹⁷ In the bankruptcy in Argentina, the claims payable in Argentina will be paid first.¹⁸ The new law makes existence of assets in Argentina a sufficient basis for assumption of bankruptcy jurisdiction.¹⁹

The provision previously in force²⁰ which goes back to the Commercial Code of 1859 for the Province of Buenos Aires²¹ and today is still the law in Uruguay,²² Paraguay,²³ and Peru,²⁴ says that "the bankruptcy also declared by the courts in the Republic shall not take into account the creditors belonging to the foreign bankruptcy, except if a surplus remains after payment in full of the creditors in the Republic." What is meant by creditors of the foreign bankruptcy is unclear. Presence of assets was insufficient for assumption of bankruptcy jurisdiction. The claim made on occasion²⁵ that the provision was taken from Massé's *Droit Commercial*, is unfounded. The treatise has no such general rule.²⁶ Massé cites with approval the case of a debtor with houses in London and on the Continent where the Court of Appeal in Brussels denied effect to the bankruptcy declaration in England.²⁷

Turning to the provision in the new Argentine bankruptcy law, its background is no mystery. Attention needs to be given to the Montevideo Treaty system. In 1889, a South American Congress on Private International Law was held in Montevideo. Among the treaties prepared is the Treaty on International Commercial Law which has a chapter on bankruptcy.²⁸ For jurisdiction a distinction is made between an insolvent debtor who has independent houses in different states and other insolvent debtors. In the first case, as many bankruptcies may be declared as houses; in all other instances, the court of the debtor's commercial domicile has exclusive jurisdiction. Requests to take protective measures go to other states in which assets are located, and the bankruptcy decree is published locally. Creditors with claims payable in the state are given the right to ask for a local adjudication. The local proceeding is conducted independently. The local law produces priority for the local claims.

A controversy developed over whether the right to ask for a local bankruptcy is general or restricted to the case of independent commercial houses. The language is ambiguous and arguments can be made in both directions.²⁹ The source for the provision identifying claims by the place of payment is said to be a provision to the same effect in the chapter "Succession after Death" in the Treaty on International Civil Law. Assets are split territorially, claims payable in the state having to be paid out of the local assets.³⁰ The Treaties were ratified by Uruguay, Argentina, Paraguay, Peru, and Bolivia. Colombia acceded some time later.

To celebrate the fifty years of the Montevideo Treaty system, a Second South American Congress on Private International Law was called for 1939. Before dealing with the Congress which sat until 1940, attention

must be called to the existence in Latin America of another treaty system. In 1928, at the Sixth International Conference of American States held in Havana, the participating States (except the United States which abstained) approved the Bustamante Code on Private International Law³¹ which has a chapter on bankruptcy.³² Fifteen Latin American States have ratified the Code Convention.³³ Of the Montevideo group, only Peru has become a party. For bankruptcy the draftsmen did not follow the Montevideo system which they found unsatisfactory.³⁴ The Code provides for a single bankruptcy adjudication at the commercial domicile of the debtor with effect in all States. Only if the debtor has entirely different separate establishments in several States, may there be as many bankruptcies as establishments.

The Second South American Congress which convened in Montevideo in 1939, was used to bring the Treaties of 1889 up to date. Structural changes were opposed by Uruguay. The old Treaty on International Civil Procedure lacked rules on the insolvency of non-merchants. An insolvency chapter was added to the Treaty of 1940.³⁵ The court of the domicile of the debtor is given jurisdiction but local proceedings may be requested in any state in which assets are located. Claims payable in such a state must be paid first. Even if a local bankruptcy is declared, the priority of claims must be applied in the domiciliary proceeding.³⁶ This provision was not in the Argentine draft. The promoters of "priority" succeeded in getting it into the text at the session.³⁷ At the demand of Uruguay, over the objections of Argentina, a corresponding provision was added to the Treaty of 1940 on International Terrestrial Commercial Law.³⁸ Uruguay, Argentina, and Paraguay have ratified the new Treaties.³⁹

The influence of the Montevideo Treaty system 1940 version on the new provision in the Argentine bankruptcy law is evident. Parties to a treaty may for their interrelations provide as they please. If a rule is made applicable generally, as in the new law, a different situation is created. A reaction may come from abroad. The Official Report on the new law does not say whether such a possibility was weighed. What the Report⁴⁰ says, is that the new provision is "adapted" to the domestic tradition; and the right to ask for a local bankruptcy on the basis of mere presence of assets is noted.⁴¹ In their own supporting statement, the draftsmen had stressed "practical reasons" for continuation of the old system,⁴² reserving their doctrinal views.⁴³

In doctrine, the priority system had long been the subject of attacks.⁴⁴ Whatever the respective doctrinal merits of the theories of "unity" and

“plurality” of bankruptcy, changed economic conditions need to be taken into account. In 1859, a practical argument could be made in favor of linking local claims with local assets in the case of existence of a local establishment. Today the lack of stability of all assets makes their allocation on a fictional basis such as the place of payment of debts legally as well as economically indefensible.⁴⁵ The realities of present-day life are not taken into account. Furthermore, the trends in the direction of creation of separate legal entities have made the problem of 1859 largely academic.

But the “practical advantage” argument used by the supporters is definitely real, although it is predicated on the assumption of apathy on the part of the rest of the world. If, abroad, treatment of claims from Argentina is made subject to the “Argentina rule,” the system backfires. With the windfall gone, the true merit of the system must be considered. The odds are that it will not survive the test.

Introduction into the domestic legislation of a “reciprocity” clause is recommended. Availability of a broadly phrased general clause allowing “reciprocal” treatment in all cases of discrimination of creditors abroad is desirable for a variety of reasons. Keeping a “balance” becomes possible. Aside from the immediate reasons, the possibility of other countries following the Argentine example must be contemplated. Advance notice is given. Also, pressures made for revision of the Montevideo system will be helped. The priority is in direct opposition to the considerable efforts made to create a Latin American Free Market after the European model.⁴⁶ These efforts merit support from insiders and outsiders as well. Free markets must live with the rest of the world.⁴⁷ By some, criticism of what was done in 1889 at Montevideo is considered a sacrilege. Abandonment of rules which have become dated will not affect the historic contribution made by the Montevideo Treaties of 1889 to unification of the rules of private international law. A beneficiary of the work done at Montevideo, the Hague Conference on Private International Law would not be alive today and prospering ⁴⁸ had it stuck to the Mancini doctrine of the supremacy of the law of nationality which was embraced by the Conference during its first period.⁴⁹

Giving claims from countries with priority systems parallel treatment at home, is a response whose justice cannot be questioned. The result if disliked can be terminated by abandonment of the discriminatory rule.⁵⁰ Automatic response should be provided for widely, and rules and practices in violation of the principle of equal treatment of all unsecured claims will be on the way out.

NOTES

- ¹Cf. Rolls-Royce (Purchase) Act 1971, [1971] Stat., ch. 9.
- ²The French text appeared in the volume "Les problèmes internationaux de la faillite et le Marché Commun" (Cedam: Padova, 1971) containing the proceedings of a round table on the draft held in Milan in June 1971.
- ³From the standpoint of English law the draft is discussed in Hunter, *The Draft Bankruptcy Convention of the European Economic Communities*, 21 *Int'l & Comp. L. Q.* 682 (1972).
- ⁴See statement read at the Hague Conference of 1925 on Private International Law, reproduced in Nadelmann, *Bankruptcy Treaties*, 93 *U. Pa. L. Rev.* 58, 86 (1944), reprinted in K. H. Nadelmann, *Conflict of Laws: International and Interstate* 299, 328 (Nijhoff: The Hague, 1972); transl. in 10 *Revista de la Escuela Nacional de Jurisprudencia* (Mexico), No. 37 105 (1948).
- ⁵The problem is considered in Nadelmann, *The Common Market Bankruptcy Convention Draft: Foreign Assets and Related Problems*, in K. H. Nadelmann, *Conflict of Laws*, supra note 4, at 340; French version in 6 *Rivista do diritto internazionale privato e processuale* 501 (1970), transl. in 145 *Revista Juridica Argentina La Ley* 705 (1972).
- ⁶For the pre-war efforts see Nadelmann, *Bankruptcy Treaties*, supra note 4. Efforts made by the International Law Association at the Edinburgh 1954 Conference were a complete failure. See Report of the 46th Conference 193-257; cf. Report of the 47th—Dubrovnik 1956—Conference 434-446.
- ⁷The treaty law is discussed in Nadelmann, *Bankruptcy Treaties*, supra note 4.
- ⁸See notably Report of the Canadian Study Committee on Bankruptcy and Insolvency Legislation 60-62 (Information Canada: Ottawa, 1970).
- ⁹Discussed in Honsberger, *The Need for a Rapprochement of the Bankruptcy Systems of Canada and the United States* 18 *McGill L. J.* 147 (1972).
- ¹⁰In Quebec, effect is denied to foreign bankruptcy adjudications. *Osgood v. Steel*, 16 *Lower Can. L. J.* 141 (B.R. 1872); *Pacaud v. Tourigny and the Niagara District Mutual Fire Insurance Company*, 10 *Que. L. Rep.* 54 (1884), cited with approval in *Defa v. Bayless*, [1964] B.R. 205, 208. In the common law Provinces, the liberal conflicts rules of the English courts are followed. See Honsberger, supra note 9, at 151. This may include though *Galbraith v. Grimshaw*, [1910] A.C. 508, considered in *Re Universal Auto Bonders Ltd.*, 24 *W.W.R.* 600, 13 *Dom. L. Rep.* 2d 459 (Alta. 1958), where the House of Lords denied a Scottish trustee in bankruptcy assets garnished in England, although the garnishment was void under Scottish law and would have been voidable in the case of a bankruptcy declaration in England. See J. H. C. Morris, *Conflict of Laws* 348 (1971); A. E. Anton, *Private International Law* 442 (Edinburgh 1967).
- ¹¹The author has dealt with the subject many times. See e.g. Nadelmann, *Legal Treatment of Foreign and Domestic Creditors*, 11 *Law & Contemp. Probl.* 696 (1946), reprinted in *Selected Readings on Conflict of Laws* 1073 (M. Culp. ed. 1956).
- ¹²See Nadelmann, *Assumption of Bankruptcy Jurisdiction over non-Residents*, 41 *Tul. L. Rev.* 75 (1966); transl. in 42 *Diritto Fallimentare I* 267 (1967).
- ¹³This is statutory law e.g. in Austria. See Nadelmann, *International Bankruptcy Law: Its Present Status*, 5 *U. Toronto L. J.* 324, 329, 18 *Referees J.* 104 (1944).
- ¹⁴See Nadelmann, *Concurrent Bankruptcies and Creditor Equality in the Americas*, 96 *U. Pa. L. Rev.* 171 (1947), 22 *Referees J.* 51 (1948); transl. in 25 *Annuario di Diritto Comparato e di Studi Legislativi* 105 (1950). Cf. Nadelmann, *Creditor Equality in Inter-State Bankruptcies*, 98 *U. Pa. L. Rev.* 41 (1949); transl. in 55 *Revista Juridica Argentina La Ley* 1028 (1949), 2 *Boletín del Instituto de Derecho Comparado de México*, No. 5, 65 (1949).
- ¹⁵This rule was introduced into the Mexican Bankruptcy Law of 1943. See S. A. Bayitch & J. L. Siqueiros, *Conflict of Laws: Mexico and the United States* 181

(1968); Nadelmann, *Once Again: Local Priorities in Bankruptcy*, 38 *Am. J. Int'l L.* 470 (1944). Cf. Honduras Commercial Code of 1940 art. 1057-1060. And see Costa Rica Bankruptcy Act of 1901, arts. 9, 10. G. Ortiz Martin, *Derecho Internacional Privado* 453 (1947).

¹⁶Ley de concursos, B. O., May 8, 1972, [1972] *Anales de Legislación Argentina*, Boletín informativo No. 15. Cf. Bayitch, *Inter-American Legal Developments*, 4 *Lawyer of the Americas* 474, 478 (1972).

¹⁷See 1 S.A. Argeri, *La Quiebra y demás procesos concursales* 170, 179-80 (La Plata 1972).

¹⁸Art. 4(2).

¹⁹Art. 2(1), cl. 5. See Argeri, *supra*, at 140, 159.

²⁰Ley de Quiebras No. 11.719 of 1933, § 7(2). See C. A. Lazcano, *Derecho Internacional Privado* 523 (1965); W. Goldschmidt & J. Rodrigues-Novas, *American-Argentine Private International Law* 80 (1960).

²¹See *Almancio Alcorta, Fuentes y Concordancias del Código de Comercio* § 1531 (1887).

²²Código de Comercio, art. 1577. See E. Scarano, *Tratado de la Quiebra* 210 (1939).

²³Ley de Quiebras No. 154 of Dec. 13, 1969, art. 8. See Argeri, *La Nueva Ley de Quiebras de Paraguay*, *Jus — Revista de la Provincia de Buenos Aires*, No. 18, 5, 17 (1971).

²⁴Ley de Quiebras, No. 7.566 of 1932, art. 26(2). See 2 M. García Calderón, *Repertorio de Derecho Internacional Privado* 307 (1962). Furthermore, debts contracted abroad are admitted on an equal basis only to the extent to which the funds were employed in an enterprise in Peru (art. 26(3)). Cf. Costa Rica Civil Code of 1896, arts. 980, 983; Nicaragua Civil Code of 1904 arts. 2334, 2337.

²⁵See 2 F. Orione, *Exposición y crítica de la ley de Quiebras* 323 (1935); R. Fernández, *Fundamentos de la Quiebra* 727 (1937).

²⁶See 2 G. Massé, *Le Droit Commercial dans ses Rapports avec le Droit des Gens et le Droit Civil*, No. 809 (Paris 1848).

²⁷No. 810, discussing Appeal Brussels, June 6, 1816, Outhwaites Freres, London and Brussels, reported in Merlin, *Répertoire de Jurisprudence, voce Faillite*, section II, ch. II, art. X, No. 2.

²⁸Treaty, arts. 35-48, *Actas y Tratados Celebrados por el Congreso Internacional Sud-Americano de Montevideo* 842 (Montevideo 1911). Transl. in T. Esquivel Obregón, *Latin-American Commercial Law* 685 (1921); Ph. J. Eder, *American-Colombian Private International Law* 86, 89 (1956).

²⁹Compare Gonzalo Ramírez, *El Derecho Procesal Internacional en el Congreso Jurídico de Montevideo* 61 et seq. (Montevideo 1892), with L. Segovia, *El Derecho Internacional Privado y el Congreso Sudamericano de Montevideo* 147 et seq. (Buenos Aires 1889). Cf. Alcorta, *El Profesor Meili y el régimen de la quiebra en el Congreso Sud-Americano de Montevideo*, 14 *Jurisprudencia Argentina: Doctrina* 66 (1924), commented on in Nadelmann, *Professor Meili etc.*, 84 *Zeitschrift des Bernischen Juristenvereins* 175 (1948), transl. in 12 *Boletín de la Facultad de Derecho y Ciencias Sociales de la Universidad Nacional de Córdoba (Argentina)* 83 (1948). An excellent presentation of the controversy is Quintín Alfonsín, *Quiebras — La Doctrina de Montevideo y los Tratados de 1889 y 1940* (Montevideo 1943).

³⁰Treaty on International Civil Law, arts. 46-48, *Actas y Tratados*, *supra* note 28, at 827. See Ramírez, *supra* note 29, at 79. Transl. of Treaty in Eder, *supra* note 28, at 79, 83. See Nadelmann, *Insolvent Decedents' Estates*, 49 *Mich. L. Rev.* 1129, 1145 (1951).

³¹Text in 86 *L.N.T.S.* 362; 4 M. Hudson, *International Legislation* 2340 (1931); *The International Conferences of American States 1889-1928* 367 (1931).

³²Arts. 414-422. See 3 A.S. de Bustamante y Sirvén, *Derecho Internacional Privado* 275 (3rd ed. 1943).

³³Some of the ratifications have been with broad reservations. See Nadelmann,

The Need for Revision of the Bustamante Code on Private International Law, 65 *Am. J. Int'l L.* 782 (1971).

³⁴See A. S. de Bustamante y Sirvén, *La Comisión de Jurisconsultos de Río de Janeiro y el Derecho Internacional*, No. 187 (Havana 1927).

³⁵Text in *Segundo Congreso Sudamericano de Derecho Internacional Privado*, Acta Final 41 (2d ed. Montevideo 1940); transl. in 37 *Am. J. Int'l. L. Supp.* 116 (1943).

³⁶Art. 20.

³⁷For history see Videla Aranguren, *El concurso civil de acreedores en el Congreso de Montevideo 1939-40*, 4 *Revista Argentina de Derecho Internacional* 200, 342 (1941); Nadelmann, *Concurrent Bankruptcies*, supra note 14, at 181.

³⁸Art. 48(2). Text in *Segundo Congreso*, supra note 35, at 61; transl. in 37 *Am. J. Int'l L. Supp.* 132 (1943). See Videla Aranguren, *Las quiebras en el Congreso de Montevideo 1930-1940*, 5 *Revista Argentina de Derecho Internacional* 363, 447, 450 (1942).

³⁹See Pan American Union, *Status of Inter-American Treaties and Conventions* (Dep't of Legal Affairs 1969).

⁴⁰Nota al Poder Ejecutivo acompañando el Proyecto de ley 19.551, reproduced in [1972] *Anales de Legislación Argentina*, Boletín Informativo No. 15.

⁴¹Exposición de Motivos, Pt I, Tit. I. § 9. See W. Goldschmidt, *Derecho Internacional Privado* 514 (1970).

⁴²See Algeri, *Consideraciones sobre el anteproyecto de ley de concursos mercantiles, formulado por la comisión especial en el año 1969*, [1970] *Jurisprudencia Argentina — Doctrina* 414, 425. A group in Cordoba had urged broadening of the priority. See Kaller de Orchansky, *Regimen de la quiebra extranacional*, 129 *Revista Jurídica Argentina La Ley* 1179, 1187 (1968).

⁴³Draftsmen were Carlos C. Malagarriga, Francisco Quintana Ferreira, Horacio P. Fargosi, and Hector Alegria. On the earlier priority rule Professor Malagarriga had commented: ". . . if it cannot be considered inspired by high principles of private international law, it must be respected as in defense of foreign trade and as an understandable reciprocity toward identical hostility of foreign legislations." 9 *Código de Comercio Comentado*, Note 41 to Art. 6 of the Bankruptcy Law of 1902 (art. 1383 of the Commercial Code) (Carlos C. Malagarriga ed. 1922).

⁴⁴See Carlos Alberto Alcorta, *Regimen internacional de la quiebra*, 14 *Jurisprudencia Argentina*, Doctrina 130 (1924), reprinted in 2 *Revista Argentina de Derecho Internacional* 354 (1931); cf. 4 C. Vico, *Curso de Derecho Internacional Privado* 31, 34 (2d ed. 1939); Orione, *Igualdad en el tratamiento de los acreedores en las quiebras internacionales*, 1 *Revista de la Facultad de Derecho y Ciencias de Eva Peron* 79, 87 (La Plata 1954).

⁴⁵Persons in the know suggest that, to avoid the expenses, the treaty is hardly ever applied and that matters are settled out of court.

⁴⁶See Vieira, *Le Droit International Privé dans le Développement de l'Integration Latino-Americaine*, 130 *Hague Academy of International Law, Recueil des Cours* 351, 395 (1970 II); Vieira, *La Asociación latino-americana de libre comercio y el derecho privado internacional*, in 2 *Anuario del Instituto Hispano-Luso-Americano de Derecho Internacional* 176 (1963).

⁴⁷This aspect is considered in Nadelmann, *The Common Market Bankruptcy Convention Draft: Foreign Assets and Related Problems*, supra note 4, at 358.

⁴⁸See Table, *Status of Hague Conventions on Private International Law*, 19 *Am. J. Comp. L.* 587 (1971). Cf. Nadelmann, *La décima sesión y la sesión extraordinaria de la Conferencia de la Haya de Derecho Internacional Privado*, 126 *Revista Jurídica Argentina La Ley* 897 (1967). Argentina and Brazil have since joined the Hague Conference as members.

⁴⁹See de Winter, *Nationality or Domicile?*, 128 *Hague Academy, Recueil des Cours* 347, 378 et seq. (1969 III).

⁵⁰Or limitation to situations where the foreign law has the same rule. See Malagarriga, supra note 43.

INTER-AMERICAN LEGAL DEVELOPMENTS

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ARGENTINA

The Law of Business Associations enacted in 1972 (No. 19.550, 4 *Law. Am.* 476, 1972) was amended by Law No. 19.880 (1972) regarding transitory provisions contained in art. 369. The new law provides for automatic adjustment of existing business associations to provisions contained in Law No. 19.550, with additional periods for compliance. Associations constituted abroad which ordinarily transact business in the Republic shall adjust their organization to art. 118 and 120 within six months from the day Law No. 19.880 takes effect.

Art. 3.137 and 3.149 of the Civil Code dealing with mortgages have been amended by Law No. 20.089 (1973).

A regulation regarding the exercise of the right of assembly was enacted as Law No. 20.120 (1973).

Bankrupt enterprises which continue functioning according to Law No. 18.832 (1971) offer creditors who made such continuation possible, preferred treatment (Law No. 19.980, 1972). The law is implemented by a decree (No. 8.590, 1972).

Law No. 19.982 (1972) regulates marks indicating domestic products.

The clause "without protest" in negotiable instruments is now regulated by Law No. 19.899 (1972), amending art. 50 of Decree-Law No. 5.965 (1963).

The Law on Industrial Development (No. 19.904, 1972) assists industrial enterprises through direct financial support as well as through State participation, deferred tax payments, import privileges, import restrictions, facilities regarding raw materials, and accelerated amortization (art. 4). These benefits are available only to persons domiciled and

established in the Republic and to legal entities constituted in the Republic and established therein. Regarding foreign investments and foreign technology, Laws No. 19.151 and 19.231 of 1971 (3 *Law. Am.* 479, 1971) and 4, 63, 1972) apply. Simultaneously, the establishment or expansion of enterprises in the Capital is being discouraged with some exemptions (art. 9). The new law favors deconcentration of present industrial sites (art. 10) by offering incentives for settling in less developed regions. Funding shall be provided by a single tax on the total value of investments for areas of high industrial concentration (art. 13). A *Consejo Nacional de Promoción Industrial* shall assist administrative authorities (art. 20).

The industrial register provided by Decree No. 10.363 (1961) is now regulated by Law No. 19.971 (1972).

A Law on Insurance Institutions was enacted (No. 20.091, 1973). It implements the Law on Insurance Contracts (No. 17.418, 1967) by regulating insurers which may be corporations, cooperatives, and mutual institutions; also subsidiaries or agencies of foreign associations (art. 2). Foreign insurers will be authorized to do business under conditions established for domestic corporations provided reciprocity is granted to Argentine insurers in their home countries (art. 5). The law provides for operating permits (art. 7 to 10), for various types of associations (art. 11 to 22), and regulates various risks and insurance plans (art. 23 to 29). Insurance operations demand a minimum capital (art. 30) which must be, in regard to foreign insurers, available within the Republic (art. 30, para. 2). Additional provisions regulate losses over 30% (art. 31, para. 3), investments (art. 35), management and financial statements (art. 37 to 47), revocation of permits (art. 48 to 49), liquidation (art. 50 to 57), and penalties (art. 58 to 62). Control will be exercised by the *Superintendencia de Seguros de la Nación* (art. 64 to 75) assisted by a *Consejo Consultivo* (art. 76 to 81). Final provisions regulate proceedings and appeals (art. 82 to 87).

Law No. 19.938 (1972) promotes mining. It applies to mining entrepreneurs, enterprises and cooperatives domiciled and constituted in the Republic, and engaged in exploring, prospecting and actual mining operations (art. 2). Benefits available are not only those applying to industry in general, but also exemptions up to 100% for investments in exploration and prospecting, in machinery, buildings and installations, and equipment, including imports (art. 7). Additional benefits are available under art. 11, including contributions by the State (art. 13).

Law No. 18.250 (1969) was amended by requiring that maritime transportation on behalf of the State, provinces, municipalities, decentralized organizations, State enterprises and associations with public participation be via domestic vessels. Decree-Law No. 667 (1963) regarding the *Fondo Nacional de la Marina Mercante* was amended in art. 25 by Law No. 19.870 (1972).

The *Servicio de Hidrografía Naval* was established by Law No. 19.022 (1972).

The death penalty mentioned in art. 5, 44, 46, 62, and 65 of the Criminal Code (1921) and applicable to murder (art. 80 bis), deprivation of freedom (art. 142), illegal association causing death or serious bodily injury (art. 210 ter), attacks on means of transportation with deadly or serious results (art. 225 ter), armed misuse of authority (art. 247 bis), and concealment of crimes (art. 278 quater), has been abolished by Law No. 20.043 (1972) and replaced with life imprisonment, except for crimes under art. 278 quater which now carry imprisonment from 15 to 25 years.

Subsequent to Law No. 17.094 (1966) establishing the 200 maritime miles zone off the coast as subject to Argentine sovereignty (art. 1), Law No. 17.500 (1967) excluded aliens from fishing within a 12-mile zone off the coast (art. 2) but allowed such fishing in the remaining maritime area subject to an administrative permit and payment of a fee (Decree No. 8.802, 1967, replacing Decree No. 5.106, 1966). The latter law (No. 17.500) was amended by Law No. 20.136 (1973) declaring living maritime resources within the Argentine sovereignty, as defined by Law No. 17.094 (1966), property of the State and available for exploitation exclusively to vessels flying the Argentine flag (art. 1), on the basis of a license by the Ministry of Agriculture and Livestock. The new law excludes aliens from exploitation of maritime resources in the zone claimed by Argentina since not even administrative permits are available. Violations by aliens will be punished (art. 12, b) by fines from U.S. \$5,000 to \$100,000 or their value in Argentine currency at the time of payment, and by confiscation of the catch; the confiscation of the fishing gear also may be ordered. Penalties against aliens (after an opportunity to defend) will be imposed by the "proper maritime authority with appeal to a federal judge (*juez nacional*) sitting in the circuit where the violation took place" (art. 12, b); the foreign vessel may be detained until the fine has been paid. The remaining provisions of Law No. 17.500

continue in force as does Law No. 18.502 (1970) granting jurisdiction of the maritime zone up to three miles off the coast to the provinces.

Damages inflicted by terrorists to individuals, not participating in such acts, or their property, shall be paid under Law No. 20.007 (1972), except damages to commercial or industrial assets (art. 1). The terrorist act, the causal connection and the amount of damages must be proven; in case the exact amount is not established the award shall be determined "with caution" (art. 2). Regarding damages to assets, indemnities received, including insurance, shall be deducted. In case of total or partial incapacity, the victim shall receive periodical payments (art. 3). Funds will be provided from lotteries and gambling (art. 8).

Directives for immigrations have been issued by Resolution No. 1.183 (Interior, 1972).

Law No. 20.134 (1973) seeks to prevent that increases in salaries result in increases in prices.

Prices for products from State enterprises are regulated by decree (No. 6.929, 1972).

New controls have been introduced regarding imports and exports by amendments to the Tariff Act (1963) by Laws No. 19.881 and No. 19.890 (1972).

The National Housing Fund was established by Law No. 19.929 (1972), and implemented by a regulation (Decree No. 7.680, 1972).

The law regulating the Municipality of Buenos Aires was promulgated by Law No. 19.987 (1972). The municipal government consists of a municipal council, of the administration and of neighborhood councils (art. 2). There is a municipal court for misdemeanors (art. 50), a tax court (art. 67), and a *tribunal de cuentas* (art. 85).

A tax reform was introduced by Law No. 20.040 (1972), amending Law No. 11.683.

A number of treaties have been ratified, among them with Colombia and Ecuador on scientific research and technological development (Law No. 19.875 and No. 19.874); with Greece on cultural cooperation (Law No. 20.020, 1972); also multilateral conventions on temporary importation of educational materials (Brussels, 1970), and on prohibition of export and transfer of cultural assets (Paris, 1970), the former by Law No. 19.883, and the latter by Law No. 19.943 (1972).

Chaco

The organization of criminal justice is regulated by Law No. 1.159 (1972). Notarial fees are set by Decree No. 2.065 (1972). The registration of aliens in municipal civil register is provided by a decree (No. 2.075, 1972).

Córdoba

Industrial promotion is planned (Decree No. 4.545, 1972). Litigation involving domestic help shall be subject to conciliation before it reaches courts (Decree No. 4.951, 1972). Mining procedures are contained in Law No. 5.436 (1972).

Mendoza

Industrial development is regulated by Decree No. 2.885 (1972).

Misiones

Fees for public services are set by Law No. 622 (1972).

Rio Negro

An emergency fund is provided for unemployed workers (Decree-Law No. 13 (1972)).

San Luis

A basic law on political parties was enacted (Law No. 3.481, 1972).

BARBADOS

The traditional differentiation between barristers and solicitors was eliminated by the Legal Profession Act (No. 35, 1972). The Registrar of the Supreme Court will keep a roll of attorneys-at-law (sec. 3). Admission requires qualifications stated in the second schedule; the admission of foreign attorneys, except those from the Caribbean area listed in the first schedule, depends on reciprocity (sec. 6 and 7). The unauthorized practice of law is punishable (sec. 12). Operation of bank accounts or clients' money is regulated (sec. 13 to 16). Educational requirements are stated in sec. 17, discipline in sec. 18, to be enforced by the Disciplinary Committee. Further provisions deal with fees, with

membership in the Bar Association which is required (art. 44), and a Compensation Fund, established to protect clients against damages due to dishonest attorneys (sec. 50). The Barrister Act of 1891, the Solicitors Act of 1896, and the Conveyancing and Legal Procedures Act of 1963 have been repealed (sixth schedule).

The External Loan Act (No. 20, 1972) authorizes the Government to conclude such loans subject to approval by the Legislature (art. 3).

The Medical Registration Act of 1971 (No. 10) was implemented by a regulation (S.I. 1972. No. 170). The Training Act (No. 25, 1972) provides scholarships and training courses for public employees, including teachers.

The Severance Payments Act of 1971 (4 *Law. Am.* 255 1972) was amended by an act (No. 27, 1972), affecting art. 3, 4, 6, 7, 9, 12, 14, 16 to 20, 22, 24 A, 25, 28 to 30, 37, 42, and 46. An order (S.I. 1973, No. 4) implemented sec. 24A(1), delegating to the National Insurance Board functions of the Minister. The Sugar Factory Severance Payment Act of 1965 (No. 5, 4 *Law. Am.* 225, 1972) was repealed (Act No. 34, 1972) except sec. 2.

Barbados acceded to the INTELSAT agreement (1971) and to the Convention to Eliminate Racial Discrimination (New York, 1965).

BRAZIL

A new Code of Civil Procedure was approved by Law No. 5.869 (1973), to enter into force January 1, 1974, but immediately applicable to all pending cases. The Code consists of five books dealing with the process of adjudication, of execution, of provisional measures, of special proceedings, and is followed by final and transitory provisions. The following innovations may be mentioned: elimination of certain appeals from trial courts (*agravo de petição* and *embargos infringentes in causas de alcada*), but appeals lie against all decisions terminating the case whether on the merits or not; admission of *agravo de instrumento* (interlocutory appeal) against decisions rendered during the proceedings; the judge must attempt to settle the case; only one expert may be appointed even though parties may have technical assistants of their own; summary proceedings are available for cases where the amount in issue is below twenty minimum salaries; immediate judgment in cases of default; abolition of hearings where facts are proven by documents; replacement

of action for enforcement of judgment with immediate execution; abolition of the required appeal in cases of non-contested separation (*desquite*); elimination of delays for the confirmation of the separation agreement when the court finds that the will to separate is firm; imposition of lawyers' fees amounting to 10% to 20% of the value of the judgment on the losing party; preference to creditors who promoted attachment; and extrajudicial proceedings where all heirs are of age. Until new additional laws are enacted some provisions of the prior acts continue in force, among them partition and installment sales of land; evictions; renewal of leases of commercial property; the Torrens system of land registration; annotations in the civil register; homestead; dissolution and liquidation of associations; requirements for marriage; examination of damages goods; seizure of vessels, averages, salvage and other maritime matters.

Art. 693 of the Civil Code (1916) dealing with emphyteusis, was amended by Law No. 5.827 (1972).

The effective date of the new Criminal Code (2 *Law. Am.* 204, 1970) was repeatedly postponed, most recently by Law No. 5.857 (1972) until January 1, 1974.

The Labor Code (Decree Law No. 5.452, 1943) was amended, art. 576 by Law No. 5.819 (1972) and art. 674 by Law No. 5.839 (1972).

Law No. 5.805 (1972) imposes upon publishers established in Brazil the obligation to accept texts recognized by the Brazilian Book Institute when publishing works within the public domain.

A national system of land registration (*cadastro rural*) has been modified by Law No. 5.868 (1972), amending Law No. 4.504 (1964). Provisions limiting splitting of lots have been replaced by new minimum fractions (art. 8).

Decree No. 71.265 (1972) provides incentives for the mining industry including primary transformation of minerals scarce in Brazil. Financing is available to enterprises working with a majority of domestic capital (art. 4).

A National Institute of Food and Nutrition (INSN) has been established by Law No. 5.829 (1972).

In aviation a number of enactments may be mentioned, among them Decree No. 71.329 (1972) establishing a Computer Center for Aviation; *Portaria* No. 143 (Ministry of Aviation, 1972) regarding minimum crews;

Law No. 5.862 (1972) providing for the establishment of the *Empresa Brasileira de Infra-Estrutura Aeroportuaria* (1972); also a regulation of exploration of land from air or space (*aerolevamento*).

Law No. 5.859 (1972) regulates employment of domestic help; it grants annual vacations after one year of service in the same family and extends social security, contributions to be paid by both parties, each 8% of the minimum salary.

The functions of the Commission for Trade with Eastern Europe (COLESTE), established by Decree No. 62.225 (1958), have been re-defined by Decree No. 71.509 (1972).

The organization, functions and jurisdiction of the Ministry of Foreign Relations is now regulated by Decree No. 71.534 (1972).

A decree (No. 71.835, 1973) authorizes universities to admit without examination and regardless of available space dependents of foreign diplomats and employees of international organizations, diplomatic missions and consular offices, subject to reciprocity.

Among treaties the following may be mentioned: with Colombia on health (Legislative Decree No. 65, 1972); with the Federal Republic of Germany on entry into Brazilian ports of nuclear vessels (Legislative Decree No. 72, 1972); with Belgium on double taxation avoidance (Legislative Decree No. 76, 1972); on prohibition of dealing in cultural assets, signed in 1970 (UNESCO, Legislative Decree No. 71, 1972), and on international responsibility for damages caused by space objects, signed in 1972 (Legislative Decree No. 77, 1972).

BRITISH WEST INDIES

Antigua

The Social Security Act of 1972 entered into force, providing benefits for old age, disability, maternity, survivors, occupational hazards and death. Contributions will consist of 5% of wages payable by the employer and 3% by the employee.

Bahamas

The Act to Establish a System of National Insurance (No. 21, 1972) shall insure employed (as defined in the first schedule), self-employed, and voluntary insured persons (sec. 11) by offering retirement, invalidity,

survivor's, sickness, maternity, and funeral (sec. 19, para. 1), also injury, disablement, and death benefits (sec. 19, para. 2). Under particular conditions assistance may be available in the form of old-age non-contributory pensions, invalidity, survivor's and sickness assistance (sec. 30). Contributions are paid, unless otherwise provided by regulations, by insurance stamps on insurance cards (sec. 17). The National Insurance Board administering the act is composed of eleven members appointed by the Minister: five at his discretion, three representing employers, and three representing the insured (second schedule). The Board acts through an executive director (sec. 35) and other personnel, among them inspectors (sec. 35). The funds flow into a National Insurance Fund (sec. 38) to be invested as provided in the third schedule.

Act. No. 22 of 1972 regulates the use of listening devices in private conversations as defined (sec. 2). The use of such device is an offense, except if done under authorization or unintentionally (sec. 3). Punishable also is any communication of knowledge derived from the use of such devices (sec. 4). Exceptions may be authorized by the Governor, the Minister, or the Commissioner of Police after consultation with the Attorney-General (sec. 5). No evidence relating to illegal listening is admissible in civil or criminal proceedings except by consent of the party to the conversation or in any prosecution under this act (sec. 10). Violations of the act are punishable by a fine up to \$2,000 or imprisonment not exceeding six months or both (sec. 9).

Among others, the following have been amended: the Public Holidays Act (No. 16, 1972); the Pension Act (No. 17, 1972); the Electricity Act (No. 19, 1972); the Tariff Act (No. 23, 1972); the Broadcasting and Television Commission Act (No. 24, 1972); the Out Islands Administration Act (No. 26, 1972), and the Road Traffic Act (No. 27, 1972).

An understanding with the United States regarding the use by Bahamian organizations, public and private, of certain islands at the United States Navy Base on the Great Exuna Islands (Nassau, 1972) entered into force.

The documents establishing independence will be summarized in the next issue.

St. Vincent

The Petroleum (Production) Regulations (No. 44, 1970) regarding licenses have been amended (No. 31, 1972).

According to the new marriage regulations (No. 35, 1972) applicants for a license must state that both parties intending marriage have resided in St. Vincent for at least five days prior to the date of application.

Act No. 13 (1972) regulates condominiums.

CANADA

A bill to establish controls over foreign investments is before Parliament. The proposed Foreign Investment Review Act deals with new foreign investments as well as with foreign takeovers of existing Canadian enterprises. Such acts will have to be submitted for approval to the Foreign Investment Review Agency acting directly under the Minister of Industry, Trade and Commerce. The Agency shall negotiate with foreign investors and check their investment plans against the following criteria: effect on Canadian economy; degree of Canadian participation in the particular enterprise and in any related part of the Canadian industry; effect on domestic productivity, efficiency and technology; effects on competition; and compatibility with domestic industrial and economic policies. The decision shall be subject to judicial review, except with regard to the points just listed, termed "significant benefit".

Among others, the following acts came into force: the Pest Control Products Act, and the St. Lawrence Ports Operation acts. Amended were the Shipping Act, the Unemployed Insurance Act, and the Pilotage Act.

Alberta

The Franchises Act (1972) was enacted; amended were the Beverage Container Act and the Companies Act.

British Columbia

The following enactments entered into force: the Tobacco Products Act; the Guaranteed Minimum Income Assistance Act; the Handicapped Persons Income Assistance Act; and the Legislative Procedures and Practice Inquiry Act. Amended were the Male Minimum Wage Act and the Mediation Commission Act.

Manitoba

The following acts took effect: the Mineral Tax Act; the Provincial Judges Act, and the Public Trustee Act; amended were among others, the Law Society Act; the Mines Act and the Municipal Act.

New Brunswick

The Community Planning Act and the Official Languages Act (1969) have been assented to.

Newfoundland

Among others, the following acts came into force: the Adoption of Children Act; the Child Welfare Act; the Family Guidance Association Act; the Registration of Partnerships Act; the Community Council Act; the Local Government Act, the Children of Unmarried Parents Act. Amended were the Evidence Act; the Direct Sellers Act; the Attachment of Wages Act; the Summary Jurisdiction Act and the Company Act.

Nova Scotia

A number of acts have been amended, among them the Forest Improvement Act, and the Trust Companies Act.

Ontario

The Police Act (1972) was amended.

Quebec

The following acts took effect, among others: the Public Health Protection Act; the General Investment Corporation of Quebec Act; and the Environment Quality Act.

Saskatchewan

Enacted was the Industry and Commerce Development Act; amended the Department of Education Act.

CHILE

The Law on Control of Arms and Explosives (1972, 4 *Law. Am.* 57, 1973) was implemented by an extensive regulation issued by the Ministry of War (No. 50, 1973). Subsequent corrections (D.O. March 12, 1973) contain as Annex No. 1 extensive additions to penal provisions, to be inserted in continuation of art. 98 and consisting of art. 8 through 16. These provisions deal, among others, with penalties for organizing, supporting, instructing and activities of "private *milicias*, combat groups

or parties militarily organized and armed" with the implements controlled by this law. In case such acts are committed by members of the armed forces, the penalty shall be doubled; warehousing of these implements by organized groups is punishable (art. 8). Attacks on the armed forces while maintaining internal order shall be punished under the Code of Military Justice (art. 15).

An executive decree (No. 1.013, D.O. January 26, 1973) regulates the *Superintendencia* designed to administer, coordinate and control electrical and gas services and telecommunications (SEGTEL). It is headed by an *ingeniero superintendente* appointed by the President (art. 6), assisted by an administrative council of five members appointed by the President and five representatives of workers elected according to a regulation (art. 9). A special office will be in charge of planning (art. 11) and another of legal work (art. 12). There will be three technical divisions (art. 13) and regional offices (art. 21).

The price for wheat and flour has been fixed for 1973 by Decrees No. 15 and 16 (1973).

Decree No. 41 (D.O. January 31, 1973) created a National Council and a National Secretariat in charge of distribution and marketing of essential articles and services, in cooperation with administrative authorities. It will be attached to the Ministry of Economic Development and Reconstruction.

The *Banco Central de Chile* (D. O. December 30, 1972) has set maximum interest rates for contractual obligations at 20% over the current interest rate charged by the *Banco Central*, a rate applicable also to banking operations. For transactions after January 1, 1973, the rate is fixed at 30% per annum.

Law No. 17.907 (1973) valorized pensions.

The President is authorized (Law No. 17.882, 1973) to amend the decree with force of law (No. 1, 1971), containing the statute of the University of Chile approved by the advisory plebiscite on April 27, 1972.

The *Superintendencia* for Santiago promulgated a decree (January 8, 1973) prohibiting collective granting of vacations to the personnel of commercial enterprises. These enterprises must remain open during the forty-four hours of weekly work and vacations given in turns.

Decree No. 409 (D. O. February 24, 1973) requires that public enterprises as well as those with State participation have their transporta-

tion needs met by the State enterprises (art. 3), with some exceptions (art. 3).

A regulation for telecommunication services in aviation was promulgated (Decree No. 76, 1973).

Contracts with the Telephone Company of Chile, approved by Law No. 4.791, have been terminated by Law No. 17.910 (1973) "in the national interest". Nevertheless, the Company will have to continue providing services (art. 3); employment contracts continue in force (art. 4).

Among treaties ratified the following may be mentioned: with Colombia on technical and scientific cooperation, signed at Bogotá in 1971 (Decree No. 548, 1972); the Convention for the Protection of *Vicuña* with Bolivia and Perú, signed at La Paz in 1969 (Decree No. 63, 1973); for credits with Spain (Decree No. 2.109, 1973); with Argentina on judicial solution of controversies accepting the jurisdiction of the International Court of Justice (Decree No. 676, 1973), and with the Soviet Union regarding mutual commercial representations pursuant to the agreement in Moscow in 1971 (Decree No. 663, 1972). Also ratified have been multilateral conventions, among them, the convention regarding the transit traffic of countries without coasts, signed at New York in 1965 (Decree No. 594, 1972); amendments to the convention on international civil aviation (1944) signed at New York (1917); the rules and methods in cases of collision and sabotage, prepared by I.C.A.O. as Annex No. 12 to the Convention on International Civil Aviation (Decree No. 18, 1973), and the Convention for the Protection of Literary and Artistic Works signed at Bern (1886), as amended in Brussels (1948), by Decree No. 121 (D. O. March 20, 1973).

The decree establishing commercial monopoly on the export of copper (5 *Law. Am.* 53, 1973) appears translated in 12 *Int'l. Leg. Mat.* 98 (1973); also the decision by the French court in the *Kennecot* case (at 182).

COLOMBIA

Decree No. 98 (1973) established five regional funds for *capitalización social* to mobilize domestic funds for new productive activities according to the national program of economic development, to guarantee to workers prompt payment of severance pay, and to further the "par-

ticipation of workers in the industrial development, in the ownership and profits of enterprises as well as in the administration of the funds set up by the decree" (art. 3). Funds shall be supplied primarily from accounts held by employers and earmarked for future payments of severance pay, (art. 4), due to the workers according to the length of employment (Decree No. 2.351, 1965). Such accounts shall be liquidated by the employers and the proceeds transferred in five equal annual installments to regional funds (art. 7). These funds will be invested according to directives in art. 9 and the income distributed according to art. 14. The funds will be administered by boards of seven members of whom three will be elected by workers participating in the fund, three by the affiliated employers, and one appointed by the government (art. 18). A *Consejo Nacional Coordinador* shall establish investment policies and supervise activities of the several funds (art. 28). Accounts of individual workers will carry 9% interest (art. 29). Under particular circumstances, the participating workers may demand payment before the time when the severance pay would become due (art. 32 to 41). The decree was implemented by a resolution (No. 295, 1973) issued by the Ministry of Labor and Social Security.

Discrimination in employment is prohibited by Law No. 13 (1972). Applications for public or private employment may not contain requests for information regarding the civil status of the applicant, the number of children, or the religious or political affiliations (art. 1). Employer's agents who investigate these matters shall be liable to a fine amounting to 10% of their monthly salary (art. 2). The employer (in this respect semi-official or private) who dismisses a worker for reasons listed in art. 1, shall — in addition to liabilities under the applicable labor laws — be fined similarly (art. 3). A public, semipublic or private employer who discriminates because of age in regard to workers between 30 and 50 years of age, shall also be fined (art. 4).

The allocation of resources of the *Fondo Nacional de Ahorro* is regulated by Decree No. 97 (1973).

The *Superintendencia de Cooperativas* has established rules for the administration of employee pension funds (Resolution No. 1.618, 1972).

New directives have been promulgated by the Ministry of Economic Development (Decree No. 2.165, 1972) for investments by insurance and finance companies, and banks.

Issuance of bonds by business associations in the private sector require approval by the *Superintendencia de Sociedades* (Decree No. 1998, 1971).

The decree contains an extensive and detailed implementation of the respective provisions of the Commercial Code (3 *Law Am.* 528, 1972).

A new regulation regarding purchases by administrative authorities, by industrial and commercial enterprises of the State and enterprises within the *economía mixta* has been issued by the Ministry of Economic Development (Decree No. 2.248, 1972).

The Mining Statute (Decree No. 1.275, 1970, 2 *Law Am.* 210, 1970) has been amended by Decree No. 2.181 (1972).

A new regulation for the *Fondo de Promoción de Exportaciones* has been issued (Decree No. 2.103, 1972).

Pensions within the private sector have been adjusted by Law No. 10 (1972).

Colombia has ratified the convention with Chile, signed at Santiago in 1970, regarding avoidance of double taxation of maritime and aviation enterprises (Law No. 21, 1972). Pursuant to the Cartagena Agreement, Colombia has modified its tariffs by Decree No. 2.525 (1972). Also ratified were the Tokyo (1963) and the Hague (1970) conventions (Law No. 14, 1972) and implemented by changes in the Criminal Code (Decree No. 2.300, 1936), adding art. 275 bis, ter, and cuater. The general provisions of the Code also have been implemented by the addition of art. 7 bis, complying with art. 4 (b) and (c) of the Hague Convention.

COSTA RICA

A Legislative Commission was established by Law No. 5.157 (1972), consisting of five members of the Legislature appointed by its president and of representatives of the Supreme Court, of the Attorney General's office and the *Contraloría General*, of the Faculty of Law and of the Costa Rican Bar. The Commission shall supervise the collection and organization of the laws in force (art. 2) and publish it as a compilation (5 *Law Am.* 240, 1973). The future compilation will be considered authentic except when there is proof to the contrary (art. 4).

The Code of Civil Procedure (Law No. 2.859, 1961) was amended by Law No. 5.016 (1972) regarding attorneys' and other fees (art. 1040 to 1045); furthermore, art. 473 was amended by Law No. 5.114 (1972), and art. 485 by Law No. 5.115 (1972).

The status of judicial personnel was regulated by Law No. 5.155 (1973). It provides requirements for entering the judicial career (art. 18) and rules for the selection of the personnel (art. 23) through competition (art. 18 to 22); a trial period, advancements and transfers (art. 8); rights and duties, pensions (ch. 11), salaries (ch. 12) and the appointment of administrative personnel (ch. 13). In order to improve the judiciary, a *Consejo de Personal* and a department for personnel have been set up.

Law No. 5.176 (1973) empowers the government, as well as municipalities and related institutions to further, within their budgetary means, literature, national arts and monuments, acquire archeological specimens and works of national artists as well as to publish works in the *Editorial de Costa Rica* (art. 1).

Law No. 5.167 (1973) provides for educational loans (FONAPRE), funds to be provided by 5% of profits of all commercial banks and a subsidy from the State. Loans shall be granted for studies necessary for an integrated development of the Republic (art. 12), for studies in the country as well as postgraduate work abroad. Cooperativism shall become a required subject in all schools (Law No. 5.184, 1973); an intensive campaign in favor of the concept will be undertaken in cultural associations, labor unions and professional organizations (art. 5). Starting in 1974, saving and credit cooperatives shall be organized in all educational institutions to familiarize students with the practical aspects of these entities (art. 6).

Titles to lands belonging to the national reserve shall be transferred (Law No. 5.064, 1972) through the Institute of Land and Colonization in areas where at least 20% of farmers lack a properly inscribed title, provided their holdings are less than 100 hectares of agricultural land or 300 hectares of pasture (art. 1).

Three professions have recently been affected by legislation. The College of Pharmacists (Law No. 5.142, 1972), amending Law No. 15 (1941), has been reorganized and the requirements for admission revised. In regard to aliens, general requirements must be met as well as reciprocity. Exceptions apply to aliens married to Costa Ricans, residing in the country. The status of public accountants is now regulated by Law No. 5.164 (1973) amending Law No. 1.038 (1947). Aliens may exercise this profession upon meeting all general requirements and a five year residence period, subject to reciprocity; they also must obtain Costa Ri-

can nationality within two years. Art. 24 of the Organic Law of Newspapermen (Law No. 4.4420, 1964) was amended by Law No. 5.050 (1972).

Regarding exports, two important enactments shall be mentioned. Export of meat is regulated by Law No. 5.135 (1972) and controlled by the *Consejo Nacional de Producción* assisted by a *Comisión Asesora del Mercado de Carnes* (art. 2). Exporters file their applications for export permits with the *Consejo* (art. 6), the price depending on free negotiations; however, quantities are subject to domestic needs (art. 7), by setting aside quotas needed locally (art. 9). Violations are punishable (art. II). In case scarcity should develop on the domestic market, the *Consejo* will increase the domestic quota; in extreme situations, exports will be halted (art. 13).

Law No. 5.162 (1972) is designed to support non-traditional exports (traditional exports are coffee, bananas, cacao, sugar, tobacco, meat, wood, etc.). Exporters will be entitled to bearer certificates (CAT) in the amount of 15% of the export value (art. 6). Issued by the Central Bank they are not subject to taxation nor carrying interest and may be used for the payment of any kind of taxes. The same law provides for free provisional importation of goods (raw materials, half-manufactured products, products to be inserted or assembled, packaging and others) to remain in the country up to 180 days and then re-exported as finished products.

In the area of transportation, the General Law on Public Highways should be mentioned (Law No. 5.060, 1972), amended by Law No. 5.113 (1972). The General Railways Law (Law No. 5.066, 1972) provides, among others, that railway enterprises must be constituted according to Costa Rican law, be domiciled there and have nominative shares (art. 15). In case the board of directors has its seat abroad, the company must maintain a local representative with unlimited powers (art. 16); all bookkeeping must also be done locally (art. 17). No foreign state may be associated nor hold shares in such companies (art. 18, para. 2).

A new General Law of Civil Aviation was enacted (*Gaceta* No. 37, *alcance* No. 19, February 22, 1973), to replace the Law No. 762 (1949), but was vetoed by the President.

Executive Decree No. 2.487 H (1962) established a register of assets belonging to the State.

Law No. 5.052 (1972) amended provisions dealing with the enforcement of judgments rendered against the State.

The law regulating admission of aliens with fixed income (No. 4.812, 1971, 4 *Law. Am.* 269, 1972) was implemented by a decree (No. 2.545-H, 1972).

A reduction of prison terms is available under Law No. 5.151 (1972) for working inmates counting two working days for one day of imprisonment, subject to good behavior and progressing social adjustment. Another law provides that the *Caja Costarricense de Seguro* may intervene in criminal proceedings whenever the insured appears as victim (Law No. 5.126, 1972).

Costa Rica has ratified amendments to the Geneva Convention on Narcotics (1961, 1972) by Law No. 5.168 (1973); the Tokyo Convention on Criminal Acts on Board Aircraft (Law No. 5.067, 1972), and the Convention on Economic, Cultural, Technical and Scientific Cooperation with Israel (Law No. 5.175, 1973).

ECUADOR

A Commission for Legislation was created (*Decreto Supremo* No. 1.395-A, 1972) to prepare drafts for laws and necessary reforms to be submitted to the President for approval.

The law regulating special tribunals (4 *Law. Am.* 497, 1972) was amended (D. S. No. 1.4445, 1972).

In administrative matters the following enactments should be listed. Two Ministries have been established: the Ministry of Agriculture and Livestock Industry and the Ministry of Industries, Commerce and Integration (D. S. No. 162, 1973). The National Secretariat of Information has been regulated by Supreme Decree No. 70-a (1973). The Galápagos Islands became a province (D. S. No. 165, 1973). Also promulgated was a supreme decree regulating the national civil police force (No. 294, 1973).

The law on waters was implemented by a regulation (D. S. No. 40, 1973).

Oil concessions in the Gulf of Guayaquil have been cancelled (D. S. No. 1.391, 1972).

Municipalities, the Housing Bank and Mutual Associations have been authorized to enter into agreements for the construction of housing in the social interest (D. S. No. 121, 1973).

The Government will, through the Ministry of Education, provide free school supplies for the first six grades of elementary education (D. S. No. 159, 1973).

Basic studies in any country which signed the Convenio Andres Bello (D. S. No. 286, 1973) will be given credit.

A *Dirección General de Desarrollo Marítimo* was established (D. S. No. 112, 1973) to coordinate and regulate work of administrative agencies engaged in this area, i.e., the *Dirección de la Marina Mercante y del Litoral*, the *Instituto Oceanográfico de la Armada* and the *Empresa de Transportes Navieros* (TRANSHAVE), under the guidance of the *Comandancia General de Marina*.

A Committee for Foreign Credit was created (D. S. No. 111, 1973) to formulate, coordinate and execute policies of foreign credits under the chairmanship of the Minister of Finance, in cooperation with the Minister of Foreign Relations, the President of the Planning Council and the manager of the Central Bank, in addition to the Minister competent for the particular area.

A Law on National Culture was enacted (D. S. No. 184, 1973). The use of Spanish or indigenous terms for the identification of things, establishments and associations became compulsory (D. S. No. 1.392, 1972).

In taxation the Income Tax Law was amended (D. S. No. 158, 1973); stamp and court fees have been repealed for labor, agrarian, rent, support, guardianship and certain criminal cases (D. S. No. 163, 1973).

Participation in tax revenues was introduced by Supreme Decree No. 279 (1973).

In international relations a number of arrangements with neighbor-states is noted: a mixed commission was set up with Bolivia (*Registro Oficial* No. 202, 1972); also duty free or privileged commerce instituted (R. O. No. 204, 1972 and No. 143, 1973). With Peru, an arrangement for crossing the boundary was concluded (R. O. No. 208, 1972). The Convention establishing the International Union for the Conservation of Nature and Natural Resources was ratified (R. O. No. 213, 1972). Further, a convention on military technical cooperation was concluded with France (R. O. No. 227, 1973); with Colombia a convention for

technical and scientific cooperation (R. O. No. 229, 1973), with Argentina on agricultural education (R. O. No. 233 1973), and with the Republic of China on the export of bananas (R. O. No. 231, 1973).

EL SALVADOR

The Labor Code, enacted in 1972 (4 *Law. Am.* 66, 1972) was amended by Decree No. 182 (1972). In the first place, difficulties arose regarding coverage by the Code of autonomous and semiautonomous public institutions. In this respect, art. 2 now provides that the Code applies to such contracts but not when they are based on an administrative act, with salaries regulated by the *Ley de Salarios* charged to the general budget or special funds of the institutions or municipal budgets. In any case, employees and workers of official autonomous and semiautonomous institutions have the right to organize and bargain collectively. Stamp tax privileges provided in art. 12 have been restricted. Employment contracts considered permanent are, in fact, entered for an indefinite period except in special cases (art. 250). Employers may hire temporary workers in order to fill vacancies; such workers acquire all rights of permanent workers, except tenure (art. 27). Pregnant women may not be used for strenuous work (art. 110). Final provisions correct errors in the original text (art. 192, 226 and 632).

The provisions contained in the Commercial Code (1970, 3 *Law. Am.* 60, 535, 1971) regarding commercial agents (*agentes-representantes*) have been amended by Decree No. 247 (1973). Art. 392 defines agents, distinguishing those who do not act on their own account and their liability. Agents may represent a number of principals as long as their commercial activities are different (art. 393). Conditions of agency may be changed if terminated as long as they do not violate the basic contract (art. 394). The agent is entitled to a proportionate commission which accrues to him in case of exclusive dealership even if the deal has been made by the principal (art. 395). Offers shall be forwarded without delay (art. 396). The arrangement may be terminated on a three month notice (art. 397). In case of an illegal termination, namely without just reason (art. 398), the agent has claims listed in art. 397 (1) to (5). Litigations belong to the court of the agent's domicile (art. 399 A). Whenever the principal is an alien and owes the agent money under a final judgment, the principal will be prevented from importing goods or offer services until he complies with the judgment (art. 399 B).

The law for the regulation of farm leases enacted in 1972 (4 *Law. Am.* 498, 1972) was extended through March 31, 1974, in view of the fact that the circumstances which prompted the enactment still exist (Decree No. 269, 1973).

The law of the commercial register (Decree No. 271, 1973) has implemented provisions of the Commercial Code (1970) by regulating its function, organization, and types of inscriptions as well as applicable procedures and fees. Among items subject to inscription are: licenses of individual and business associations and the charters of the latter; various types of powers; installment sales; bond issues; transfers of enterprises or vessels and interests in them; chattel mortgages; trusts (*fideicomisos*); certificates of participation; charters of foreign business associations and administrative permits to operate locally; individual enterprises with limited liability (4 *Law. Am.* 412, 1972); name of the firm; trade marks, patents and copyrights and their transfers; transfers and leases of commercial enterprises, and others (art. 13). Contents of the register are considered, in principle, to be true; in any case, third parties' reliance in good faith is protected. Unregistered documents subject to the duty of registration do not take effect in relation to third persons (art. 5), nor will they be admitted in evidence in courts or before administrative authorities (art. 85). There will be one commercial register in the Capital, with additional offices outside, if necessary (art. 6).

A new Criminal Code was adopted, effective on January 1, 1974. It will be summarized in the next issue. A draft for a Code of Criminal Procedure is under study.

El Salvador ratified the Hague Convention on Seizures of Aircraft (1970).

FRENCH ANTILLES AND GUIANA

Decree No. 72-1049 (1972) amended Decree No. 62-138 (1962) regarding courts *de grande instance* in Martinique, Guadeloupe and Guiana. Law No. 73-1 (1973) extended laws on notaries (enacted in year XI) and on *huissiers* (1945) as well as on certain public officials (1955) to overseas departments.

Law No. 73-42 (1973) amended the law on French nationality; its provisions became applicable in overseas territories (art. 1, 21, 25, 30).

Law No. 72-1226 (1972) simplifying the Code of Criminal Procedure applies to overseas departments (art. 69), art. 1 and 2 with reservations.

The application of the maximum annual work hours in agriculture (art. 994 of the Labor Code) was regulated by Decree No. 72-922 (1972); in overseas departments, the control is vested in departmental labor directors (art. 8); Decree No. 72-985 (1972) amended various provisions of the Code; it repealed Decree No. 68-143 (1968) on health services and partially Law No. 54-13 (1954) dealing with employment of aliens. Further provisions in the Code have been amended by Laws No. 72-1168, No. 72-1169 (1972); the Code is also being recodified. *Arrêté* (December 13, 1972) increased certain risks in professional accidents and illnesses for overseas departments. Compulsory insurance against accidents and professional sickness of agricultural workers was introduced by Law No. 72-965 (1972) but does not apply to overseas departments (art. 18).

The Aviation Code (pt. 1) was amended by Law No. 72-1090 (1972), regarding art. L. 142-1, L.600-5, L.321-2; some penal provisions have been amended for overseas departments (L.150-12, L.150-17, and L.427-3). Amendments to the same Code dealing with policing and protecting airports (art. 213, 282, Law No. 73-10, 1973) apply also to overseas departments and territories (art. 5 and 6). The Code took effect in overseas territories (art. 5, 11).

Decree No. 73-78 (1973) regulating agricultural chambers shall apply to overseas departments (art. 69) by order of the *Conseil d'Etat*, providing for necessary adaptations; until then, present regulations obtain. Decree No. 73-89 (1973) extends metropolitan regulations on cattle breeding to overseas territories.

Allowances to handicapped adults have been raised by Decree No. 72-1.228 (1972); also minimum wages (*Arrêté*, October 31, 1972). Financing of sickness, invalidity and maternity benefits for farmers and members of their families in overseas departments is regulated by Decree No. 73-83 (1973).

A directive (December 23, 1972) makes Decree No. 67-27 (1967) regarding reserves required in financial institutions applicable to overseas departments.

The Convention of the European Economic Community on Judicial Jurisdiction and Enforcement of Civil and Commercial Decisions (Brus-

sels, 1968), ratified by Decree No. 73-63 (1973), applies also to overseas departments and territories (art. 60).

The Electoral Code (art. 85, 333, and 342) was amended by Law No. 73-2 (1973).

The French franc was introduced in Saint Pierre and Miquelon (Decree No. 72-1015, 1972).

GUATEMALA

The law on the judiciary (Decree No. 1.762, as amended by Decree No. 74, 1970, 3 *Law. Am.* 296, 1971) was again amended (Art. 142) by Decree No. 78 (1972). Amnesty was granted regarding certain rulings by the *Tribunal de Cuentas* (Decree No. 1-73, 1973).

Civil service salaries have been regulated by Decree No. 11-73 (1973).

Land reform in Petén conducted under Legislative Decree No. 38 (1972), as amended by Decree No. 48-72 (5 *Law. Am.* 71, 1973), has been implemented by a regulation.

Export of cotton seeds and their products will be controlled (*Acuerdo*, January 18, 1973).

Acuerdo No. 8 (1973) regulates registration and control of foods.

Another *Acuerdo* No. 82, (1973) established a *Comisión Coordinadora Petrolera* to study oil resources by the State; under *Acuerdo* of March 8, 1973, the State will take over oil resources in zones designated by the Ministry of Economy.

Decree No. 3-73 (1973) replacing Decree No. 362, has reorganized the administration of medical stamps in order to make their use more efficient. Under the new regime these stamps will have to be attached by members of the College of Physicians and Surgeons on all certificates they issue. The funds collected will be used for "socio-economic benefits" of its members (Art. 1). The necessary regulations will have to be approved by the University of San Marcos (Art. 5). Benefits from this fund may not be attached, except for alimony (Art. 6).

Decree No. 82-72 (1972) approved a loan from the International Coffee Organization from its fund for diversification (art. 1).

An agreement on technical agricultural cooperation with the Republic of China was approved (Decree No. 69-72, 1972); also the Vienna Convention on Consular Relations of 1963 (Decree No. 75-72, 1972).

HONDURAS

Under Decree-Law No. 8 (December 26, 1972) the new government has inaugurated a new phase of the agrarian reform aimed at incorporating peasants into the process of national development (Art. 1). Policies will be set by the *Jefe de Estado* assisted by a National Agrarian Council, and executed by the *Instituto Nacional de Reforma Agraria* (Art. 2). The latter shall take necessary measures - within the next two years - to provide peasants with sufficient land (Art. 3). In addition to measures already available under the agrarian reform law, the Institute may: temporarily grant peasants the use of public and comunal lands; request owners to voluntarily, temporarily and free of charge allow such use of their lands; lease lands belonging to owners or possessors which, in the opinion of the Institute, are not properly cultivated. In these instances the Institute will pay as annual rent amounts not higher than 1% of the tax value of the land. The Institute may also guarantee to peasants the use of land which they work under any kind of contract; in case the rent is higher than the amount fixed above, the Institute may renegotiate the arrangement. Finally, the Institute may terminate such arrangements whenever the land involved was not improved as agreed in the arrangement (Art. 4). Property of land properly worked in compliance with its social function shall be protected by the State (Art. 6). Peasants, organized or not, may not occupy public, comunal or private lands except under conditions set by the Institute (Art. 7). The State will provide peasants with necessary financial means from various available funds (Art. 8). The government and its subordinate agencies will support this emergency program (Art. 9). Against the decisions by the Institute *amparo* is available to the Supreme Court of Justice; however, it does not suspend the measures ordered (Art. 10).

Decree No. 10 (December 28, 1972) has established the *Instituto Nacional de Formación Profesional* (INFOP) designed to contribute toward increased productivity through a system of professional education of all segments of the economy, in accordance with development plans (Art. 2). The Institute will undertake surveys of human resources in need of professional competency; will undertake programs for such education, offer technical assistance, cooperate in adult reading courses

and in placement and employment (Art. 5). The organization of the Institute (Art. 6 to 14), its *Consejo Directivo* (Art. 15) the powers of the executive director (Art. 16), funding and pertinent controls (Art. 19 to 31) conclude the decree.

JAMAICA

The new Radio and Telegraph Control Act (No. 20, 1972) provides, among others, for a Radio and Telegraph Control Advisory Committee to assist the Minister in matters connected with radio and telegraph. For such installations a license is required (art. 5), subject to administrative regulations (art. 8). Control shall be exercised by inspectors (art. 11) with power of search and entry under a warrant granted by the justice of the peace (art. 12). Misleading messages, interceptions and disclosures are punishable (art. 13). In an emergency the government may take over such stations (art. 16).

The Medical Act (No. 22, 1972) provides for a Council (art. 4) to register medical practitioners, appoint examiners and ensure proper standards of the profession. Admitted practitioners are registered (sec. 6 to 9). The Council may, on specific grounds (sec. 10), suspend or otherwise discipline practitioners who retain the right of appeal a Medical Appeals Tribunal (sec. 11, 12). Certain offenses are punishable by the resident magistrate (sec. 13).

Amended were the Tourist Board Act (No. 19, 1972); the Road Traffic Act (No. 21, 1973); and the Tax Act (No. 23, 1972), abolishing the surtax (sec. 3) and amending sec. 12, 18, 19 E, 65, and 73 of the principal law (No. 59, 1954).

Jamaica has ratified the international Convention on the Elimination of all Forms of Racial Discrimination, signed at New York in 1965, and the INTELSAT agreement (1972); Jamaica also joined the Interamerican Institute of Agricultural Sciences.

MEXICO

The Law on the Register of Transfers of Technology and the Use and Exploitation of Patents and Trademarks (D.O. December 30, 1972) established a national register for such inscriptions to be administered by the Secretariat of Industry and Commerce, with a Council of Science and

Technology as an advisory body (art. 1). Subject to registry are concessions for the use and for the exploitation of trademarks and patents, including improvements, also of models and designs; for supplying technical know-how and basic engineering regarding installations and products, technical assistance, and administrative services and management of enterprises (art. 2). These documents must be filed by Mexicans or by Mexican legal entities, by aliens residing in Mexico, by foreign legal entities and foreign agencies and subsidiaries established in Mexico (art. 3). Registration may be denied for the following reasons: if the act involves technology freely available in the country; if the price is not commensurate with the acquired technology or causes undue burden on the national economy; or the agreement contains clauses allowing the supplier to manage or intervene in the management by the acquirer; or the acquirer is bound to assign the supplier patents, trademarks, innovations or improvements; when the agreement imposes limitations on research or technological development of the acquirer; or the latter is bound to acquire equipment, tools, spare parts or raw materials exclusively from the supplier; or the export of goods or services involved is prohibited or restricted; or the acquirer is bound to sell exclusively to the supplier; or the volume of production should be limited to prices fixed; or the acquirer has to sell or to be represented only through or by the supplier of technology; also in cases of excessive duration of such agreements; and finally whenever litigations arising from such agreements are to be submitted to foreign courts (art. 7). The following acts do not come within the coverage of this law: the entry of foreign technicians to install plants or machinery or to do repair work; the supply of designs, catalogues and similar assistance; assistance in repair or in emergencies; instruction or training and the operation of *empresas maquilladoras* (art. 9). Documents subject to registration (art. 2) which have not been registered remain without legal effect and consequently have no value in the courts; this applies also to registered acts which have been cancelled (art. 6). Parties which consider themselves to be (unjustly) affected by rulings of the Secretariat of Industry and Commerce may apply for reconsideration (art. 14).

The Law to Promote Mexican Investments and Regulate Foreign Investment (D.O. March 9, 1973, 5 *Law. Am.* 169, 1973) is designed to stimulate "a just and balanced development and strengthen the economic independence of the country" (art. 1). Foreign investments are defined (art. 2) as those made by foreign legal entities, aliens, foreign economic units without legal personality, and Mexican enterprises with majority

foreign capital or in which aliens, by whatever means, control the management. Foreign investments in the capital of the enterprises, in the acquisition of goods, and in operations covered by this particular law are also subject to its provisions. The law makes the Calvo Clause applicable to "assets of any kind" acquired by aliens in Mexico and in regard to these aliens agree to be treated as nationals and not to invoke diplomatic protection of their governments. Any violation of this obligation results in forfeiture of assets to the State (art. 2, para. 2). Economic resources and activities are, for the purposes of this law, divided into three classes; the first are those reserved exclusively to the State; the second are those reserved exclusively to Mexican and Mexican associations which exclude aliens from membership the third includes activities and enterprises which allow minority participation by foreign investors. The first group comprises activities relating to oil and other hydrocarbons; basic oil transformation; mining as determined by the respective law; electricity; railways; telegraph and radiotelegraphy, and others designated by law (art. 4, para. 1). To the second belong the following activities; radio and television; urban and interurban bus transportation as well as motor transportation of federal highways; air and maritime transportation; exploitation of forests; distribution of gas and other activities designated by law and regulations (art. 4, para. 2). The third group admitting foreign minority investments includes: exploitation and use of mineral resources, with foreign investments limited to 49 through 34% depending on the type of the concession; secondary oil products; manufacture of component parts for automobiles, and other activities designated by pertinent laws and regulations. Aliens with the status of immigrants are granted national treatment except when tied in with "centers of economic decision-making abroad." However, this privilege does not apply to areas and activities reserved exclusively to Mexicans or Mexican associations which exclude aliens or when the matter is regulated specifically (art. 6). Aliens, foreign associations and Mexican associations which do not exclude aliens, cannot acquire direct ownership of land or waters within 100 kilometers from the frontier and 50 kilometers from the coast, nor may foreign associations acquire ownership of land or waters or obtain concession for their exploitation. Only individual aliens may acquire such interests subject to a permit from the Secretariat of Foreign Relations (art. 7). The law requires a permit by the Secretariat in charge of the respective branch of the economy, whenever any party listed in art. 2 should acquire or lease 25% or more of the capital or more than 49% of fixed assets of an enterprise (art. 8). Similar authorization is required for acts leading to foreign acquisition of an enterprise, or for acts through

which foreign investment may control the management of the enterprise (art. 8, para. 2). An interministerial commission (*Comisión Nacional de Inversiones Extranjeras*) will provide general directives for the administration of the law (art. 12). Particular applications for investments by foreign interests will be handled by the pertinent Secretariat (art. 15), taking into account its effect on domestic investment, domestic enterprises, balance of payments, exports, employment, technicians and management personnel, components of finished products, foreign financing investment sources, economic integration, development of under developed zones, monopolistic practices, capital structures, technological contributions, prices and quality of products, regard for social and cultural values, importance of activity vis-à-vis the national economy, the identification of the foreign investor with the interests of Mexico and his tie-in with foreign decision making entities in the economic area, and finally the extent to which the investment contributes and identifies with national development policies (art. 13). Chapter IV of the law, in essence, adopted arrangements available for trusts of land along the frontier and the coast (art. 18 to 21, 3 *Law. Am.* 549, 1971). A national register of foreign investments will be established in the Secretariat of Industry and Commerce to include a list of aliens and foreign entities whose investments are subject to this law; of Mexican associations with foreign investments in the sense of art. 2; of trusts with foreign participation; of shares (*títulos*) representative of capital owned by aliens or used as guarantees, and of the resolutions issued by the National Commission (art. 23). Shares representing the capital of the enterprises will be nominative when so specified by particular laws and regulation, or by resolution of the National Commission; also, when owned by persons listed in art. 2. Bearer shares may not be acquired by aliens without approval of the National Commission; in any case, they will be converted into nominative shares (art. 25).

A new election law was promulgated (D.O. January 5, 1973), replacing the law enacted in 1951.

A number of federal enactments have been amended, among them the federal law regarding workers in state employment (D.O. December 28, 1972); the Institute of Security and Social Services for the same; the law of social security for the armed forces (*id.*); the law of general means of transportation (D.O. December 30, 1972), and the law on industrial property (D.O. January 4, 1973).

The Civil Code for the federal district and territories was amended (D.O. January 4, 1973) in art. 951 dealing with condominium type

property. A new law regulating condominium property in the federal district and territories was enacted (D.O. December 28, 1972) replacing the previous law enacted in 1954.

Mexico adopted the agreement on INTELSAT and the annex, signed at Washington in 1971 (D.O. December 11, 1972), and aviation conventions with the Netherlands signed at Mexico in 1971 (D.O. December 26, 1972) and with Japan, signed at Tokyo in 1972 (D.O. December 26, 1972).

NICARAGUA

Following the earthquake on December 23, 1972, a state of emergency was decreed and a number of laws passed to alleviate the situation, among them, a law imposing a 10% export tax on value FOB Nicaraguan port on main exports, among such as cotton, coffee, rice, wood and others. This tax will be paid by the exporter and consequently affect the price of exported goods. Another decree prohibits the administration to grant exemptions from export tariffs. Rents have been frozen.

A new Ministry of National Reconstruction has been established outranking all others, including the Presidency.

The work week was lengthened from 40 to 60 hours and compulsory days of rest restricted to five.

Finally, a new building law was enacted, modelled after a law in force in California, applicable to the recent earthquake in zone 3.

PARAGUAY

Law No. 388 (1972) regulates employment in agriculture, animal husbandry, forestry and similar occupations.

Law No. 357 (1972) is designed to combat traffic in narcotics and also provides aid to addicts. An agreement with the United States, dated October 26, 1972, established cooperation in the fight against traffic in narcotics.

Decree No. 28.482 of the Ministry of Public Works and Communications (1972) provides that engineering and construction work, both public and private, shall be performed by domestic enterprises,

A regulation to the Law establishing the *Banco de Ahorro y Préstamo para la Vivienda* (No. 325) and the related national plan was issued by decree (Ministry of Finance, No. 29.721, 1972); also implemented by a regulation (Ministry of Agriculture, No. 27.384, 1972) was the law on cooperatives (No. 349, 1972). The same Ministry issued a decree (No. 28.657, 1972) prohibiting certain insecticides to be used on tobacco.

Among treaties, the agreement with Switzerland (Law No. 358, 1972) regarding a gift of wheat in connection with the technical cooperation between the two countries is worthy of mention.

PERU

A law to "establish an agrarian order which guarantees social justice and increases production and productivity" by decentralizing public services in this area and bringing these closer to the people was enacted. This Organic Law of the Agrarian Sector (Decree-Law No. 19.608, 1972) deals mainly with the organization of the Ministry and with decentralized organizations, namely the Public Enterprise of Agrarian Services, the Institute of Agro-Industrial Research, the National Center of Agrarian Reform, and the National Office for Nutritional Aid (art. 35).

In the area of commercial law the following enactments may be mentioned. Decree-Law No. 19.893 (1973) established the commercial register for the inscription of individuals and legal entities engaged in business (art. 2) by dealing in goods (art. 3) or services (art. 4). Exempt are health, education, transportation and communications, economy, finance, energy and mines in addition to professional and religious activities (art. 5). Art. 131 of the Mercantile Associations Law (No. 16.123), dealing with proxies for general assemblies has been amended (Decree-Law No. 19.629, 1973). The functions of the *Comisión Nacional de Valores* (now *Comisión Nacional Supervisora de Empresas y Valores*) have been expanded (Decree-Law No. 19.648, 1972) to include control of legal entities regulated by the Mercantile Associations Law. This decree-law was implemented by a regulation (Resolution CNSEV No. 000-73-EF/94, 1973).

A *Fondo de Exportaciones no Tradicionales* has been set up in the Industrial Bank (Decree-Law No. 19.625, 1972). The law providing for export insurance (Decree-Law No. 19.568, 1972) has been implemented by a regulation (Supreme Decree No. 284-72-EF, 1972).

The Government will issue bearer bonds in the amount of six billion *soles-gold* (Decree-Law No. 19.930, 1973) in order to mobilize domestic savings, primarily for public works. Capital held by insurance enterprises shall be invested (Decree-Law No. 19.854, 1972) according to the following directives: no less than 40% in immovables; no less than 20% in public investment bonds; no less than 10% in other public issues; no more than 10% in values selected by the enterprise; the remaining amounts in shares available on the stock exchange (art. 1).

Prices for goods and services have been frozen by Decree-Law No. 19.885 (1973). Violations will be punished by fines, by imprisonment up to five years, coupled with inability to engage in commercial or industrial activities for at least five years, by closing the business for no less than two years, and in regard to aliens with expulsion after they have completed their penalties (art. 5).

Some deadlines imposed upon foreign enterprises have been extended (Decree-Law No. 19.863, 1972); art. 3 of this enactment was subsequently repealed (Decree-Law No. 19.883, 1973).

Travel documents for resident aliens are now regulated by Decree-Law No. 19.897 (1973); foreign performers by Decree-Law No. 19.058 (1972), as implemented by a regulation (Supreme Decree No. 09-72-ED, 1972).

Private institutions engaged in international cooperative efforts will be registered (Supreme Resolution No. 0102-73-RE, 1973).

Members of professional organizations shall introduce secret, general direct and compulsory voting (Decree-Law No. 19.837, 1972). Failure to vote shall be punished by suspension from professional activities for six months (art. 2).

Decree-Law No. 19.609 (1972) regarding duties of public health institutions in emergencies has been implemented (Supreme Decree No. 0023-73-SA, 1973).

A commission has been established to prepare a draft for labor in cooperatives (Supreme Resolution No. 042-73-TR, 1973).

Decree-Law No. 19.852 (1972) approved Decision No. 51 of the Cartagena Commission dealing with tariff terminology; also an additional agreement for credits from Hungary (Decree-Law No. 19.628, 1972).

Supreme Decree No. 061-72-EM/DS (1972) provides for exploration of the atmosphere and of space.

TRINIDAD AND TOBAGO

The Industrial Relations Act (1972, 5 *Law. Am.* 84, 1973) has been amended (Act No. 42, 1972); affected are sec. 34 (para. 3), 85 (para. 5), and 86.

UNITED STATES

The administration has submitted to Congress a draft bill to define immunity due to foreign states from judicial jurisdiction and execution (1973). In essence, the bill maintains the distinction between acts *jure imperii* and acts *jure gestionis*, the latter available since 1952 as a reason to deny immunity. The bill will transfer the issue as to whether a foreign state is or is not entitled to immunity in regard to a particular claim from the Department of State to the courts (§ 1602), thus making it a justifiable issue. The notion of commercial activity is defined (§ 1603, b). In addition to this ground for denial of immunity (§ 1605, para. 2) which still remains a general rule (§ 1604), immunity may be waived (§ 1605, para. 2) or it may be denied in the following instances: when interests in property taken in violation of international law are litigated and such property (or one exchanged for it) is present within this country "in connection with a commercial activity carried on in the United States by the foreign state", or if such property is owned or operated there by an agency or instrumentality of a foreign state in conjunction with their commercial activity (§ 1605, para. 3); also if property located in the United States and acquired by succession or gift or if rights in immovable property situated in this country are in issue (§ 1605, para. 4); finally, in case that monetary damages are sought from a foreign state for personal injury or death or damages to property caused by a negligent or wrongful act or omission committed in this country by the foreign official or employee (§ 1605, para. 5). Special provisions apply in connection with public debts (§ 1606). Counterclaims are allowed (§ 1607). Service shall be on the ambassador or chief of the respective mission with two copies to the Department of State (§ 1608). Assets belonging to foreign states are exempt from execution, except in cases listed in § 1610; moreover, certain assets are generally exempt (§ 1611). Following these provisions constituting a new chapter (97) in the United States Code, the bill provides jurisdictional rules to be inserted in title 28 of the Code. They vest jurisdiction in federal district courts (§ 1330) with venue designated under new sub-paragraph (f) of

sec. 1391 of the Code. State courts have concurrent jurisdiction (subject to federal rules regarding immunity), but such actions may be transferred to federal courts (sec. 1441, d).

The Convention on the Taking of Evidence Abroad (Hague, 1970, 5 *Law. Am.* 89, 1973) was implemented by Executive Order (38 Fed. Reg. 2207, 1973).

URUGUAY

Law No. 14.068 (1972, 5 *Law. Am.* 92, 1973) is characteristic of an attempt by a democratic policy to cope with a militant revolutionary movement. The law consists of two parts: one part containing amendments (art. 1 to 15) to the Military (Criminal) Code, and the other, amending art. 16 to 34 of the general Criminal Code. The Military Code, applicable in certain situations to civilians, deals with attacks against the integrity of the national territory, the independence and the unity of the State, with military service in behalf of a foreign country at war with Uruguay, with betrayal of secrets, and direct attacks on the constitution in order to change it or the form of government by means not permitted under domestic constitutional law (art. 60, I). Punishable also are acts which expose Uruguay to war or to undergo retaliations; treasonable machinations of an official in dealing with foreign governments and others (art. 60, II). In all these crimes even negligence suffices (art. 60, III). Membership in subversive organizations which intend to change by direct acts the constitution or the form of government by means not permitted by law (art. IV), support of such organizations (art. 60, IV) or support of their members (art. 60, VII) are punishable. Membership in organizations designed to replace public authorities in matters of criminal prosecution is punishable, as is any assistance to them or assistance to their members (art. 60, VIII to X). Special aggravating circumstances apply (art. 60, XI), namely the use of arms; membership of more than ten persons; being a leader; public service on the part of the violator; and motivation of hate or vengeance (art. 60, XI). The previous penalty for rebellion (art. 141 of the Criminal Code, and following) namely exile, was changed to imprisonment (art. 1). Among amendments to the Criminal Code the following may be mentioned. Attempts against the chiefs of foreign States (art. 138) and against the President of the Republic (art. 140) are punishable according to art. 138 and 140. Punishable also is public instigation to criminal acts (art. 147); justification (*apología*) of criminal acts (art. 148), and membership in

associations designed for criminal activities (art. 150). Aggravating circumstances are use of arms, membership of more than ten persons, or being a leader (art. 151). Improper activities of public servants (art. 160, 161) are punishable as are attempts to suppress the status (identity) of a person (art. 258) or creation of a fraudulent personality (art. 259). The above delicts are particularly significant in cases of change of identities of revolutionaries going "underground" or returning therefrom. Additional provisions deal with sexual crimes (art. 259, 279) which, in most cases, will be prosecuted only on demand; the same applies to negligent bodily injuries (art. 322). Amended provisions apply to robbery (art. 344); also to neglect of economic duties by the father (art. 279-A, B). Extensive provisions deal with crimes committed by the press, among them spreading of false news, depreciation of the nation, state or authorities, or defense of persons sought by the authorities. Crimes of defamation or insult will always be punished by imprisonment and the fact that they appeared in print shall be considered as an aggravating circumstance (art. 29), to be prosecuted on demand (art. 31). Final provisions deal, among others, with the relations between proceedings before military and ordinary criminal courts.

The Council of Ministers has again suspended constitutional guarantees (Decree No. 655. 1972).

A National Council of Education was established (Law No. 14.101, 1973), accompanied by a plan to prepare a comprehensive and coherent educational system.

The Council of Ministers promulgated an extensive modification of the existing tax system (Law No. 14.100, 1973), covering changes in income taxation, capital and sales taxes, and others.

Uruguay recently approved two treaties: a treaty for cultural scientific and technical cooperation with France (Law No. 14.087, 1973), and with Israel a treaty for the peaceful use of atomic energy (Law No. 14.091, 1973).

VENEZUELA

The Capital Market Law (G. O. No. 1.566, 1973) regulates public offerings of shares. A *Comisión Nacional de Valores*, (art. 1), attached to the Ministry of Finance (art. 2), shall perform functions as listed in art. 10. A national register of shares will be established (art. 14) and

includes all documents subject to the law (art. 14). The *Comisión* will control public offerings of shares (art. 17) by requiring information (art. 20) and then will approve or deny the application. Particular provisions apply to bonds (*obligaciones*), nominative or bearer (art. 26), and issued by prospectuses which must contain required information (art. 28). Special rules apply to convertible shares (art. 31 to 35) whose holders are provided with a statutory organization (art. 36 to 44). In addition to shares, the *Comisión* controls corporations and other associations, including mutual funds, stock exchanges and others (art. 46). Corporations are divided into those with authorized capital (art. 48 to 55) and those termed *de capital abierto*, the latter meeting the following requirements: to be registered in the national register; to have paid in capital of at least one million *bolivares*, and no less than 50% of the capital is in the hands of at least fifty shareholders for each million of the capital and each shareholder holds at least 1,000 *bolivares* of the capital while no shareholder of this group (holding 50%) may control more than 10% of this capital (art. 56). For each of these types different rules apply. Mutual funds (art. 62) are defined as corporations investing in shares without ever exercising majority control. Legal entities not domiciled in Venezuela may not hold shares in such corporations (art. 62). Mutual corporate funds may not hold more than 5% of the capital in any enterprise, maintain more than 10% of their capital in the same enterprise, or acquire more than 10% of convertible bonds issued by one enterprise (art. 64, para. 4). Mutual funds may not invest proceeds of their shares directly but only through a managing company (art. 66). These cannot service more than one corporation at one time if their plans of offering to the public are identical or of the same type (art. 72). For their work managing corporations receive reasonable fees (art. 73). Stock exchanges are organized as corporations (art. 78) and perform functions listed in the law (art. 81). Associations offering their shares to the public may appoint transfer agents (art. 104). In regard to treasury shares, the law has extensive provisions. In principle, corporations may acquire their own shares only upon authorization of their assemblies, or with undistributed profits, if shares are completely paid (art. 117), or if the capital is to be reduced (art. 119). Such shares do not partake in profits or claim a share of assets in case of liquidation nor do they give voting rights (art. 121). Particular provisions protect rights of minority shareholders (art. 123 to 128). Some tax incentives are available, for example, for corporations which reinvest all of their profits in shares of similar associations (art. 129). The final title deals with administrative penalties (art. 136 to 147); there are also criminal sanctions (up to six years

imprisonment) for fraudulent machinations listed in art. 148 to 150 and 154.

The Law on Chattel Mortgages (*hipotecas mobiliarias*) and pledges without dispossession (*prenda sin desplazamiento de posesión*) regulates (G. O. No. 1.570, 1973), as indicated in the title, two kinds of security arrangements distinguishable by the asset used. A chattel mortgage may be constituted on business establishments or their assets (*fondos de comercio*), various types of motorcars, aircraft, industrial machinery, and copyrights and patents (art. 20). Pledge, on the other hand, may be constituted on fruit and crops, animals, products of forests, agricultural machinery and merchandise, products and raw materials warehoused (art. 51). Security arrangements of either kind may only be established in favor of creditors listed in the law (art. 18): the Nation, the States, municipal governments, the *Banco Central*, and autonomous institutes and public enterprises; foreign banks and international financial institutions authorized by the *Superintendencia de Bancos*; domestic banks and other credit institutions supervised by the *Superintendencia*; insurance companies; business associations authorized for such transactions by the *Superintendencia*, and other persons and legal entities so authorized by the competent Ministry. The law contains provisions applicable to both types of security arrangements (art. 1 to 18, 67 to 68, and art. 78 to 86, the latter regulating the register). The arrangement must be executed in the form of a public, authenticated or acknowledged document and properly filed (art. 4). The arrangement includes also proceeds of insurance (art. 7). The debtor may use the pledged asset according to the standard of a *buen padre de familia* (art. 8). Debts to be secured may cover current loan accounts (art. 11), negotiable instruments (art. 12), periodical payments (art. 13), and future obligations (art. 14). The secured debt may be alienated or otherwise transferred (art. 15). The title on chattel mortgages contains detailed provisions on mortgages involving business establishments (art. 25 to 34), motorcars (art. 35 to 38), aircraft (art. 39 to 41) maintaining in force art. 63 of the Aviation Law (2 *Law. Am.* 154, 1970), dealing with preferred claims; industrial machinery (art. 42 to 44), and copyrights and patents (art. 45 to 49). The section on pledge deals with arrangements in agriculture (art. 51 to 66). Procedural rules are contained in art. 67 to 77.

Amended were the law on identification (G. O. No. 29,998, 1973) and the election law (G. O. No. 1.564, 1973) which allows resident aliens to vote in municipal elections (art. 61).

A fund for the study of problems relating to oil and for the professional education of personnel employed in this industry is regulated by law (G. O. No. 30.017, 1973).

A resolution of the Ministry of Defense prohibits taking photographs from the air without permission (G. O. No. 29.995, 1972).

Two decrees (No. 1.170 and 1.171, G. O. No. 1.561, 1972) deal with documentation required for imports and the value of goods in tariff matters.

Agreements with Sweden and Spain for radio amateurs (G. O. No. 30.008, 1973 and No. 30.019) with Canada on commercial relations (G. O. No. 30.015, 1973), has been ratified.

The agreement regarding the Latin American Center for Development (CLAD), signed in Caracas in 1972, was ratified (G. O. No. 29.989, 1972).

The present session of the national Legislature faces a heavy load of important bills, particularly since in this election year the session will be shortened. Some of the bills have completed part of their legislative procedure in the previous session. Among them the law on tourism, on the domestic oil market, on development of exports incentives, and on investments in housing. Newly introduced bills came mostly from the administration. The Ministry of Justice sponsors bills on the judicial police, on a partial reform of the public register and of the Criminal Code, as well as of the Code of Criminal Procedure. The Ministry of Foreign Relations submitted drafts to ratify a number of multilateral conventions; the Ministry of Transportation submitted drafts dealing with transportation by land and with the development of the merchant marine; the Ministry of Mining and Oil a law to establish the Venezuelan Mining Corporation, and the Ministry for Public Works a draft for a Ministry of Housing and Urban Development, and another on urban and suburban parks. Some bills have been submitted by members of the Legislature, among them bills on stability of employment and on the organization of the federal district. A law to reform the Labor Code is under discussion.

This report summarizes a select number of statutory enactments and other developments. Therefore, no decision should be made without consulting the complete texts and related materials. Moreover, consultation with a competent local attorney is recommended.

REGIONAL AND INTERNATIONAL ACTIVITIES

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ORGANIZATION OF AMERICAN STATES

GENERAL ASSEMBLY

The February 1973 issue of the *Lawyer of the Americas* contains information on the preparation and topics of the preliminary draft agenda for the third regular session of the General Assembly scheduled for Washington, D. C., beginning April 4, 1973. On November 1, 1972 that document was sent to the Governments of the Member States, and from their observations, several new topics were added.

On January 23, 1973 the Preparatory Committee of the General Assembly approved the draft agenda for the session, and submitted it to the Assembly with the following new topics: Consideration of the ultimate purpose and the mission of the Organization of American States and ways of achieving that goal in the international climate existing in the world today; review of the system of Inter-American cooperation for development, with a view to its improvement and updating in order to strengthen regional solidarity in that field, and to avoid acts or measures serving unilateral interests alien to the objectives of cooperation.

The October 1973 issue of the *Lawyer* will carry the results of the April, 1973 General Assembly.

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

INTER-AMERICAN JURIDICAL COMMITTEE

The Committee met from January 15 to February 16, 1973 in Rio de Janeiro, and approved, among other documents, a resolution on the Law of the Sea and a draft inter-American Convention on Extradition.

Resolution on the Law of the Sea

The Inter-American Juridical Committee had been studying the law of the Sea since its meeting of March and April, 1971. The problem of a new legal system governing the seas was studied at depth in the light of the valuable contributions submitted by several of its members. On February 9, 1973 the Committee approved a pertinent resolution on this matter consisting of fifteen paragraphs.

In the preamble, it is stated that the Committee agrees that the principles and standards contained in the resolution represent the common elements of the positions of the American states, and it therefore recommends that the American states take them into consideration and present them at a regional or worldwide conference on a new legal system governing the seas.

Paragraph 1 provides that the sovereignty or jurisdiction of a coastal state extends beyond its territory and its internal waters to an area of the sea adjacent to its coast up to a maximum distance of 200 nautical miles, as well as to the air space above and the bed and subsoil of that area. Consequently, limits of up to 200 miles established or to be established by any American state are valid, provided that the provisions of paragraph 4 are observed.

Paragraph 2 stipulates that within that area of the sea there are two zones: one extending to a distance of 12 nautical miles, and another that extends from the outer limit of the first zone to a distance of 200 nautical miles, measured in accordance with the applicable rules of international law. The distinction between the two zones is made for the purposes set forth in paragraphs 3, 4, 7 and 8.

In paragraph 3 it is provided that within the limits of the 12-mile zone, the ships of any state, whether coastal or not, shall enjoy the right of innocent passage, in accordance with international law.

Paragraph 4 provides that within the limits of the zone adjacent to the 12-mile zone, the ships and aircraft of any state, whether coastal or

not, shall enjoy the right of free navigation and overflight, subject to the pertinent regulations of the coastal state with regard to the preservation of the marine environment, the activities of exploration, exploitation and scientific research conducted therein, and the safety of maritime navigation and transportation, all in accordance with international law.

According to paragraph 5, ships and aircraft that transit through or over international straits that are customarily used for international navigation and that join two free seas enjoy the freedom of navigation and overflight regulated in paragraph 4. This provision shall be understood to be without prejudice to the legal status of certain straits, transit through or over which is regulated by international agreements in force that deal specifically with those straits.

Under paragraph 6, in the utilization of the resources that exist in the zone that extends from the 12-mile limit to the 200-mile limit, beyond which extend the high seas, the objective of the coastal states shall be the maximum development of their economies and the raising of the standards of living of their peoples.

Paragraph 7 provides that with regard to the zone extending from the 12-mile limit to the 200 nautical mile limit, a coastal state has the following powers:

- a. To regulate and conduct exploration of the sea, its bed, and its subsoil, and exploitation of the living and non-living resources; that it or its nationals may undertake those activities, or assign them to third parties in accordance with the provisions of its domestic legislation or of any international agreement concluded on the subject;
- b. to regulate and adopt the necessary measures to prevent, reduce, or eliminate the damage and risks of pollution and other effects harmful or dangerous to the ecological system of the marine environment, the quality and use of the waters, the living resources, human health, and other interests of its population, in accordance with the criteria established by its authorities and taking into account the recommendations and guidelines of international technical organizations, as well as cooperation with other states;
- c. to promote scientific research activities, to participate in carrying them out, and to receive the results obtained, taking into account

- the advisability of facilitating such activities without undue discrimination or restriction;
- d. to exchange information on the plans and activities of the coastal state in the ocean zone referred to in paragraph 4, in order to ensure the most effective international cooperation;
 - e. to establish specific regulations on the exploration and economic exploitation of the various ocean zones of the sea that it may consider advisable to establish in the area up to the limit of 200 nautical miles.

As provided for in paragraph 8, within the zone that extends from the 12-mile limit to the 200 nautical mile limit, the coastal state shall authorize the laying of underwater cables and conduits recognized under international law, subject to the domestic regulations of that state for the regulation of navigation, scientific research, and preservation of the marine environment.

Paragraph 9 stipulates that the coastal state shall authorize the non-coastal states in the region to exploit living resources within the zone that extends from the 12-mile limit to the 200 nautical mile limit, granting them preferential rights in relation to third states and in accordance with criteria to be set forth in multilateral, regional or bilateral agreements.

Under paragraph 10, the sovereignty or jurisdiction of any territory subject to colonial domination, in the second zone mentioned in paragraph 2 of this resolution, shall not be recognized so long as that domination lasts.

The problem of the continental shelf is taken up in paragraphs 11 and 12. According to paragraph 11, for purposes of exploration and exploitation of the natural resources of the seabed and the subsoil, the sovereignty of the coastal state extends beyond the zone mentioned in paragraph 1 throughout its sector of the continental shelf. Under paragraph 12, the continental shelf comprises the seabed and the subsoil of the undersea areas adjacent to the coast up to the outer border of the continental rise, that is, the boundary with the ocean basin or abyssal depths.

According to paragraph 13, seabeds and ocean floors located beyond the 200 nautical mile zone and beyond the continental shelf, as well as the resources that may be extracted therefrom are the common heritage of mankind. Under paragraph 14, the future legal system governing the

high seas and the exploitation of their resources should be organized on regional and not on world-wide basis.

Paragraph 15 provides that the rational and peaceful use of the sea demands commitment by all states to avoid every form of pollution and of depredation of living resources, and that it requires the cessation of all testing of nuclear weapons in the sea, in its bed or subsoil, or in the atmosphere.

Eight members of the Inter-American Juridical Committee presented written explanations of their votes in relation to the above-mentioned resolution on the Law of the Sea.

Draft Inter-American Convention on Extradition

Resolution AG/RES. 91 (II-0/72) approved by the OAS General Assembly on April 21, 1972 requested the Inter-American Juridical Committee, based on the observations of the governments on the Draft Convention on Extradition approved by the Inter-American Council of Jurists in 1959, to prepare a new draft convention to be submitted to the General Assembly through the Permanent Council. The latter would in turn formulate such observations as deemed advisable, in accordance with article 91 (f) of the Charter of the OAS.

During its regular meeting held in January-February 1973, the Inter-American Juridical Committee carefully studied the 1959 Draft Convention as well as the observations presented by Argentina, Costa Rica, Mexico, Trinidad and Tobago, the United States and Venezuela.

As a result of its deliberations, on February 7, 1973 the Committee approved a new Draft Inter-American Convention on Extradition, accompanied by a detailed *Exposé des Motifs*.

Two members of the Committee presented written explanations of their votes.

Following is a resumé of some of the articles of this important Draft Convention.

According to Art. 1, the Contracting States bind themselves, in accordance with the provisions of the Convention, to surrender to another contracting State requesting the extradition, such persons who may be under indictment for or are judicially charged with, or who are being tried for or have been convicted of an offense in that State.

Art. 2 provides that, for extradition to be granted, the offense must have been committed within the jurisdiction of the requesting State according to legislation in force at the time of the offense. When the offense for which extradition is requested has been committed outside the territory of the requesting State, extradition may be granted provided the requesting State has jurisdiction to take cognizance of the offense that gave rise to the request for extradition, and to pronounce judgment thereon.

Under Art. 4, the request for extradition shall be made by the diplomatic agent of the requesting State, or, should there be none, by its consular officer, or, when appropriate, by the diplomatic agent of a third State to whom is entrusted the representation of the interests of the requesting State. The request may also be made directly from government to government. Art. 5 indicates the documents that should accompany the extradition request.

According to Art. 8, the nationality of the person may not be invoked as grounds for denying extradition, except when the law of the requested State establishes the contrary. Art. 9, however, stipulates that, if, when extradition is applicable a State does not deliver the person sought, because of some impediment, the requested State shall be obligated to try him for the deed imputed to him, just as if it had been committed within its territory, and shall inform the requesting State of the judgment rendered.

Art. 10 cites the cases where extradition is not applicable, which, among others, are as follows: When the individual has completed his punishment or has been granted an amnesty or pardon in the requesting State for the crime for which extradition is sought, or when he has been acquitted or the case against him for the offense has been dismissed; when the trial or punishment is barred by the Statute of Limitations, according to the laws of the requesting or the requested States, prior to the date of the granting of extradition; when, as determined by the requested State, the offense for which the person is sought is a political offense or an offense related thereto.

Art. 11 provides that no provision of the Convention shall stand in the way of extradition for the crime of genocide or any other offense that is extraditable under a treaty in force between the requesting and the requested States. On the other hand, Art. 12 states that no provision of the Convention may be interpreted as a limitation on the right of asylum, when its exercise is in order.

As provided for in Art. 13, no person surrendered to a State in accordance with the Convention may be condemned to death or life imprisonment.

According to Art. 15, if extradition is requested by more than one State, either for the same offense or for different offenses, the requested State shall make its decision having regard to all circumstances, and especially the relative seriousness and place of commission of the offenses, the respective dates of the requests, the nationality of the person whose extradition is requested, and the possibility of subsequent extradition to another State.

Art. 18 provides that the person sought shall have the right to utilize all the legal remedies available to him according to the law of the requested state. Furthermore, the person sought shall be assisted by legal counsel and if the official language of the country is different from his own language, he shall also be assisted by an interpreter. Under Art. 19, if the extradition has been granted, the requesting State shall take charge of the person sought within a period of thirty days, counting from the date on which he was placed at its disposal. If it does not do so within that period the person sought shall be set free, and he may not be subjected to a new extradition procedure for the same offense or offenses. Once the request for extradition of a person has been denied, the request may not be made again for the same offense.

Art. 24 is the first of the final clauses of the Draft Convention. It provides that the Convention shall remain open for signature by the Member States of the OAS, as well as by any other State that requests to sign it. Under Art. 25, the Convention shall be ratified by the signatory States in accordance with their constitutional procedures. As provided for in Art. 27, the Convention shall enter into force among the ratifying States when they deposit their instruments of ratification.

Course on International Law

Also at its January-February 1973 meeting, the Inter-American Juridical Committee took the first steps towards organizing a Course on International Law, an activity which will be similar to the Seminars that are held during the sessions of the International Law Commission. The Committee hopes to organize a course to be offered during its regular sessions held in July and August of each year, with the first one scheduled for July-August 1973. The subjects of the first course will be: The Law

of the Sea, Private International Law, and the Law on Latin American Integration.

The Committee has requested the OAS General Assembly to provide the necessary funds to carry out this important activity. In its 1973 annual report to the General Assembly, besides requesting the necessary funds, the Committee also presented some alternative solutions, such as the granting of scholarships to young officers of the Ministries of Foreign Affairs of the American countries or other public or private institutions, to attend the course. The Committee suggested the granting of twenty-three scholarships, one for each American State.

CIES

The Inter-American Economic and Social Council (CIES) held its VIII annual meeting in Bogota in January-February, 1973, during which it approved several resolutions and recommendations.

In one of these resolutions, CIES approved a six page declaration as a general basis for future decisions on cooperation and development within the inter-American system. This document states, in part, that a review of the inter-American system of cooperation in the social, economic, scientific, and technological fields should be made, with a view to updating and improving it within the context of the political situation in the Hemisphere. In the field of trade, the declaration stated that a true increase in the participation of Latin America in world trade should be attained through the elimination or reduction by the developed countries of any barriers restricting exports from the developing countries. Steps should be taken to increase the access of Latin American products to the markets of the United States and other developed countries, and to this effect the pertinent mechanisms for production, consultation and negotiation should be strengthened.

On the question of external financing, the declaration states that steps should be taken to strengthen the mechanisms for increasing the volume of external financing for Latin American development, in accordance with the needs and the strategy adopted by each country in the region, and that preferential attention should be given to the special financial needs of the relatively less developed countries. The declaration also indicates that foreign private investment, as a complementary source of external financing for development, must adjust itself to existing legislation in each country or group of countries as well as to the

strategy of the recipient country. In addition, it reiterated that transnational companies should conform to the economic policies of the country in which they operate, and that since they are subject to its legislation, any controversies that may arise with transnational firms should be resolved by the courts of the country in which they operate, in accordance with its laws, in no case giving rise to foreign claims.

Another CIES resolution dealt with the Special Committee for Consultation and Negotiation (CECON). It reaffirmed that CECON should be a dynamic and continuous instrument for dialogue, consultation and negotiation on specific topics between the Latin American countries and the United States of America, and that it should be retained in any reorganization of the inter-American system of cooperation.

In the field of tourism, CIES approved a recommendation by CIAP for the establishment of the Inter-American Tourism Training Center and Subcenter, with headquarters in Mexico and in Argentina, respectively, in accordance with the offers made by the governments of those Member States.

CIES also approved a draft Organization Plan of the International Travel Congresses, and submitted it to the third regular session of the OAS General Assembly, April 4, 1973. According to the draft plan, the Congresses will be specialized conferences within the context of the OAS Charter, permanent in nature and will function within the sphere of CIES. The Congresses have, among others, the following purposes and functions: a) To aid and promote, by all available means, the development and progress of tourist travel in the Americas; b) to organize and encourage regular meetings of technicians and experts for the study of special problems related to tourist travel; c) to foster the harmonization of laws and regulations concerning tourist travel; d) to study, suggest and sponsor, through the OAS, the adoption of official agreements among American governments relating to tourist travel; e) to serve as advisory body of the OAS and its organs in all matters related to tourism in the Hemisphere.

The draft Organization Plan also provides that the Travel Congresses should meet regularly every three years, and all Member States of the OAS have the right to be represented. The Permanent Executive Committee of the Congresses shall be composed of specialists representing the governments of seven countries. The Congresses shall appoint such technical committees as may be necessary for carrying out its objectives.

It should be pointed out that several Travel Congresses have been held within the sphere of the OAS. The new Plan is being submitted to the OAS General Assembly with the idea of approving new standards and regulations for these Congresses.

In another resolution, CIES approved the draft Organization Plan of the Pan American Highway Congresses, and submitted it to the third regular session of the OAS General Assembly. The goals of these Congresses are, among others, the following:

a) To promote, by all available means, the development of highways and road transportation in the American Hemisphere in order to speed up the progressive integration of the Pan American highway system with the national and international transportation systems; b) to encourage multinational coordination of highway planning, programming, financing, and administration; c) to promote the opening of large highways of multinational interest, by supporting the financial negotiations of the interested countries; d) to promote uniformity of highway and traffic standards throughout the Hemisphere; e) to act as the principal advisory organ of the OAS in all matters relating to highways; f) to study, propose and sponsor, through the OAS, the adoption of official agreements among the American governments relating to studies for the planning, design, construction, improvement, and maintenance and use of highways, at the national and international levels.

The Plan also provides for regular meetings of the Congresses to be held every four years. As specialized conferences, the Congresses constitute an activity of the OAS, and as such, the governments of all Member States of the OAS may participate. The Permanent Executive Committee of the Pan American Highway Congresses shall be composed of representatives of the governments of eleven countries. The Congresses may appoint the necessary technical committees.

It should be noted that several Pan American Highway Congresses have been held as an activity of the OAS. The new Plan was submitted to the OAS General Assembly to establish new standards and regulations for such congresses.

UNITED NATIONS

The twenty-seventh (XXVII) regular session of the General Assembly of the United Nations was held in New York, September 19 to De-

ember 19, 1972. This report contains a resumé of some of the resolutions adopted during that session.

SECURITY COUNCIL

On October 20, 1972 the General Assembly of the United Nations elected five states to serve on the Security Council for a two-year term beginning January 1, 1973 to replace five others whose terms expired on December 31, 1972.

The Security Council is now composed of the following fifteen members: Australia, Austria, China, France, Guinea, India, Indonesia, Kenya, Panama, Peru, Sudan, USSR, United Kingdom, United States, Yugoslavia.

ECONOMIC AND SOCIAL COUNCIL

On October 31, 1972, the General Assembly elected nine states to serve on the Economic and Social Council for a three-year term beginning January 1, 1973.

At present, ECOSOC consists of the following twenty-seven members: Algeria, Bolivia, Brazil, Burundi, Chile, China, Finland, France, Haiti, Hungary, Japan, Lebanon, Madagascar, Malaysia, Mali, Mongolia, Netherlands, New Zealand, Niger, Poland, Spain, Trinidad and Tobago, Uganda, USSR, United Kingdom, United States and Zaire.

INTERNATIONAL COURT OF JUSTICE

As a result of independent voting in the General Assembly and the Security Council in October 1972, Isaac Forster (Senegal), André Gros (France), Nagendra Singh (India), José María Ruda (Argentina), and Sir Humphrey Waldock (United Kingdom) were elected members of the International Court of Justice for a nine-year term beginning February 6, 1973.

Thus, as of February 6, 1973, the International Court of Justice is composed of the following fifteen members: Fouad Ammoun (Lebanon), Cesar Bengzon (Philippines), Federico de Castro (Spain), Hardy C. Dillard (United States), Isaac Forster (Senegal), André Gros (France), Louis Ignacio-Pinto (Dahomey), Eduardo Jiménez de Aréchaga

(Uruguay), Manfred Lachs (Poland), Platon D. Morozov (Soviet Union), Nagendra Singh (India), Charles D. Onyeama (Nigeria), Sture Petrán (Sweden), Josú María Ruda (Argentina), and Sir Humphrey Waldock (United Kingdom).

INDUSTRIAL DEVELOPMENT BOARD

The Industrial Development Board is composed of forty-five members. On December 11, 1972 the U.N. General Assembly elected fifteen members to fill vacancies in this Board. The following Member States of the OAS are members of the Industrial Development Board: Argentina, Brazil, Costa Rica, Cuba, Mexico, Peru, United States, Uruguay, Venezuela.

GOVERNING COUNCIL FOR ENVIRONMENTAL PROGRAMS

On December 15, 1972 the General Assembly elected fifty-eight Member States to serve on the fifty-eight-member Governing Council for Environmental Programs. The General Assembly agreed that twenty of the elected members would serve for three years, nineteen for two years and nineteen for one year. It was also agreed that lots would be drawn for the selection of members to serve three years, two years and one year.

Of the members elected to serve on the Council the following are Member States of the OAS: Argentina, Brazil, Chile, Guatemala, Jamaica, Mexico, Nicaragua, Panama, Peru, United States, Venezuela.

On the nomination of the Secretary General, the General Assembly elected by acclamation, on December 15, 1972, Maurice F. Strong, as Executive Director of the Environment Secretariat for a term of four years, beginning January 1, 1973.

SECRETARY GENERAL OF UNCTAD

On the recommendation of the Secretary General, on December 19, 1972 the General Assembly confirmed the extension for one year of the appointment of Manuel Pérez Guerrero as Secretary General of the United Nations Conference on Trade and Development (UNCTAD). The extension will end on March 31, 1974.

**STRENGTHENING THE ROLE OF THE UNITED NATIONS
WITH REGARD TO THE MAINTENANCE OF
INTERNATIONAL PEACE**

In Resolution 2925 (XXVII), adopted on November 27, 1972, the U.N. General Assembly made evident the necessity of strengthening the role of the United Nations in order to attain a more effective contribution from that body in the settlement of international issues in the interest of all peoples and of general peace and security, and urged all Member States to fulfill their obligations under the Charter and, in accordance with its provisions, to implement the resolutions of United Nations organs. It also appealed to all Member States to take full advantage of the framework and means provided by the United Nations for the solution of international issues of common interest.

The Resolution further invited Member States to communicate to the Secretary General not later than June 30, 1973, their views and suggestions on the ways and means for contributing to the strengthening of the role of the United Nations in international life, and requested the Secretary General to prepare a report based on those views and suggestions to be submitted to the General Assembly at its twenty-eighth session.

NON-USE OF FORCE IN INTERNATIONAL RELATIONS

In Resolution 2936 (XXVII), adopted on November 29, 1973, the General Assembly solemnly declared, in the name of the Member States of the Organization, their renunciation of the use or threat of force in international relations, in accordance with the Charter of the United Nations, and the permanent ban on the use of nuclear weapons. It recommended that the Security Council take, as soon as possible, appropriate measures for the full implementation of this declaration of the General Assembly.

OUTER SPACE

Resolution 2915 (XXVII), adopted on November 9, 1972 by the General Assembly, deals with international cooperation in the peaceful uses of outer space. The Assembly expressed its satisfaction at the recent entry into force of the Convention on International Liability for Damage Caused by Space Objects. It noted the significant progress made by the Legal

Sub-Committee on the Peaceful Uses of Outer Space, by approving a substantial part of the draft treaty relating to the Moon, and agreed that the Legal Sub-Committee should, at its next session, pursue, as a matter of priority, its work on the draft treaty relating to the Moon and the draft convention on registration of objects launched into outer space.

The Assembly also cited the progress achieved in international co-operation among Member States, in the field of space research and exploration, particularly the continuing exchange and analysis of lunar material on a broad international basis. It also noted the progress achieved in implementing agreements relating to space communications recently concluded among a number of States, and reiterated the importance of the goal of making satellite communications available to States on a world-wide and non-discriminatory basis, as expressed in General Assembly resolution 1721 D (XVI) of December 20, 1961.

DIRECT TELEVISION BROADCASTING

In Resolution 2916 (XXVII), adopted on November 9, 1972, the General Assembly reaffirmed the common interest of all mankind in furthering the peaceful exploration and use of outer space for the benefit of all States and for the development of friendly relations and mutual understanding among them. It expressed that direct television broadcasting should help to draw the peoples of the world closer together, to increase the exchange of information and cultural values and to enhance the educational level of people in various countries. The Assembly considered it necessary to prepare principles governing the use by States of artificial earth satellites for direct television broadcasting with a view to concluding an international agreement or agreements. It requested the Committee on the Peaceful Uses of Outer Space to undertake the preparation of such principles as soon as possible.

WORLD DISARMAMENT CONFERENCE

By Resolution 2930 (XXVII) of November 29, 1972, the General Assembly invited the Governments of all States to exert further efforts with a view to creating adequate conditions for the convening of a World Disarmament Conference at an appropriate time. A Special Committee on the World Disarmament Conference consisting of thirty-five Member States was established.

CHEMICAL AND BACTERIOLOGICAL (BIOLOGICAL) WEAPONS

In Resolution 2933 (XXVII) of November 29, 1972, the General Assembly reaffirmed the recognized objectives of the effective banning of chemical weapons, and to this end reiterated the request made by the General Assembly to the Conference of the Committee on Disarmament in Resolution 2827 A (XXVI), to continue negotiations, as a matter of high priority, with a view to reaching early agreement on effective measures for the banning of the development, production and stockpiling of chemical weapons and for their destruction. It reaffirmed its hope for the widest possible adherence to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction.

NUCLEAR AND THERMONUCLEAR TESTS

In Resolution 2934 (XXVII) of November 29, 1972 the General Assembly stressed again the urgency of halting all nuclear weapon testing in all environments by all States, and deplored that the General Assembly had not yet succeeded in achieving a comprehensive test ban, despite twenty-one successive resolutions on the subject. Once again it urged the Governments of the nuclear-weapon States to bring to a halt all nuclear weapon tests at the earliest possible date, and in any case not later than August 5, 1973, either through a permanent agreement or through unilateral or agreed moratoria.

LAW OF THE SEA

In Resolution 3029 (XXVII) of December 18, 1972, the General Assembly reaffirmed the mandate of the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction set forth in General Assembly Resolutions 2467 (XXIII) and 2750 (XXV), as supplemented by the present resolution. It requested the Committee, in the discharge of its mandate, to hold two further sessions in 1973, one in New York, beginning in early March, and the other at Geneva, beginning early July, with a view to completing its preparatory work for the Third Conference on the Law of The Sea.

The General Assembly requested the Secretary General to convene the first session of the Third Conference on the Law of the Sea at New

York in November-December 1973, to deal with organizational matters. The second session of the Conference, to deal with substantive matters, to meet at Santiago, Chile, in April-May 1974, and subsequent sessions as necessary, having in mind that Austria has offered Vienna as a site for the Conference for the succeeding year.

In the same resolution the Assembly requested the Secretary General to prepare, on the basis of data and information available, a comparative study of the extent and the economic significance for riparian states, in terms of resources, of the international area that would result from each of the various proposals on limits of national jurisdiction presented so far to the *Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction*. The study is to be submitted at the earliest date possible, and but not later than the opening date of the 1973 summer session of the Committee.

UNITED NATIONS UNIVERSITY

By Resolution 2951 (XXVII) adopted on December 11, 1972, the General Assembly agreed to the establishment of an international university under the auspices of the United Nations, to be known as the United Nations University.

It further agreed that the United Nations University should be guided, *inter alia*, by the following objectives and principles: a) The concept of the University should be that of a system of academic institutions, and not of an inter-governmental organization; b) close coordination should be maintained between the activities of UNESCO, the United Nations Institute for Training and Research and other organizations of the United Nations system and those of the University; c) binding guarantees, under law, of academic freedom and autonomy should be written into the charter of the University; d) selection procedures should be established so as to ensure the highest intellectual and moral quality of the University personnel; e) the structure of the University should consist of a programming and coordinating central organ and a decentralized system of affiliated institutions, integrated into the world's university community, devoted to action-oriented research into the pressing global problems of human survival, development and welfare matters of concern to the United Nations and its agencies, and to post-graduate training of young scholars and research workers for the benefit of the world community; f) the programs of research of the University should

include, among others, the coexistence between peoples of different cultures, languages and social systems, peaceful relations between States and the maintenance of peace and security, human rights, economic and social change and development, the environment and the proper use of resources, basic technology in the interest of development; g) capital costs and recurrent costs of the University should be met from voluntary contributions of: i) Governments directly or through specialized agencies of the United Nations; ii) non-governmental sources including foundations, universities and individuals.

The Assembly requested the Secretary General, acting in close cooperation with the Director General of UNESCO, to establish a Founding Committee of the United Nations University to define further the objectives and principles of the University and to draft its charter. It also requested the Secretary General to commence efforts for raising the necessary funds in order to permit the launching of the United Nations University at the earliest possible date and to make recommendations to the General Assembly concerning the location of the programming and coordination center and the other institutions.

LAND-LOCKED DEVELOPING COUNTRIES

In Resolution 2971 (XXVII) of December 14, 1972, the General Assembly invited the developed countries, the United Nations Development Program and other competent international organizations to provide technical and/or financial assistance to land-locked developing countries for feasibility studies and investment to assist them, at their request, in their economic development. It further invited the United Nations Development Program to undertake operational activities in the field of industrial surveys to help these countries, at their request, on a national, subregional or regional basis to evaluate structure, operation, development possibilities and their future needs in the field of industrial development.

GOVERNING COUNCIL FOR ENVIRONMENTAL PROGRAMS

Resolution 2997 (XXVII) of December 15, 1972, calls for the establishment of a Governing Council for Environmental Programs composed of fifty-eight members elected by the General Assembly for three-year terms, on the following basis:

- (a) Sixteen seats for African States;

- (b) Thirteen seats for Asian States;
- (c) Ten seats for Latin American States;
- (d) Thirteen seats for Western Europe and other States;
- (e) Six seats for Eastern European States.

The Resolution sets forth the Governing Council's main functions and responsibilities as follows: a) To promote international cooperation in the environmental field and to recommend, as appropriate, policies to this end; b) to provide general policy guidance for the direction and coordination of environmental programs within the United Nations system; c) to receive and review the periodic reports of the Executive Director on the implementation of environmental programs within the United Nations system; d) to keep under review the world environmental situation; e) to promote the contribution of the relevant international scientific and other professional communities for the acquisition, assessment and exchange of environmental knowledge and information; f) to maintain under continuing review the impact of national and international environmental policies and measures on developing countries; g) to review and approve annually the program of utilization of resources of the Environment Fund.

The Governing Council is to report annually to the General Assembly through the Economic and Social Council.

The same resolution calls for the establishment of a small secretariat in the United Nations to serve as a focal point for environmental action and coordination within the United Nations system. It also establishes a voluntary environmental fund in order to provide for additional financing for environmental programs, and an Environmental Coordinating Board, under the chairmanship of the Executive Director. The Board will function under the auspices and within the framework of the Administrative Committee on Coordination.

Resolution 3004 (XXVII) of December 15, 1972, calls for the establishment of the environment secretariat in Nairobi, Kenya.

OUTFLOW OF TRAINED PERSONNEL FROM DEVELOPING TO DEVELOPED COUNTRIES

In Resolution 3017 (XXVII) of December 18, 1972, the General Assembly invited the Secretary General, in cooperation with the pertinent

organizations of the United Nations system, and taking due note of the report on the subject prepared by the Secretary General of UNCTAD plus the work of UNITAR, the Advisory Committee on the Application of Science and Technology to Development and other interested bodies, and in consultation with the Member States concerned, to prepare a study on the outflow of trained personnel from developing countries which affects their technological development, bringing out the negative consequences in those countries and the advantages reaped by the industrialized countries, specifying the mechanics of that outflow and identifying the countries to which it is directed.

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

In Resolution 3041 (XXVII) of December 19, 1972, the General Assembly recognized Resolutions 82 (III) on multilateral trade negotiations and 84 (III) on the international monetary situation, adopted by UNCTAD at its third session held in Santiago, Chile, in April–May 1972, and reaffirmed that the developing countries should participate fully, effectively and continuously in all stages of the multilateral trade negotiations and in the decision-making process of the international monetary system and its reform, notably through their participation in the Committee of Twenty of the International Monetary Fund and forthcoming multilateral trade negotiations, to ensure that full consideration is given to their specific interests. The Assembly endorsed the recommendation of UNCTAD that, because of their interdependence, the monetary, trade and financial problems should be resolved in a coordinated manner, with the full participation of developed and developing countries.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

In Resolution 2906 (XXVII) of October 19, 1972, the General Assembly reaffirmed its adherence to the principles, values and ideals contained in the Universal Declaration of Human Rights, and reiterated the hope that the twenty-fifth anniversary of the Declaration will be celebrated by the world community in a manner fitting the occasion and serving the cause of human rights.

UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW
(UNCITRAL)

Resolution 2928 (XXVII) of November 28, 1972, takes note of the report of UNCITRAL on the work carried out in its fifth session held in April–May 1972, and commends UNCITRAL for its work. The Assembly noted with satisfaction the completion of the draft articles for a convention on prescription (limitation) in the international sale of goods.

In the same resolution, the Assembly recommended that UNCITRAL should: a) Continue to pay special attention to priority topics, i.e., the international sale of goods, international payments, international commercial arbitration, and international legislation on shipping; b) accelerate its work on training and assistance in the field of international trade law, with special regard to developing countries; c) continue to collaborate with international organizations active in the field of international trade law; d) continue to give special consideration to the interests of developing countries and to bear in mind the special problems of land-locked countries; e) keep its program of work and its working methods under constant review.

Moreover, the Assembly invited UNCITRAL to seek from the Governments and interested international organizations, information relating to legal problems presented by the different kinds of multinational enterprises, and the implications thereof on the unification and harmonization of international trade law, and to consider, in the light of this information and the results of available studies, including those by the International Labor Organization, UNCTAD and ECOSOC what further steps would be appropriate in this regard.

UNITED NATIONS CONFERENCE ON PRESCRIPTION
(LIMITATION) IN THE INTERNATIONAL SALE OF GOODS

By Resolution 2929 (XXVII) adopted on November 28, 1972, the General Assembly expressed its appreciation to UNCITRAL for its valuable work on prescription in the international sale of goods. The Resolution calls for an international conference in 1974, to consider the question of prescription (limitation) in the international sale of goods and to embody the results of its work in an international convention and such other instruments as it may deem appropriate.

INTERNATIONAL LAW COMMISSION

Resolution 2926 (XXVII) of November 28, 1972, deals with the report of the International Law Commission on the work of its twenty-fourth session (1972).

The Assembly recommended that the International Law Commission should: a) Continue its work on State responsibility; b) continue to consider the subject of succession of States with respect to treaties in the light of comments received from Member States on the existing draft; c) continue the work on the succession of States in respect to matters other than treaties; d) continue the study of the most-favored nation clause; and e) continue the study of the question of treaties concluded between States and international organizations, or between two or more international organizations. The Assembly noted that the International Law Commission intends, in the discussion of its long-term program of work, to decide upon the priority to be given to the topic of the non-navigational uses of international watercourses, as requested by the General Assembly in Resolution 2780 (XXVI).

Furthermore, the Assembly recommended that, in conjunction with future sessions of the International Law Commission, other seminars might be organized, which should continue to ensure the participation of an increasing number of jurists of developing countries.

The Assembly invited States and specialized agencies and interested inter-governmental organizations to submit, as soon as possible, written comments and observations on the draft articles prepared by the International Law Commission concerning the prevention and punishment of crimes against diplomatic agents and other internationally protected persons. It also requested the Secretary General to circulate the comments and observations received to facilitate consideration of the draft articles by the General Assembly at its twenty-eighth session.

In Resolution 2927 (XXVII) of November 28, 1972, the General Assembly commended the International Law Commission and all the attorneys who have participated in the work of the commission for the outstanding contribution to the codification and progressive development of international law. It recommended that the twenty-fifth anniversary of the Commission should be observed in an appropriate manner by the General Assembly during its twenty-eighth session.

REPRESENTATION OF STATES IN THEIR RELATIONS WITH INTERNATIONAL ORGANIZATIONS

The International Law Commission, during its twenty-third session held in 1971, revised the draft articles on the subject.

At its 1972 session, the General Assembly, by Resolution 2966 (XXVII) of December 14, 1972, decided to convoke an international conference of plenipotentiaries as soon as practicable, to consider the draft articles on the representation of States in their relations with international organizations and to embody the results of its work in an international convention and such other instruments as it may deem appropriate.

PREVENTION OF INTERNATIONAL TERRORISM

In Resolution 3034 (XXVII) of December 19, 1972, the General Assembly expressed deep concern over increasing acts of violence which endanger or take innocent human lives, or jeopardize fundamental freedoms. It urged States to devote their immediate attention to finding just and peaceful solutions to the underlying causes which give rise to such acts of violence. It reaffirmed the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination. It condemned the continuation of repressive and terrorist acts by colonial racist and alien regimes which deny peoples their legitimate right to self-determination and independence.

The Assembly invited States to become parties to the existing international conventions which relate to various aspects of the problem of international terrorism. It also invited States to take all appropriate measures at the national level, with a view to the speedy and final elimination of the problem, and to consider the subject-matter urgently and submit observations to the Secretary General by April 10, 1973, including concrete proposals for finding an effective solution to the problem. It also decided to establish an ad hoc committee to consider the observations submitted by the States and to present its report to the General Assembly at its twenty-eighth session.

CHARTER OF THE UNITED NATIONS

The General Assembly Resolution 2968 (XXVII) of December 4, 1972, requested the Secretary General to invite Member States that have

not already done so to submit, before July 1, 1974, their views on the desirability of a review of the Charter of the United Nations and their suggestions on the subject. It also requested the Secretary General to present to the General Assembly at its twenty-ninth session a report setting forth the views and suggestions submitted to him by Member States.

ADMINISTRATIVE MACHINERY OF THE UNITED NATIONS

Resolution 2924 (XXVII) of November 24, 1972, of the General Assembly calls for the continuance of the Joint Inspection Unit for a further period of four years beyond December 31, 1973. It also calls for the review, at the thirty-first session, of the machinery of the United Nations and of its system for administrative and budgetary control, investigation and coordination. For this purpose, the Assembly requested the views of the Secretary General as chief administrative officer of the United Nations and as Chairman of the Administrative Committee on Coordination, and the views of the governing bodies of the specialized agencies, the Economic and Social Council, the Committee for Program and Coordination and the Joint Inspection Unit, as well as the comments and recommendations of the Advisory Committee on Administrative and Budgetary Questions.

The Assembly also recommended the evaluation, during its thirty-first session, of the work of the Joint Inspection Unit and reaffirmed the terms of reference of the Unit. It recommended further that the term of office of the Inspector should be four years, with the possibility of reappointment.

**LATIN AMERICAN
ECONOMIC INTEGRATION****FRANCISCO ORREGO-VICUÑA***Professor of International Law**University of Chile**Senior Legal Adviser**Department of Legal Affairs**Organization of American States*

and

ALBERTO O. C. TOLOSA*Legal Officer**Department of Legal Affairs**Organization of American States***LATIN AMERICAN FREE TRADE ASSOCIATION (LAFTA)**

The twenty-second period of regular sessions of the Conference of the Contracting Parties to the Treaty of Montevideo closed on December 12, 1972. During that period, twenty-four Resolutions were approved and many of the negotiations which the Treaty specifies are to be carried out annually were complied with.

Among the Resolutions approved, the following should be noted: Resolution 304(XII) urging the Parties which have not done so as yet, to ratify the Caracas Protocol to the Montevideo Treaty, subscribed December 12, 1969, which extends to December 31, 1980, the time limit stipulated in Art. 2 of the Treaty to bring the Free Trade Area into full operation. The Whereases emphasize the difficult legal problem facing the Association should the agreement not be ratified for, in such case, the obligation set forth in Art. 2 — bringing the Free Trade Area into full operation within not more than twelve years from the date of the Treaty's entry into force — would be in effect. Resolution 305(XII) complements Resolution 304(XII) in that it stipulates that "the terms of the provisions in force in the Association in connection with the completion of the Free Trade Area referred to in Art. 2 of the Treaty, shall be in force until December 31, 1973, should the Protocol of Caracas not be ratified by the contracting Parties before that date." Three countries have not ratified the Protocol, which will only enter into force once all the countries concerned have done so.

The significance of the ratification of the Caracas Protocol should not be overlooked in view of the far-reaching juridical and political repercussions resulting from non-ratification. If the Protocol is not ratified by December 31, 1973, Art. 61 of the Treaty will become operative. This article provides that "on the expiration of the twelve-year term starting on the date of entry into force of the present Treaty, the contracting Parties shall proceed to study the results of the Treaty's implementation and shall initiate the necessary collective negotiations with a view to fulfilling more effectively the purposes of the Treaty and, if desirable, to adapting it to a new stage of economic integration." If the Free Trade Area is not brought into full operation and if the term for so doing is not extended, the evaluation of the Treaty will raise problems of a dual nature: political, within the organization itself, and, as regards the rest of the world an apparent lack of flexibility to adapt to integration needs. On the other hand, from a juridical point of view, ensuing negotiations would lack the clear and solid legal basis necessary to face the many problems still unsolved in connection with trade liberalization, sectoral aspects, effectiveness and accomplishments of the Agreement of Cartagena, etc. All Governments represented in the Association are hopeful that the Protocol will be ratified before December 31, 1973.

Other resolutions approved refer to problems inherent to the regular administration of the Association, some of them modifying previous resolutions. By Resolution 319(XII) the Parties approved the work plan of the Permanent Executive Committee for 1973. This plan covers important topics such as the liberalization and coordination of trade policies, and industrial, agriculture and cattle raising, statistical and economic matters.

With regard to the negotiations, various NABALALC topics were discussed as well as some of the pending problems and future exchange prospects, and certain aspects of the sectoral negotiations.

SUBREGIONAL INTEGRATION AGREEMENT

As regards the Agreement of Cartagena, the most relevant event of the last quarter has been Venezuela's adherence to the Agreement. It should be remembered, that by Decision 35 the Commission of the Agreement of Cartagena established a joint working group of experts of the signatory Governments to the Agreement and of the Government of

Venezuela, to study the conditions and position of that country relative to its possible entry to the so-called Andean Group or Sub-regional Agreement.

On January 14, 1972, the Group's task came to an end and the Government of Venezuela took the necessary steps to initiate the appropriate official negotiations. These negotiations extended throughout 1972 and ended on February 15, 1973. A definite understanding was reached on the subjects discussed during that period.

The negotiations climaxed with the signing of the Final Act, which contains the *Consensus of Lima*. The latter sets forth the agreements reached and consists of two documents, i.e., Ancillary Instrument to the Agreement of Cartagena for the Adherence of Venezuela, and Conditions for the Adherence of Venezuela to the Agreement of Cartagena. Because of the potential readjustment problems, both documents constitute two important juridical instruments, not only to the Andean Group itself but to the broader ALALC as well.

Ancillary Instrument to the Agreement of Cartagena for the Adherence of Venezuela

Art. 109 of the Agreement of Cartagena provides that it may not be signed with reservations, and that it shall remain open to adherence by the other Contracting Parties of the Montevideo Treaty. Further, that the conditions of adherence shall be defined by the Commission, bearing in mind that acceptance of new members must conform to the goals of the Agreement. Thus, in twelve articles, the ancillary document establishes certain standards on adjustment to special circumstances in the application of the Agreement, so that Venezuela may be able to enter as a full member of the Andean Group.

Conditions for the Adherence of Venezuela

By virtue of Art. 109 of the Agreement and through Decision No. 70, the Commission established the conditions for adherence. The Decision consists of thirty-eight articles divided into nine chapters dealing with the liberalization program, common external tariffs, NABANDINA, metal/mechanic sectoral program and other aspects including some of the treatment of foreign capital, established in Decision 24.

CENTRAL AMERICAN COMMON MARKET

The first meeting on the rebuilding and improvement of the Central American Common Market, convened by the General Secretariat of the Treaty for Central American Economic Integration, was held in Guatemala City on December 1-2, 1972, with five Central American countries officially attending. Among those present were the Ministers of Economy and Finance; the Presidents of the Central Banks; representatives of the Executive Secretariat of the Central American Monetary Council, the Central American Bank for Economic Integration, the Central American Institute of Industrial Technology and Research, and the Central American Institute of Public Administration. The presence of the five countries at the meeting marks a forward step towards the elimination of the difficulties arising from the 1969 conflict between El Salvador and Honduras.

A high-level committee, integrated by a representative from each Government, for the improvement and rebuilding of the Common Market was created at the meeting. The main task of the Committee will be to study the proposals submitted by the Permanent Secretariat to the Treaty for the establishment of the Central American Economic Community (3 *Law. Am.* 127, 1972). SIECA, the Permanent Secretariat of the Treaty, was designated Technical Secretariat of the Committee. One of the main subjects to be considered by the new organism, already at work, will be the revision of the juridical and institutional instruments of the Common Market. It is too early as yet to determine just how far the Governments of the Central American Isthmus desire to go on the matter of the powers of the institutions of the Common Market. Meanwhile, the consensus of governmental representatives is that only a bold outlook and strong political action can pull the Common Market out of its present state of inertia and lead it towards true economic unification, a necessary requirement to the economic progress not only of each country, but of the entire area as well.

CARIBBEAN FREE TRADE ASSOCIATION (CARIFTA)

Three meetings of great significance to the establishment of the Caribbean Community and Common Market were held in Antigua, February 18-26, 1973. All three meetings were attended by officials of Member Countries of CARIFTA, the East Caribbean Common Market (ECCM) Secretariat and the Commonwealth Caribbean Regional (CARIFTA) Secretariat.

The First meeting, held on Sunday, 18th February, was called for the purpose of the drawing up of Intra-Regional Agreements for the Avoidance of Double Taxation (with tax-sparing provisions) principally as a means of encouraging the flow of private capital from the MDC's to the LDC's, particularly in the form of joint ventures, involving manufacturers from both the MDC's and LDC's. A Draft Agreement on Intra-Regional Double Taxation was drawn up at this meeting for Ministerial consideration.

The second meeting, held on Monday, 19th February, was called to finalize at official level outstanding technical issues in the Scheme for Harmonization of Fiscal Incentives to Industry which provides, among other things, for a longer maximum number of years of tax holiday to industries set up in the LDC's than to those established in the MDC's. The meeting was able to resolve all outstanding issues and its recommendations will be submitted for Ministerial consideration.

The third meeting, held from 20th to 26th February, dealt with the construction of a Common External Tariff and Protective Policy for the countries of the Region. In relation to the Common External Tariff, the main task of the meeting, as mandated by the Twelfth CARIFTA Council Meeting held in December, 1972, was to work out for Ministerial consideration a Common External Tariff for the CARIFTA countries, using as a basis the ECCM Common External Tariff, the Belize National Tariff and the Draft CARIFTA Common External Tariff prepared between 1970 and 1972 by officials of Member Governments, the ECCM Secretariat and the Commonwealth Caribbean Regional (CARIFTA) Secretariat. This meeting was able to complete its task within the allotted seven days and was able, among other things, to construct for Ministerial consideration a revised draft CARIFTA Common External Tariff.

MEETING OF ATTORNEYS-GENERAL

The Attorneys-General of Commonwealth Caribbean Countries met at the Commonwealth Caribbean Regional Secretariat in Georgetown from 9th to 12th March, to consider the Draft Treaty establishing the Caribbean Community and Common Market later this year. The meeting considered the proposals put up by the Working Group which held four meetings earlier this year.

HEADS OF GOVERNMENT CONFERENCE

The Eighth Conference of Commonwealth Caribbean Heads of Government is scheduled to be held in Georgetown, Guyana from 9th to 11th April, 1973. The Conference, at which all Commonwealth Caribbean Governments and the Commonwealth of the Bahamas are expected to participate, will pursue *follow-up action on matters referred to it by the Seventh Heads of Government Conference held in Chaguaramas, Trinidad, in October 1972, with specific reference to the establishment of the Caribbean Community and Common Market.* The Conference will be preceded by the Thirteenth Meeting of the CARIFTA Council of Ministers, also to be held in Guyana.

TAXATION

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NOTE

It is with deep regret that the Editor announces that due to the press of other duties, Contributing Editor John P. Corrigan, Jr. will be unable to submit his Tax Report in the future. Mr. Corrigan's contributions over the past five years have enhanced the stature of the *Lawyer*, and for this and his unselfish cooperation, the Editor is deeply grateful. In lieu of Mr. Corrigan's Report a special tax feature will appear in this and future issues. The first of these features—Latin American Tax Law Update: 1972—by Mary Mercedes Marti will be found immediately following Mr. Langer's Caribbean Report.

CARIBBEAN REPORT

Tax Havens

The Practicing Law Institute of New York has published a course handbook entitled "Foreign Tax Havens—Choosing the Right One." It contains outlines and other materials relating to various tax havens, including those in the Caribbean such as the Bahamas, Bermuda, the Cayman Islands, Netherlands Antilles and Panama.

BARBADOS

Tax Treaty with Canada

The Canadian Department of Finance has announced that it has begun negotiations with Barbados intended to result in an income tax agreement between them.

BRITISH VIRGIN ISLANDS

"Exempt Bodies Ordinance"

The Legislature of the British Virgin Islands is considering the enactment of an ordinance which may be designated as the "Exempt Bodies Ordinance 1973." If enacted, it would permit any company, partnership or trust whose income comes basically from sources outside the British Virgin Islands to exempt itself from B.V.I. income tax by paying a fee of US\$250 per year. In addition to income from sources outside the British Virgin Islands, such a company could also have bank interest or dividends from any source.

CAYMAN ISLANDS

Bank License Fees

Effective January 1, 1973, the annual license fees payable by banks and trust companies in the Cayman Islands were substantially increased. Institutions holding Class B (Offshore) Licenses now pay CI\$2,500 (about US\$3,000) per year. Those with Class A (Local) Licenses now pay CI\$5,000 (about US\$6,000) yearly.

JAMAICA

Tax Treaties With U.K. and Canada

Preliminary talks have taken place between Jamaica and the United Kingdom which could lead to a new income tax treaty between them.

Meetings also took place in February 1973 to discuss the revision of the income tax treaty between Jamaica and Canada.

NETHERLANDS ANTILLES

Dividend Tax

The Netherlands Antilles Government has reported that it does not intend to introduce a dividend tax. This preserves intact the present usage of the Netherlands Antilles as a tax haven for special transactions such as Eurobond financing and U.S. real estate investments by nonresident aliens.

U.S.-Netherlands Antilles Tax Treaty

Negotiations are pending which are likely to result in either substantial changes or a new income tax treaty between the U.S. and the Netherlands. It has been learned from a high U.S. Treasury Department official that such changes are not likely to affect the existing treaty as it applies to the Netherlands Antilles.

By way of background it should be noted that the original 1948 treaty applied only to the Netherlands in Europe. In 1955, it was extended to cover the Netherlands Antilles as well. Because of alleged abuses, a 1963 protocol made certain changes which applied only to the Netherlands Antilles. Subsequent modifications have been made applicable only to the Netherlands in Europe, and not the Antilles. Thus, for practical purposes there are now two entirely different treaty texts—one applicable to the Netherlands and the other to the Netherlands Antilles. Apparently the governments will continue to treat them as separate treaties.

ST. VINCENT

Income Tax Amendments

A number of changes were made in St. Vincent income tax legislation by the Income Tax (Amendment) Act 1972 (Act 4 of 1972), according to a report from the United Kingdom Board of Inland Revenue in their publication *Overseas Tax Developments*. The annual rental value of owner-occupied property is no longer included in the computation of income. Nevertheless, interest on money borrowed to acquire such property is still deductible.

All of the personal and family allowances have been substantially increased.

SURINAM

Dividend Withholding Tax

The Surinam Government has indicated that it may introduce a dividend withholding tax. The possible consequences of such a withholding tax have been discussed by the Surinam Minister of Finance and the Dutch Vice Minister of Finance.

TRINIDAD AND TOBAGO

Tax Treaty With Canada

The governments of Trinidad and Tobago and Canada have held negotiations to discuss revision of the income tax agreements between them.

SPECIAL FEATURE**LATIN AMERICAN TAX LAW UPDATE: 1972**

MARY MERCEDES MARTI*

This study reviews the tax developments in eighteen countries of Latin America during 1972 and early 1973, with emphasis on those changes which affect North American investors and corporations. Recurrent legislation, as well as proposed legislation, particularly when the bills seemed likely to become law, are highlighted so as to give maximum coverage in each of such common areas listed below.

Area No. 1 — Fiscal Policy

Area No. 2 — Promotion of Economic Development

Area No. 3 — Inflation Generated Measures

Area No. 4 — Social Security Systems

Area No. 5 — Tax Administration

Area No. 6 — Special Situations

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Before analyzing the pertinent legislation of each country, it is well to bear in mind three decisions taken by the Cartagena Convention Commission. These decisions, enumerated below, constitute the framework for the treatment of foreign investments by the signatory countries of the Andean Agreement for Subregional Integration.

1. Decision No. 24, of December 31, 1970 laid down Rules on Foreign Investments which are being adopted by each signatory country.
2. Decision No. 40 of November, 1971 approved two model treaties to avoid double taxation.
3. Rules on Multinational Enterprises and Subregional Capital Treatment, and Rules on Investments by the Andean Development Corporation were passed under Decisions 46 and 48, respectively, both dated December 18, 1971.

ARGENTINA

In the Tax Policy Area, important amendments to the income tax law were enacted effective January 1, 1972. A novel provision took into account the effect of inflation on the computation of taxable income by allowing adjustment of the cost of assets in accordance with the coefficient fixed annually by the Income Tax Bureau on the basis of the wholesale prices of nonagricultural products. Nonresidents were allowed a 20% rather than a 50% deduction on payment received as interest, fees for technical assistance, royalties and the like. Thus, since the basic rate was 41%, the effective rate turned to be 32.8% as opposed to 20.5% under the old law.¹

New Income Tax rules were also instituted in 1972. Personal exemptions which had been updated at the beginning of 1972, were again updated at the beginning of 1973. An important change affected non-residents, i.e., the new law waived the need for showing the withholding of the tax on the remittance, in order to claim the deduction. The new rules for 1973 refer to valuation of inventories, adding flexibility to the rules promulgated at the beginning of 1972.²

Beginning January 1, 1972, the coefficient used to adjust the cost of assets has also been used to adjust the basis of property in determining taxable occasional gains.³

Under amendments introduced in the occasional gains tax law for 1973, gains from the sale of automobiles will be exempt. A new rule applies to the computation of gains from sales of real estate. In addition, the general rate has been increased from 10% to 15%. The 20% rate on lottery prizes has been increased to 25% beginning January 1, 1973.⁴

Beginning December 31, 1972, and for the ten years that follow, a new "emergency" tax is to be imposed. It will take the form, as it has in other Latin American nations, of a patrimony tax, that is, a net worth tax. It is levied on individuals and undivided estates. It applies at the rate of 5 per thousand to 15 per thousand where the net worth exceeds 500,000 pesos.⁵

Starting in January 1, 1972 the rates of several excise taxes were also boosted.⁶ Similarly, beginning in January 1, 1973,⁷ the tax rates were upped for the stamp tax.⁸

In Area No. 2, the most significant development was the overhaul of the Industrial Promotion Law. Emphasis has been on fomenting new activities in diversified geographical areas. This law sets forth guidelines for granting tax exemptions and reductions for periods up to ten years and, in certain zones, fifteen years.⁹

The Mining Promotion Law was also enacted in 1972, filling a void in a country which has had no specific incentive to promote the mining industry. The law sets up alternative incentives that may be opted for by investors as opposed to firms.¹⁰

In Area No. 3, to cope with inflation, fixed assets may be revalued as provided for in a new law. The revaluation is compulsory only for financial institutions and certain large enterprises. The percentages to be applied to the original cost are to be fixed by regulations. The new values are to be applied in computing depreciation allowances for income tax purposes.¹¹

Tax administration, that is Area No. 5, has also been the subject of amendments effective January 1, 1973.¹² Further, the Executive Branch, exercising the authority granted by law, has consolidated the text of several tax laws including amendments thereto up to 1972. The new text will be cited as "Text Ordained in 1972" for each of the tax laws consolidated. These are the income, occasional gains, sales, inheritance and gifts, stamp, and substitute inheritance tax laws.¹³

BOLIVIA

Concerning Area No. 1, local real property taxes, imputed rental value, and municipal service fees have been merged in a single real property tax. This levy is applied on the appraised value, at a 4% rate.¹⁴

New rules to aid exporters of copper have been enacted. The scale of royalties paid in lieu of export duties and income taxes has been revised. Rebates against this royalty will be maintained until January 31, 1974. Exports of copper are exempt for five years, beginning July 28, 1972, from the payment of commissions to the Mining Bank of Bolivia.¹⁵

The exploitation of Hydrocarbons has been regulated under new legislation. Oil deposits belong to the State and will be explored and exploited by *Yacimientos Petrolíferos Fiscales Bolivianos* (YPFB), a governmental agency. YPFB may act directly or may enter into association, operation or service contracts with national or foreign individuals or legal entities. Upon the termination of the contract, all assets used by the company revert to the Government. The taxing provisions of the statute include departmental and national extractive royalties equivalent to 11% and 19% of production, respectively. These royalties are paid in lieu of income tax on business profits and total income tax. Service contractors are subject to the income tax, but special rules apply to payments abroad and depreciation allowances. Other provisions call for exemptions from import and export duties, sales tax and future direct taxes for YPFB, operating contractors and service contractors.¹⁶

Exports of cotton will now be subject to a 20% tax on their FAS value.¹⁷

A new tax on the net value of exports of minerals, metals, oil, and other goods, has been established. The rates range between 15% and 40%.¹⁸

Under a new statute purporting to consolidate existing laws and regulations governing the sales tax in force since June 1, 1971, the 10% rate levied on certain goods regarded as luxury items has been eliminated. The 5% general rate is maintained. The new law became effective on August 1, 1972.¹⁹

Within Area No. 2, national and foreign private investment and re-investment in industry, mining, agriculture, cattle raising, renewable natural resources exploitation, construction and tourism are governed by a new Investment Law. New enterprises declared entitled to the benefits

of the law will enjoy up to 100% exemption from import duties and additional tax on imports and from national and local taxes on construction. Interest on domestic or foreign loans, the proceeds of which are invested in approved enterprises, will be free from income tax. Sales and production taxes will not apply to the output which is exported. Special accelerated depreciation of fixed assets is also granted.

Profits of domestic enterprises applied to the purchasing of new shares issued by companies wholly or partially owned by foreign capital will be exempt from income tax until the national equity reaches 51%. The exemption of reinvested profits has been retained. Existing enterprises will enjoy tax benefits with regard to their exports.²⁰

To cope with inflation, a mandatory revaluation of fixed assets has been decreed as part of a plan begun in October, 1972 for Monetary Stabilization for Development. Imported goods are to be revalued by 60%; buildings and domestic goods, 20%. Such revaluation is subject to a 5% tax.²¹

In Area No. 6, two model treaties to avoid double taxation promulgated by the Cartagena Agreement Commission have been approved.²²

BRAZIL

In the first area, i.e. fiscal policy, important changes in the income tax law applicable to individuals were introduced effective January, 1972. The amendments relate to withholding of tax on salaries, withholding of tax on payments of fees by legal entities, limitations on the amount of interest on personal debts that may be deducted, and deduction of expenses connected with professional activities.²³

There were no basic income tax amendments in 1972 other than updating the brackets of income of individuals subject to the progressive tax.

Also within the fiscal policy area, consolidated regulations under the I.P.L. tax have been released.²⁴

Further, under the authority of a recent decree-law, the industrialized products tax rates on a wide range of essential processed foods and educational material have been reduced to zero. Tax credits for raw materials used in manufacturing such foods have been eliminated.²⁵

In Area No. 2, legislation favorable to foreign loans was enacted. Subject to proof of their qualification as loans in the national interest, income tax on interest and commissions related to such foreign loans may be refunded, reduced, or waived by the Minister of the Treasury.²⁶

Brazil is also pushing for increased exports of industrialized products. Thus, a decree-law was passed providing that firms or groups of firms that develop special export programs will qualify for import duty, industrialized products and income tax benefits under a new law, but forfeit the tax benefits granted under current legislation. The aggregate value of goods imported duty-free and industrialized products tax-free under this law, may not exceed one-third of the net value of the manufactured products exported annually. Dividends attributable to the exportation of industrialized products may be excluded from taxable income as well as from excess profits subject to excess profits tax.²⁷

Moreover, Brazil is also pushing for increased exports of minerals and metals. Accordingly, a decree-law was passed providing that mining companies which export at least one half of their output to their foreign parent company may deduct profits from exports for normal income tax purposes. But there is a condition to be met—the majority of the voting capital must be Brazilian.²⁸

Exporters received a further benefit. Subject to approval by decree, on a case-by-case basis, importers of “industrial complexes” which are in operation in the originating country will be exempt from import duties and the industrialized products tax, if the equipment is used essentially to produce goods for export.²⁹ This exemption from import duty and the industrialized products tax allowed for used industrial complexes has been implemented by a new decree-law and regulations thereunder. These statutes spell out the conditions under which the goods produced with the duty-free equipment may be sold within the country, Such sales will be treated as imports.³⁰

Lastly, fishing incentives were extended so that up to and including the year 1977 (1976 taxable year), fishing enterprises and manufacturers of fishing equipment will continue to be entitled to import boats and fishing equipment and tools free from custom duties and industrialized products tax. No federal taxes and assessments will be levied on processed fish until above year. Also up to that year, every legal entity may invest in qualified fishing projects up to 25% of the income tax payable by them, and fishing enterprises will remain totally exempt from income tax.³¹

Referring to Area No. 3, Brazilians seem to have learned to live with inflation. It is well known that the *cruzeiro* values contained in the income tax law are adjusted every year in accordance with the cost-of-living index. A Treasury *Portaria* has fixed at 1.15 the coefficient for taxes payable in 1973 for the taxable year 1972,³² and a decree-law has set the new brackets of taxable income of individuals and the allowance for dependents.³³

With regard to Area No. 6, a peculiar feature of Brazilian tax law is the awareness of jurisdiction-to-tax conflicts. Three treaties to avoid double taxation and prevent tax evasion were promulgated last year: one with France,³⁴ another with Belgium,³⁵ and the third with Finland.³⁶

CHILE

In the area of Fiscal Policy, tax surcharges were imposed at the outset of 1972. The 17% tax levied on business income (industry, commerce, mining, fishing and banking,) income from brokerage and construction and any other income not expressly mentioned in the law or exempt, will be paid with a 15% surcharge for 1972, if the taxpayer's capital exceeds, 2,000,000 *escudos*. The surcharge applies also to the tax payable in lieu of income tax by large mining companies. The 20% tax levied on corporate directors' remuneration is to be paid with a 30% surcharge for 1972. A 10% surcharge will apply to the real property tax payable in 1972.³⁷

Exercising the authority granted by the Income Tax Law, the Executive Branch has increased the 40% tax rate on certain royalties and technical assistance fees derived by non-residents. For one year beginning January 1, 1972, a 50% rate will be levied on those items connected with printing, clothing and furniture-manufacturing industries, a 60% rate on those connected with the production of wines and liquors, and an 80% rate if connected with the production of cosmetics, perfumes and toiletries.³⁸

Substantial changes have been introduced in the Income Tax Law in connection with the taxation of earned income of resident individuals. Wages, salaries and retirement pensions will be subject, beginning January 1, 1973, to a new progressive rate from 10% to 65% applicable to various brackets of taxable income described in terms of up to 5 to over 80 "minimum vital salary" per month. The personal exemption is 10%

of a minimum vital salary and the exemption for dependents decreases from 20% to 5% of a minimum vital salary, depending on the number of dependents. The tax is withheld at the source. Incomes of a minimum monthly salary are exempt, and those up to two minimum salaries are subject to 3.5% which was the old rate for all earned income.³⁹

A new sales tax took effect on January 1, 1973, replacing the previous cascade tax. The new sales tax has combined rates in an effort to lessen the pyramid effect of the cascade tax. The new tax applies as follows:

1. Sales of producers and importers directly to the public, rate 21.5%.
2. Sales of producers and importers to small businessmen, rate 21.5%.
3. Sales of producers or importers to other businessmen, rate 17.5%.
4. Sales from one producer to another for production processing, rate 8%.
5. Sales of business men to the public, rate 4%.⁴⁰

Most of the fixed rates of the stamp tax were revised effective May 12, 1972, by increasing all fractions of the *escudo* to the nearest whole *escudo*. Rates resulting from adjustment made henceforth in accordance with the cost-of-living index are to be rounded off if they show fractions of the *escudo*.⁴¹ Both the fixed rate and the proportional rates were also increased towards year end in an overhauling of the stamp tax law.⁴²

Exercising authority granted by Congress, the Executive Branch has issued several decrees with force of law fixing a single sales tax on the first sale of various products, such as liquor, cosmetics, records, radio receivers, custom jewelry, appliances, luxury goods, films and apple cider. The rates range from 22% to 52.5% of the sales price.⁴³

Among promotional measures for economic development, the Rules of Multinational Enterprises and Subregional Capital Treatment and the Rules on Investments by the Andean Development Corporation laid down by the five countries which are signatories of the Andean Agreement for Subregional Integration have been approved.⁴⁴

With regard to Area No. 3, it can be noted that Chile is so plagued by inflation that it has created a standard whereby values for tax purposes are adjusted annually, or as it happened last year, twice within a year. The standard is the "minimum vital salary" fixed for commercial and industrial workers of the Department of Santiago. The 1,016.96 *escudos* salary fixed at the beginning of the year⁴⁵ was upped to 2,033.92 *escudos* from October 1, 1972.⁴⁶ The latter applies now for all tax purposes until September 30, 1973.⁴⁷

Rampant inflation also forced the authorities to adjust real property assessments. The factor applied was 21.1% on urban property⁴⁸ and 8% on farm land.⁴⁹

A tax administration principle, novel to the Chileans, was introduced near year end in the form of payment of estimated tax by "First Category" (business income) taxpayers. The law establishes twelve monthly provisional payments based on the income earned at the end of the fiscal period. These payments also cover the global complementary tax and any additional tax for partners. After the first quarterly payment, the individual may suspend the remaining payments if he is able to show losses in the first quarter.⁵⁰

COLOMBIA

In Area No. 1, there have been no enactments dealing with income tax. However, on August 31, 1972, the Administration submitted to Congress two bills amending several provisions of the current Income Tax Law and so-called complementary taxes. Under the amendments, corporations and foreign companies would be exempt from the excess profits tax; partnerships and limited liability companies would be subject to income tax at higher rates; corporations would be allowed to reinvest up to 5% of net income tax-free in fixed assets. Personal exemptions, non-business deductions, and the amount of non-taxable dividends to which individuals are entitled, as well as the basic exemption for net worth (patrimony) tax, would be increased. Individuals would also enjoy a credit of up to 10% of the tax due on earned income for investments in a recently-created National Investments Fund.⁵¹

Congress is also considering two bills creating new taxes on real property. Owners of rural property would be subject to income tax on the imputed income from the land. Such income would be 10% of the

appraisal of farm land and 4% of the appraisal of grazing land. In addition, a 1% tax would be levied on all real property, to finance an elementary school program.⁵²

Ground rules on Foreign Investments and know-how stand out in Area No. 2. Guidelines for authorizing or denying registration of foreign technical assistance and contracts of similar nature for the investment of foreign capital have been released. The guidelines are also applicable to contracts for the sale or transfer of intangibles such as copyrights, management assistance, patents and the like. Remittance of profits may not exceed 14% of the registered capital per year.⁵³

For the purpose of stimulating savings to finance housing construction, the purchasing power of principal invested or loaned will be protected against inflation by periodic revaluations based on the national index of consumer prices. The new value will not be treated as income of the investor or lender. The tax exemption granted since 1965 to savings of up to 150,000 *pesos* and to interest thereon will not apply to transactions entitled to revaluations.⁵⁴

Under a statute regulating tourist resources, tourist projects located within areas declared to be tourist resources will qualify for maximum tax benefits. These benefits consist of receiving tourist development certificates for certain percentages of an investment in tourist facilities.⁵⁵

In Area No. 6, the Colombian Institute for Social Security, exercising the power vested in it by the statute which in June 1971 revamped the social security system, has fixed the amount of employer and employee contributions to the system, the maximum insurable salary, and categories of insured workers. Beginning January 1, 1973, the employer contribution will be 4.66% for illness and maternity, plus 4.5% for disability, old age and death. The contribution for work accidents and occupational diseases remains unchanged at .28% to 7% of payroll, according to the degree of risk. The maximum insurable monthly salary is 14,610 *pesos*.⁵⁶

COSTA RICA

Among the changes under Area No. 1, substantial reforms have been introduced in the Income Tax Law. New rates ranging from 5% to 40% apply on the taxable income of legal entities. Income received by non-residents will be subject to withholding at a 10% rate on interest income, 15% on dividends and after-tax branch profits, and 20% on royalties and any other income paid or merely credited abroad. Individuals will

pay progressive rates ranging between 5% on income not over 5,000 *colones* and 50% on income exceeding 350,000 *colones*.⁵⁷

Fundamental changes with respect to the general sales tax rate and to specific consumption taxes became effective on March 11, 1972. The old general 5% rate has been maintained, but the 10% and 15% rates applicable to certain goods and services listed in Annex I to the old law have been repealed. The 5% rate applies on sales of goods and services subject to a new consolidated specific consumption tax, as well as to liquor, beer and cigarettes on which a 10% excise tax is levied.

Luxury goods ready for consumption will be subject to a consolidated selective consumption tax payable by the importer or by the manufacturer on the importer's or manufacturer's cash selling price.⁵⁸

Rules for collection and administration of the annual tax on real property have been revised. The tax applies on the value of all the properties owned by a taxpayer. The rate is progressive, starting at .30% if the aggregate value of the property does not exceed 250,000 *colones* and reaching 1.05% should such value exceed 3,000,000 *colones*.⁵⁹

DOMINICAN REPUBLIC

The main development in Area No. 1 is a new Capital Gains Tax. Gains from the sale, exchange or involuntary conversion of real estate not held in the course of a trade or business will be subject to this new tax, effective since March 30, 1972.

The tax rate is 20% on the net gain, except if the taxpayer resides abroad, in which case the rate is 30%. Losses may be offset against gains realized during the following year.⁶⁰

A tax on excess profits derived from exports of sugar to the world market at extraordinarily high prices or to the United States under additional quotas has been created. The rates are the same as those of an earlier tax, now superseded, levied on similar profits.⁶¹

ECUADOR

A most unusual development took place in Ecuador with regard to Area No. 1 — the corporate income tax rate has been lowered — i.e., the

tax rate on undistributed earnings of domestic corporations was reduced from 30% to 20%. The new rate will apply to earnings derived on or after January 1, 1972.⁶²

The annual per capita tax levied on domiciled individuals has been repealed and in its stead a new tax based on the overall income of each person has been created.⁶³

In Area No. 4, a new Social Security Code has been enacted, but is suspended at present. The protection is rendered through two systems, namely, the general system and the complementary system. Under the former, basic and uniform protection, consisting of the same benefits currently in effect, is offered to active participants whether salaried or self-employed. Under the latter, additional benefits are granted, financed by contributions to be borne by the beneficiaries. Employer and employee contributions have not been changed.⁶⁴

In the field of tax administration, important changes have occurred. Pursuant to new legislation, export duties, income tax and royalties payable by oil companies will be withheld by the Central Bank, from the proceeds received for the oil exported. The final assessment of the tax liability at the end of the fiscal year is to be made in accordance with the general laws.⁶⁵

In Area No. 6, the two model treaties to avoid double taxation promulgated by the Cartagena Agreement Commission have been approved.⁶⁶

EL SALVADOR

In Areas No. 1 and 5, it may be observed that several provisions of the Income Tax Law dealing with the administrative procedure for the collection of tax have been amended.

These amendments relate to the filing of tax returns, the determination of deficiencies, statute of limitations for the assessment of tax and fines, taxpayers' remedies, and withholding of tax on occasional gains and on certain employment benefits. Drawing and lottery prizes and other occasional gains realized by nonresident taxpayers continue to be subject to withholding at a 38% rate.⁶⁷

Labor and social security indemnities are exempt from income tax under a new Labor Code. All contracts, petitions, receipts and certificates relating to labor matters are exempt from stamp tax.⁶⁸

Under Area No. 6, a Taxpayers' Registry for individuals, trusts, estates and legal entities has been created as of September 14, 1972. The Registry will include those who pay stamp tax and taxes on income, capital, real property transfers, inheritances, gifts, business licenses, and imports and exports, and also payors of all other fiscal contributions, if their registration is required by law or regulations.⁶⁹

GUATEMALA

In the field of income tax law, an important order dealing with foreign loans became effective August 4, 1972. The order construes the exemption granted by the income tax law to interest on foreign loans repayable in more than eighteen months.⁷⁰

Another important order of the Internal Revenue Bureau has fixed the annual tax payable by corporations. This tax, based on the net worth of the companies and deductible for income tax purposes, must be paid by domestic and foreign enterprises alike.⁷¹

In Area No. 2, pursuant to amendments to the private finance company's law, the interest yielded on securities issued by such companies will be exempt from income tax.⁷²

In Area No. 3, another provision which is common to many countries, that is, the updating of real property appraisals, may be observed, e.g., real property within Guatemala City will be reappraised. To that effect, the values established by the Municipality of Guatemala, if final and "higher" than those recorded by the Income Tax Bureau, will be used.⁷³

In Area No. 5, the organization and powers of the General Bureau of Internal Revenue and of the General Bureau of Customs have been revised in order to conform to the new structure of the public finance sector.⁷⁴

HONDURAS

In Honduras, the most important development in Area No. 1 is a new tax on undeveloped land, which progresses from 3% of the assessed value of the property for the first year, through 8%, 15% and 25% for each of the three subsequent years, to 40% of that value for the fifth year and each year thereafter. Rural property will be deemed to be undeveloped if it is abandoned or exploited for farming, cattle raising

or forestry at a yield lower than the average, within the same zone, determined by the National Agrarian Institute for Comparable Land.⁷⁵

In Area No. 2, where incentives normally promote the economy, we encounter a restraint in that tax exemptions and reductions, granted to qualified enterprises under the industrial promotion law or under the Central American Agreement on Tax Incentives for Industrial Development, have been drastically curbed since December 31, 1971. Import duties and consular fees will be gradually payable in full over a six year period from the date an enterprise becomes eligible for the exemption, and income tax payable from the taxable year 1971 will be exempt only by 50% thereof.⁷⁶ The incentives granted in Honduras were to tourist enterprises.

A recent decree-law provides that individuals who, and legal entities foreign or national which invest in construction, exploitation, expansion or modernization of hotels, or tourist-connected services, will enjoy among other tax benefits, exemption from income tax up to 100% for five years and 50% for another five years if the enterprises are established in Tegucigalpa or San Pedro Sula. The exemption is 100% for ten years for enterprises established anywhere else in the country. Strangely, the exemptions are not available to a tourist enterprise in any year in which its net profit exceeds 20% of the invested capital.⁷⁷

Honduras has also made changes in its social security system. The system enacted late in 1971 was superseded on February 16, 1972. Among the changes are the enforceability of the system with regard to coverage of disability, old age and death risks which had been in abeyance under the old law. Contributions by the employer are 7% of salaries and by employees 3.5% of salary.⁷⁸

As far as administrative practices are concerned, it is well to note, that the Director of Taxation was authorized to accept advance payment of income tax for the fiscal year 1972, although due in 1973.⁷⁹ This seems to have been the answer to a request by someone wanting to show a tax paid or accrued under Section 901 of the U. S. Internal Revenue Code.

MEXICO

Substantial reforms to the income tax law became effective on January 1, 1972⁸⁰ and other substantial reforms to that law came into effect on January 1, 1973.⁸¹

Under the amendments passed at the end of 1971, the undistributed profits tax was repealed, retroactively, to January 1, 1971. In essence, it was never operative. Royalties, fees, and other income items derived by non-residents were taxed at progressive rates but were subject to withholding at a 20% rate on account of the final tax. Taxation and tax rates applicable to interest income have been revised. Other changes relate to computation of taxable income, e.g., new rules on inclusion of gains and losses from the sale or exchange of real estate used in business, depreciation allowances, accelerated depreciation, computation of taxable distributions, disguised dividends, and so forth.

Among changes on the taxation of individuals were higher progressive tax rates on overall income, 100% increase in personal exemptions, inclusion in overall income of dividends, interest and gains from the appreciation of Mexican securities with certain limitations, the elimination of the standard deduction, and new tables for withholding of tax at the source.

The law that became effective on January 1, 1972 dealt with almost all of these issues. For instance, with regard to the withholding of income subject to the general rate which is remitted abroad, there is no more 20% limitation. The withholding is computed on accumulated payments. The gains from the sale of real property now apply to all property not only urban property as under the old law. One important change affecting foreign lenders is that the tax on interest from loans for financing machineries from abroad has been increased to 20%, against 10% throughout 1972.

The same tax reform law amends the gross receipts tax. The most important change in this tax is the rate, i.e., a combined 3%, between federal and local rates, is now a general rate of 4%. Income received by brokers and agents is subject to 10%, and a similar rate is applicable to the sale and lease of luxury items.³²

Beginning January 1, 1972, the first sale of new rugs and electronic appliances has been subject to new taxes. The tax on rugs amounts to 10% of the selling price. The tax on tuners, high fidelity consoles, amplifiers, television sets, tape recorders, record players and the like is levied at a 7% rate on the selling price. Taxed goods exported or sold within free zones are exempt.³³

As of January 1, 1973, changes have been introduced in the stamp tax law, the tobacco tax law, the soft beverage tax law, and on the law levying a tax on diesel vehicles.³⁴

In Area No. 2, the most important developments were the guidelines for the promotion of enterprises. The guidelines were passed in 1971 implicitly superseding the 1955 law relating to new and necessary enterprises.⁸⁵ Regulations for the promotion of industrial enterprises became effective July 21, 1972 under those guidelines.⁸⁶ Tax incentives, bank loans, and technical advice will be granted to enterprises for periods from two to ten years, depending upon their activities and location. For application of the benefits, the country is divided into three zones. The tax incentives include reductions in import duties, stamp, first sale and income taxes, accelerated depreciation on equipment for income tax purposes, and tax-free reinvestments. Other provisions deal with requirements for obtaining the benefits, e.g., 51% Mexican ownership.

In 1972 a new fishing promotion law was enacted. Commercial enterprises will not be granted concessions unless they are organized within Mexico, issue only registered shares, have at least 50% of their capital owned by nationals, and employ as their managers only Mexican citizens. Actual tax benefits are to be established by the Secretary of the Treasury and Public Credit.⁸⁷

Subject to several limitations, the manufacture of automobiles and auto parts has also been favored. Main incentives consist of rebates for the sales taxes paid on parts used to manufacture cars which are actually exported.⁸⁸

In the area of tax administration, provisions of the fiscal code relating to the auditing of financial statements by public accountants were among those amended as of January 1, 1972⁸⁹. The ones amended as of January 1, 1973 deal with tax enforcement and penalties.⁹⁰

NICARAGUA

In Area No. 1, a special tax on special and regular gasoline has been in force since May 2, 1972. Regular gasoline will pay 29¢ of a *cordova* per liter and the special, 32¢.⁹¹

Concerning Area No. 2, exports of industrialized products have been favored. Those out of the Central American area will benefit from tax rebates according to a decree that became effective on April 18, 1972. The Executive Branch will grant tax benefits to the extent and for the length of time it deems appropriate after taking into account the economic importance of the enterprise to the country.⁹²

An important development with regard to tax administration, was customs administration. The powers and composition of the Central Customs Commission have been established by decree. Further, a commission has been charged with administering import and export duties, and the tariff and duty privileges granted to enterprises under the Industrial Promotion Law and the Central American Convention on Fiscal Incentives.⁹³

PANAMA

In Panama, legislation in the area of income tax policy has resulted in a change in taxation of royalties. Two provisions of the Fiscal Code dealing with the income tax were modified as of July 24, 1972, e.g. royalties paid or credited abroad by persons established in the Colon free zone will not be deductible by the payor, but will be exempt in the hands of the recipient.⁹⁴

Other changes relate to excise taxes. New and higher indirect taxes were imposed. Taxes on rooming houses and leisure boats have been enacted, and the tax on rooming houses ranges from 8 to 10 *balboas* per day for each room. Taxes on liquor, beer, cigarettes and gasoline have been increased. The tax on gasoline is the highest—60% of the retail price.⁹⁵

In Area No. 2, the Securities Market Law has been amended. Gains derived by any taxpayer from the sale of stock and securities of corporations registered with the National Securities Commission and 25% or more of whose assets are invested in the country, are exempt from income tax. Interest on securities issued by such corporations will be subject to a 5% single tax to be withheld at the source, but interest so taxed need not be reported in the income tax return.⁹⁶

Tourist projects have also been favored. Income tax exemption is granted to profits from tourist operations for a thirteen-year period, to interest from loans to tourist enterprises, and to gains derived by contributors of appreciated property to the capital of tourist enterprises. And a three-year carry-forward of net operating losses will also be allowed. Eligible enterprises in special tourist zones will also enjoy exemption from import duties, property taxes and taxes on capital.⁹⁷ The Balboa district has been declared a special tourist zone.⁹⁸

In Area No. 4, the Social Security Fund has been vested with powers to enforce social security contributions.⁹⁹

PARAGUAY

Important changes took effect on February 27, 1972 in the income tax law, including a higher tax rate for domestic and foreign legal entities, and a 5% tax on gains from sales of real estate. Domestic and foreign companies, branches of foreign companies and foreign sole proprietorships will be subject to a rate progressing from 25% on the first 500,000 *guaraníes* of taxable income from Paraguayan sources, to 30% on the excess over five million *guaraníes*.¹⁰⁰

The above income tax does not affect cattle raisers, in that cattle raising industries will be subject to a 200-*guaraníes* tax per head of cattle in lieu of income tax.¹⁰¹

In Area No. 2, the financing of low-cost housing has received encouragement. The system is comprised of a National Bank for Savings and Housing Loans as well as private savings and loans companies. These companies may be organized as corporations or as mutual associations and will be supervised by the Bank. At least 51% of their capital must belong to nationals. The Bank, as well as the mutual companies (not the corporations) will enjoy exemption from income, economic activities, stamp, sales and business license taxes and import duties. Furthermore, interest from loans guaranteed by the new National Bank will be free from income tax.¹⁰²

In Area No. 5, an important development took place in the creation of the Taxpayers' Register, effective January 1, 1972. Upon registration, a number is assigned and a card is issued to each individual and to each establishment of a legal entity or company.¹⁰³ The Income Tax Bureau has released rules for the registration of income tax payers. For instance, among the documents which companies, including branches and agencies of foreign companies are required to attach to the application for registration is a legalized copy of the articles of incorporation or company agreement as well as of the authorization to do business within the country. The latter must be duly recorded in the Public Registry of Commerce.¹⁰⁴

PERU

In Peru there was a good mix of Areas No. 1 and No. 3. Recently introduced is a system similar to that used in Chile, namely, the "minimum vital salary for the Capital" as a measure of personal exemptions. Thus, the minimum personal exemption is $1\frac{3}{4}$ ths of a "minimum vital

salary” and the personal deductions are 1 “minimum vital salary” for the spouse, $\frac{3}{4}$ for each child, $\frac{3}{8}$ of a “minimum vital salary” for other dependents, and so on.¹⁰⁵

The above tax affects individuals only. However, enterprises have also been the subject of legislation. Four taxes — on stock capital, on the value of real property, on imputed rental value, and the business license tax — have been merged into one, the tax on enterprises’ net worth. This new tax is deductible for income tax purposes. The tax base is the net worth of the company and the rate ranges from 6 per thousand to 12 per thousand.¹⁰⁶

Another major development in the tax policy area has been the enactment of the value added tax on goods and services. It replaces the former 5% sales tax that was generally applied to every transaction in which goods were sold. For the production and trade sectors, the tax is applied to producers and wholesalers on the sale value and to importers on the customs CIF value. The amount of tax ranges, according to product, from 1% on basic medicine to 25% on luxury goods.¹⁰⁷

Several incentive statutes exist in Peru, the most important of which is the one granting tax concessions to encourage non-traditional agricultural exports, whether or not industrialized. Under that statute, such exports will be exempt from export duties for a period of twelve years. Exporters will also receive rebates for taxes levied on the extraction and/or processing of the goods and on the importation of raw materials or supplies used in such processing or extraction.¹⁰⁸

Tax incentives have also been granted for the merging of finance companies¹⁰⁹ and for domestic motion picture enterprises. As of March 28, 1972, motion picture enterprises would enjoy various tax benefits for a period of fifteen years, provided the conditions set forth in a new statute are met.¹¹⁰

As regards Area No. 6, it may be noted that Peru has approved the Model Treaty to avoid double taxation between persons domiciled in any member country signatory to the Cartagena Agreement.¹¹¹ As mentioned at the outset, this is one of the two model treaties to avoid double taxation approved by the Cartagena Agreement Commission.

URUGUAY

In Uruguay, the most important development in the Fiscal Policy Area was the enactment of a new net worth tax which, in addition to the net

worth tax levied in 1971 and 1972 on legal entities and individuals, again required these taxpayers to pay a "once only" additional net worth tax in an amount equivalent to that paid by them during 1971.¹¹²

The tax on travel abroad was repealed.¹¹³ That tax was a 20% surcharge applied to the purchase of foreign exchange to pay for tickets to travel abroad.

In Area No. 2, exporters have been encouraged by the establishment of a system conducive to the increase of exports. Tax rebates were granted for three years to exporters who increased the volume of exports over that of the preceding calendar year.¹¹⁴ The decree establishing that system was superseded a few months later, but the system was substantially maintained.¹¹⁵ The Ministry of Industry and Commerce implemented the system by passing resolutions which fixed the percentages of the rebates. Depending on the product, the percentages range between 36% and 12% of the FOB value of the export.¹¹⁶

Within Area No. 3, due to inflationary pressures, personal exemptions for income tax purposes had to be updated. These exemptions were updated by applying to the 1969 values, the coefficient representing the cumulative cost-of-living increase for 1969 and 1970. Thus, in the taxable year 1971 (tax payable in 1972), the personal exemption for single individuals was 250,000 pesos, for heads of household 500,000 pesos, and for each dependent, 100,000 pesos. There is also an additional deduction allowed to individuals deriving income from employment. This was maintained at 200% of the updated personal exemptions.¹¹⁷

Another result of inflationary pressures was the updating of rural property appraisals. Accordingly, current values are to be multiplied by the factor fixed for each of the nineteen departments of the country by a recent decree.¹¹⁸ The new appraisals apply to the computation of the tax on imputed minimum income from farm land and to the tax on real property transfers.

Regarding tax administration, there were several changes dealing with the collection and application of various taxes and penalties.¹¹⁹

VENEZUELA

Two significant developments occurred in the income tax law. As for one, the Fourth Regulations under the Income Tax Law were passed, providing that the investment credit granted to the enterprises specified

in the statute will be allowed in the fiscal year in which the fixed assets already produced, built or installed are actually incorporated to the production of income.¹²⁰ This is an issue that has been before the Supreme Court for those taxable years governed by the law in force until the end of 1966. The new law that became effective on January 1967, which is the current law, wasn't more clear on the subject, so these regulations are helpful.

The other development is a tax break for savings and loans associations. The current 1% additional exemption from income tax for dividends received by shareholders of savings and loans companies has been increased by another 1%.¹²¹

A very important change occurred in the import duty field. A new tariff law has been passed replacing the old system of basing import duties on gross weight and moving away from import licensing. In most cases, ad-valorem duties are below 100% although, in some instances, levels rise to as high as 300%. Automobiles, for instance, will pay 135%.¹²² Though the tariff was slated to go into effect on February 1, 1973 on some items, and on April 1st on others, it is now to become effective on March 1st for items not previously subject to import license and on May 1st for those 600 previously under license.¹²³

So far, the economy of Venezuela has been pretty stable, with the result that there are practically no incentives for any particular activity. There are no measures to cope with inflation, but mention of an administrative measure dealing with the payment of estimated tax is indicated. Exercising the authority granted by the Income Tax Law, the Executive Branch has issued regulations governing the payment of estimated tax by legal entities engaged in mining, oil and related activities. Only 85% of the estimated tax is to be paid.¹²⁴

CONCLUSION

The year 1972 saw many legislative changes in the tax area in Latin America. The year 1973, and no doubt subsequent years, will also produce many significant changes in this important area of the law. In view of this ever-changing tax picture a close check on pertinent legislation and periodic check with local counsel appears mandatory for any concern doing business in Latin America.

NOTES

- 1Law 19409, December 31, 1971.
- 2Law 20046, December 28, 1972.
- 3Law 19414, December 31, 1971.
- 4Note 2, supra.
- 5Note 2, supra.
- 6Law 19415 and 19420, December 31, 1971.
- 7Note 2, supra.
- 8Note 2, supra.
- 9Law 19904, October 20, 1972.
- 10Law 19938, November 9, 1972.
- 11Law 19742, July 25, 1972.
- 12Law 20024, December 15, 1972, and Note 2 supra.
- 13Decree 3225, May 30, 1972.
- 14Supreme Decree 10634, December 15, 1972.
- 15Supreme Decree 10379, July 28, 1972.
- 16Supreme Decree 10170, March 28, 1972.
- 17Supreme Decree 10666, December 29, 1972.
- 18Supreme Decree 10550, October 27, 1972; Regulations, Supreme Decree 10635, December 15, 1972.
- 19Supreme Decree 10330, June 30, 1972.
- 20Supreme Decree 10045, December 10, 1971.
- 21Supreme Decree 10550, October 27, 1972.
- 22Supreme Decree 10343, July 7, 1972.
- 23Decree Law 1198, December 27, 1971.
- 24Decree 70162, February 18, 1972.
- 25Decree 70435, February 18, 1972.
- 26Decree Law 1215, May 4, 1972.
- 27Decree Law 1219, May 15, 1972.
- 28Decree Law 1240, October 11, 1972.
- 29Decree Law 1236, August 28, 1972.
- 30Decree Law 1244, October 31, 1972; Regulations, Decree 71277, October 31, 1972.
- 31Decree Law 1217, May 9, 1972.
- 32Portaria 283, November 17, 1972.
- 33Decree Law 1246, November 14, 1972.
- 34Decree 70506, May 12, 1972.
- 35Legislative Decree 76, December 1, 1972.
- 36Legislative Decree 86, December 5, 1972.
- 37Law 17654, May 5, 1972.
- 38Decree 1920, November 8, 1971.
- 39Law 17828, November 6, 1972.
- 40Note 39, supra.
- 41Note 37, supra.
- 42Note 39, supra.
- 43Decrees with Force of Law: No. 7, September 29, 1972; No. 9, October 13, 1972; No. 11, October 30, 1972; Nos. 12, 13, 14, 15 and 16, October 31, 1972.
- 44Decree 281, June 6, 1972.
- 45Release, January 25, 1972, Mixed Central Commission for Salaries.
- 46Release, November 17, 1972, Mixed Central Commission for Salaries.
- 47Law 17713, August 31, 1972.
- 48Decree 2, January 2, 1972.
- 49Decree 490, March 30, 1972.
- 50Note 39, supra.
- 51Bills No. 30 and No. 34, August 31, 1972.
- 52Bills No. 4 and No. 46, August 31, 1972.
- 53Decree 1234, July 18, 1972; Resolution No. 17, July 19, 1972.
- 54Decree 677, May 2, 1972.
- 55Decree 757, May 6, 1972.

- 56Decree 1036, June 20, 1972.
- 57Legislative Decree 4961, March 10, 1972.
- 58Note 57, *supra*.
- 59Legislative Decree 4980, May 29, 1972.
- 60Law 291, March 29, 1972.
- 61Law 324, May 2, 1972.
- 62Supreme Decree 1, January 3, 1972.
- 63Supreme Decree 23, January 10, 1972.
- 64Supreme Decree 51, January 14, 1972, suspended by S.D. 179 of March 28, 1972.
- 65Supreme Decree 510, June 21, 1972.
- 66Supreme Decree 932, August 29, 1972.
- 67Legislative Decree 458, December 8, 1971.
- 68Legislative Decree 15, June 30, 1972.
- 69Legislative Decree 79, August 29, 1972.
- 70Order 4/72, July 14, 1972.
- 71Order 16/72, November 30, 1972.
- 72Legislative Decree 51/72, August 10, 1972.
- 73Executive Order, July 25, 1972.
- 74Executive Order 5-72, February 16, 1972; Order, April 11, 1972, respectively.
- 75Order 7, February 17, 1972.
- 76Legislative Decree 129, December 30, 1971.
- 77Legislative Decree 2, October 18, 1972.
- 78Executive Order 193, December 17, 1971.
- 79Executive Order 426, July 25, 1972.
- 80Income Tax Reform Law, December 27, 1971.
- 81Tax Reform Law, December 29, 1972.
- 82Note 81, *supra*.
- 83Legislative Decree, December 24, 1971.
- 84Note 81, *supra*.
- 85Tax Reform Law, December 24, 1971.
- 86Decree, July 19, 1972.
- 87Fishing Promotion Law, May 10, 1972.
- 88Executive Decree, October 23, 1972.
- 89Note 85, *supra*.
- 90Note 81, *supra*.
- 91Executive Decree 75, April 27, 1972.
- 92Executive Decree 332, April 14, 1972.
- 93Executive Decree 18, July 26, 1972.
- 94Decree 113, July 18, 1972.
- 95Decree 15, January 15, 1972. Decrees 20, 22, 23, 24 of February 1, 1972.
- 96Decree 30, February 24, 1972.
- 97Decree 102, June 20, 1972.
- 98Executive Resolution 4, July 27, 1972.
- 99Decree 146, September 7, 1972.
- 100Decree Law 51, February 25, 1972; Regulations, Decree 25552, April 10, 1972.
- 101Decree Law 52, February 25, 1972.
- 102Law 325, December 10, 1971; Regulations, Decree 29721, December 15, 1972.
- 103Decree 20147, June 17, 1971; Decree 20499, July 2, 1971.
- 104Resolutions 87, July 12, 1972 and 89 of September 6, 1972, Income Tax Bureau.
- 105Decree Law 19653, December 12, 1972.
- 106Decree Law 19654, December 12, 1972.
- 107Decree Law 19620, November 21, 1972.
- 108Decree Law 19491, August 1, 1972.
- 109Decree Law 19500, August 15, 1972.
- 110Decree Law 19327, March 28, 1972.
- 111Decree Law 19535, September 19, 1972.
- 112Law 14069, July 28, 1972.
- 113Decree 181, March 2, 1972.
- 114Decree 344, May 11, 1972.

- 115Decree 548, August 3, 1972.
- 116Resolutions, October 13 & 17, 1972.
- 117Decree 56, January 25, 1972.
- 118Decree 285, April 20, 1972.
- 119Law 14057, February 3, 1972.
- 120Decree 974, May 10, 1972.
- 121Decree 910, March 15, 1972.
- 122Decree 1168, December 27, 1972.
- 123Decree 1203, January 24, 1973.
- 124Decree 1008, June 14, 1972.

ECONOMIC DEVELOPMENTS

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AGRICULTURE AND LIVESTOCK

The Government of Brazil is considering ways of stabilizing domestic meat prices, including the imposition of an export tax and, perhaps, reductions in export quotas.

Brazilian exports to China and Taiwan have begun from the western Amazon region and are expected to reach 200,000 tons from Amazonia by the end of next year. Investors will be encouraged to set up meat packing plants in the region.

The International Coffee Organization (ICO) has provided Brazil with \$3.5 million and Colombia with \$6.77 million as diversification loans to cover studies of perishable farm products, credits to farmers willing to replace coffee with other crops, sugar cane cultivation, marketing studies, and grain handling installations at selected ports. ICO diversification loans are extended to coffee-growing areas for the purpose of exploring the possibility of changing to other and more profitable crops.

Colombia has established a governmental agency, INCORA, to carry out its land reform program. During its first decade, INCORA has devoted its efforts toward: (1) solution of the problem of proliferation of small sub-marginal farms in the highlands areas; (2) supplying more credit and financial and technical assistance to the small farmers; (3) colonization in publicly owned wilderness lands; (4) development of irrigation works; and stimulation of producer cooperatives and joint ownership of communal type farming operations.

Some 37.2 million pesos is to be spent on the first phase of an agricultural development program in the Dominican Republic. One-third of the cost will be borne by beneficiaries and two-thirds by an Inter-American Development Bank loan.

The Government of Honduras is to spend \$13.3 million on agricultural expansion and modernization, particularly cattle raising. Of this sum, \$9.2 million will be provided by the Inter-American Development Bank.

Arid and desert lands may become productive lands if an asphalt-laying technique developed by Japan's scientists proves applicable to the poor soil of some developing countries. The Desert Development Association of Tokyo has built a machine that lays asphalt deep below the surface and allows effective use of irrigation while protecting the crops against the saline content of the desert.

A program is in motion to increase Mexico's cattle production by 20% to 30 million head by 1976.

The Inter-American Development Bank (IDB) recently granted Mexico a loan of nearly \$23 million to improve irrigation technology and practices through the Land Improvement Plan (PLAMEPA). PLAMEPA is a pioneer program in the world, designed to increase water and soil productivity.

The Government of Mexico is to concentrate cereal production this year on maize, beans, wheat, rice, sorghum and a few other seed crops in an effort to make Mexico self-supporting in these basic food staples by early 1974. To the same end, exports of these crops will be restricted until domestic demand is satisfied.

Because of "low returns," the United States food processing firm of H. J. Heinz is to withdraw from Mexico. This has led to Mexican accusations that the firm is reacting against the Government's proposals to control foreign investment, that it bought its way into Mexico at a "ridiculously low price" nine years ago, and that it has neglected the land on which it grows its crops.

The Peruvian Government is using a Dutch credit of \$13 million to build a pilot plant for experimenting with the processing of *anchoveta* — presently caught only to be turned into fish meal — in a form suitable for human consumption. It is hoped that the tinned *anchoveta* might compete on world markets with the sardine.

At the beginning of March the United Nations reported that no objections had been received to the proposal to implement the International Cocoa Agreement despite the fractional deficiency in the number of signatory importing countries. The Agreement will come into being

definitively or provisionally on 30 April or within the following two months, if by that date, signatories accounting for the requisite proportion of cocoa imports and exports have either ratified, accepted or approved it, or notified their intention to apply it provisionally. Signers of the International Cocoa Agreement in the Western Hemisphere include Brazil, Canada, Chile, Colombia, Cuba, Ecuador, Guatemala, Honduras, Jamaica, Trinidad and Tobago and Venezuela.

CHEMICALS AND PLASTICS

ANDEAN GROUP

The Commission of the Cartagena Agreement has begun talks on the possibility of integrating petrochemical development in the five Andean Group countries. The *Junta* (the supranational board of the Andean Group Commission) has proposed an investment in chemical plants of \$500 million giving a production value of \$340 million a year by 1980.

ARGENTINA

Petroquímica Bahía Blanca (PBB) has contracted for the engineering and technology for its new 200,000 metric tons per year ethylene and 20,000 metric tons per year ethylene and 20,000 metric tons per year propylene complex due on stream by 1977. PBB is 51% owned by the Argentine government.

BRAZIL

Brazil's government-owned *Petroquisa* is planning several joint ventures with private firms to spur development of the country's petrochemical industry. For example, Shell, *Petroquisa*, *Refinería União* and *Coimbra Bueno* will build a 50,000 metric tons per year polypropylene plant at Capuava (near São Paulo) with start-up set for 1975. Each company will contribute \$12.5 million to the project, or 25% of the total investment.

CHILE

The Chilean government is moving to legalize its October, 1972 takeover of *Petrodow*, Dow Chemical's 70%-owned petrochemical complex at Concepción. Seizure of the unit, owned 30% by the Chilean government, was ruled illegal in January by the Controller of the Chilean government.

A bill has been introduced in Chile's Congress seeking to bring *Petrodow* into the government fold as a state-owned company or as a "mixed" company with a state majority. Dow reportedly would prefer not to hold a minority position. Its equity stake of \$10 million is almost entirely covered by U.S. government insurance by Overseas Private Investment Corporation.

PUERTO RICO

Union Carbide's \$300 million venture in Ponce, Puerto Rico, is now fully operational. More than 3 billion lbs. of petro-chemicals are expected to flow through the complex's pipelines.

VENEZUELA

Venezuela's \$1.2 billion El Tablazo petrochemical complex is finally showing some signs of progress. Its first joint venture, *Venezolana de Nitrógeno (Nitroven)* has signed a three-year sales agreement with the China National Chemical Import and Export Corporation, whereby Venezuela will sell about \$23 million in urea beginning late this year.

The Comisión del Acuerdo Subregional Andino has approved a plan to build a petrochemical complex on the border between Peru and Bolivia. The Bolivian government has stated that almost \$200 million will eventually be invested in the component plants. Meanwhile, the *Corporación Andina de Fomento* is meeting in Caracas to consider ways of expediting the subscription of the \$75 million required to complete the corporation's authorized capital.

Argentina and Bolivia will launch a joint venture for the construction of a \$10 million pesticides factory in Bolivia. Argentina's good offices will be used to obtain 70% of the financing from international sources, while the rest will be found in the two countries.

DEVELOPMENT AND INVESTMENT

Nacional Financiera, Mexico's national development agency, has loaned the equivalent of \$1 million to the Andean Development Corporation (CAF) for a pre-investment fund in which both Mexico and the members of the Cartagena Agreement group are interested.

Nacional Financiera has been designated as the coordinator of a feasibility study on the large-scale marketing of capital goods in the

member countries of the Latin American Free Trade Association and the setting up of a Latin American multi-national corporation for the purpose. The project is assisted by the Inter-American Development Bank (IDB).

A new incentive program designed to provide U. S. small business with a practical means for analyzing and funding new investments in less developed countries has been launched by OPIC. Under the plan, OPIC will advance reconnaissance and feasibility survey funds to qualified companies for the financing of investment and market development studies. A portion of the repayment of these funds can be applied to the cost of insuring or financing the investment once the decision to go ahead has been made.

A claim involving a timber mill in the Dominican Republic was settled in favor of OPIC when a special commission of the American Arbitration Association issued an opinion denying a \$318,000 expropriation claim filed by the International Bank of Washington. This marked only the second time that OPIC has gone to arbitration, and in both cases the AAA has ruled in the corporation's favor.

OPIC is taking the initiative to bring about the creation of an international investment reinsurance association, to reduce the risks of confiscation and political confrontation in foreign private investment in the developing countries.

A draft plan has been presented by OPIC to its counterpart national insurance agencies in Canada, France, Germany, Israel, Japan, the Netherlands and Switzerland. The scheme is scheduled for further discussion at the Berne (European Payments) Union in January.

Spain estimates that the gross flow of her financing to Latin America will reach and possibly exceed \$3 billion in the seventies. This represents triple the amount provided in the sixties, which was slightly more than \$1 billion.

A team from the People's Republic of China is at present carrying out studies for the siting and erection of a proposed textile mill in Guyana. This special study will also cover the availability of raw materials and construction of the factory.

Several Soviet state agencies engaged in selling different lines of products abroad announce that their efforts have paid off in several countries of the Western Hemisphere. According to *Ecotass*, a Soviet trade weekly published in Switzerland, recent developments include sales of

carpets to the United States, 4,500-ton floating docks to Cuba, automated equipment to manufacture steel milling balls to Brazil, a Yak airliner to Canada, and cranes, tractors, roadbuilding machinery and other goods to Chile.

Litton Industries, Inc. of California reports that it has completed an aerial survey of 4.25 million square kilometers of the Amazon jungle area as yet unmapped. On announcing the conclusion of the project, the company said the contract with the Brazilian government was the largest and most complete map-making project ever carried out in the world. The survey is part of the government's program to develop and colonize the Amazon territory.

At the close of a meeting held in Quito, Ecuador during the month of April, 1973, the Ministers of Petroleum and Mines of twenty Latin American governments issued what will be known as the *Declaration of Quito*, calling for the establishment of a Latin American Energy Organization to study, among other things, programs for the investigation of energy resources and the preparation of multinational projects. Also approved at the meeting was the Venezuelan suggestion that a financing office be created to cooperate in the development of energy resources throughout the area and to facilitate trade between oil producing countries and consumers. The structure of the new organization will be defined at another gathering of the group planned in six months. In the meantime, the governments of the twenty representatives who attended the Quito meeting, will be asked to ratify the decision.

EXPORT-IMPORTS

Future exports of Brazilian manufactured goods will receive the same treatment as coffee and qualify for automatic discounting to the banking system under a system set up by the Central Bank.

The Finance Minister of Brazil has suffered a substantial reverse in his attempts to provide for foreign capital to finance the establishment of bonded warehouses overseas for capital Brazilian exports. The decree-law published in December, 1972, insures full control by Brazilian capital.

The Government of Colombia has state-owned concerns that henceforth all their foreign purchases will have to be made through the National Planning Department. That Department will only authorize imports of goods not made in Colombia.

The U. S. Department of Agriculture has updated its list of countries allowed to export fresh, chilled or frozen meat to the United States, and included the following countries and territories of the Western Hemisphere: Bahamas, Bermuda, Belize, Canada, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua and Panama.

GAS AND OIL

Petrobrás of Brazil is negotiating with C. Itoh and Hissho Iwai of Japan, towards joining with the Japanese in buying Middle East oil. Marubeni and Mitsui are also interested in such negotiations.

Petrobrás, which made a profit of \$1.8 million in 1972, is to step up prospecting in Acre on the Peruvian border this year, increase the range and volume of lubricants with a view to replacing all imports, and bring into production offshore wells off Sergipe in the northeast.

It has been announced that feasibility studies for the construction of a trans-Andean pipeline are almost complete. The pipeline will carry oil from the Amazon region to the Pacific, if enough oil is found there. The production of at least 70,000 barrels a day is needed to justify the pipeline, and wells with a potential of 23,000 have already been sunk. The latest strike in the *Trompeteros* district was a well yielding over 7,000 bd, and the government is confident of reaching the 70,000 bd target. Peru currently imports 35,000 bd and hopes to become an exporter.

The Inter-American Development Bank is to provide a \$10 million loan to Uruguay toward the government's controversial \$16.4 million scheme to build an optional oil terminal near Punta José Ignacio. The terminal had been opposed by nationalists in the Navy and others who wanted the money spent on building up the country's Merchant Marine.

Bolivia has made its first oil contract with a North American company, more than three years after suspending such foreign investments. The contract gives Union Oil Co. of California the right to organize a Bolivian affiliate to explore nearly one million acres of the Amazon region near the Bolivian-Peruvian border. The agreement is for four years of exploration and can be extended another three years. Oil rights are given for thirty years, after which the oil properties and physical plants will be taken over by a Bolivian government oil company. The contract grants Bolivia the right to buy nearly 51% of all gas petroleum products extracted by the American firm.

Venezuela has proposed a government-to-government agreement with the United States for the development of the Orinoco heavy oil deposits, the reserves of which are estimated at 700,000 million barrels. Such an agreement, the President stated, must provide for a guaranteed market in exchange for a guaranteed source of supply.

The Government of Venezuela has called for an urgent meeting of the Organization of Petroleum Exporting Countries (OPEC) to consider the world energy crisis, following recent shortages in the United States. The government has come in for strong domestic criticism for its pricing policy and has been looking for a way to make a price increase; an OPEC meeting would provide a good opportunity for doing so. Production during the first two weeks of January was nearly 5% down from the same period last year.

During a visit to Ecuador in February, 1973, the President of Venezuela issued a joint declaration with the President of Ecuador relative to the establishment of a petroleum technical corporation program. The declaration contemplates a closer link in the future between the two countries on matters relating to hydrocarbons.

The British firm of Tricentral has been granted offshore oil exploration rights over a 1,660 square mile area in Guyana. Three other companies, West German, American and Guyanese have also been granted offshore prospecting rights.

LAND TRANSPORTATION

The Bolivian Government is seeking a \$5 million credit from Japan with which to purchase equipment needed for building a road from the northern part of the department of La Paz into the presently inaccessible departments of Beni and Pardo. The Government plans to finish the road before the end of 1976.

Venezuelan sources have reiterated support for the idea of a 5,900-mile inland waterway. The area to be benefited is one and a half times as big as the continental United States and rich in minerals, forestry resources, hydroelectric power and soils suitable for all kinds of crops. It also contains 30% of all the fresh water in the world. If construction is undertaken, at an estimated cost of \$1 billion, ships could cross the South American heartland from the Caribbean to the South Atlantic and vice versa, navigating the Orinoco, Casiquiare, Negro, Amazon, Madeira, Meta, Alegre, Aguapeí, Paraguay, Paraná and Plate rivers.

The Argentinian Government is providing \$619,000 to cover the cost of studies and the feasibility of expanding the rail network in eastern Bolivia.

Brazil has received an additional \$40 million from the World Bank for constructing 257 kilometers of the Rio-Santos Highway. The loan will finance that part between Santa Cruz and Ubatuba at an estimated cost of \$135.1 million.

The Peruvian National Railways Company has bought all Peruvian assets of the Peruvian Corporation for 874 million *soles*. As expected, ENAFER was the only bidder at the Lima auction. It is to spend 1,500 million *soles* on modernizing the purchased rail network.

MARITIME AFFAIRS

Local Brazilian shipyards are participating in a tender to build refrigerated ships—at a cost of \$20 million—for the Uruguayan government.

The Federal Government of Brazil has created a work group to study the installation in Brazil of a naval repair center and has recommended that this shipyard be located in Rio de Janeiro on Viana Island. The Government will enter into this venture with interested foreign and local groups.

The Brazilian Government has extended permission for foreign ships to operate on coastwise shipping, carrying bulk cargo or staple foods, for one more year.

The modernization of the ports of Tumaco, Buenaventura, Cartagena, Barranquilla and Santa Marta in Colombia begun in 1963, has passed the half-way stage with \$50 million of the \$90 million budget already spent.

The "Japan Line" of Tokyo has purchased 40% of the shares of the Colombian International Shipping Co., according to a report from Barranquilla. The association between Japanese and Colombian interests follows recommendations on foreign investments made by the Andean Pact nations.

Cuba has bought 110 fishing vessels from Peru at an approximate total cost of \$30 million. Delivery will be over a period of two years beginning in June, 1973.

The Government of Jamaica has announced that a fishing complex is to be established at Zero Wharf in Newport West. Some years ago a United Nations Development Project carried out a survey of the industry in which it was decided that if the industry was properly developed it could bring earnings to the country of some J\$9 million a year at that time. At present it is estimated that the industry is earning some J\$6 million and with the completion of the complex it is now estimated that the industry will be worth some J\$13.5 million.

An \$11 million loan for the expansion and modernization of the Nicaraguan port of Corinto on the Pacific Ocean has been announced by the International Bank for Reconstruction and Development. The operation had been under consideration before the earthquake December, 1972, and is not directly linked to construction efforts.

The members of the Association of West India Trans-Atlantic Steamship Lines trading between Europe, Latin-America and the Caribbean announced that an increase in rates of freight (both westbound and eastbound) will come into effect on 1 May 1973. It is expected that the increase will range between an average of \$2.65 and \$7.50 per freight ton westbound. Eastbound freight rates will be subject to selective increases on a commodity basis.

Japan and Andean Group countries are to examine the possibility of creating a multi-national cargo fleet for transporting grain. Japan has expressed willingness to supply the financing and the ships.

METALS AND MINERALS

Cuba is to sell nickel to Mexico—the first such sale by the Communist state to a Latin American country since the United States declared a trade embargo in October, 1960. Cuba, one of the world's main producers of nickel with a yearly output estimated at 35,000 tons, sells most of it to the Eastern European bloc and a few Western European countries. Mexico, which buys most of its nickel from the United States, is to take an initial 50 tons from Cuba, worth about \$120,000. Negotiations are also under way for the sale of Cuban chrome to Mexico.

The Government of Bolivia has set up a new public company, *Empresa Siderúrgica Boliviana S.A. (SIDERSA)*, to operate the Mutún iron ore deposits instead of COMIBOL, the state mining concern, which will henceforth be confined to non-ferrous minerals. Dispatch of ore to the Argentine steel concern SOMISA was suspended during the takeover.

However, Government officials stated that the interruption was of temporary nature only. SIDERSA will be authorized to set up joint ventures to exploit Mutún, and negotiations to this end, initiated by COMIBOL have been cancelled. This has given rise to speculation that Brazilian capital was to be attracted. SIDERSA's capital will initially be owned as follows: 30% by COMIBOL, 20% by YTFB, 20% by the Armed Forces' Corporation, and 10% each by the *Corporación Boliviana de Fomento*, by the *Empresa Nacional Nacron de Fundiciones*, and by ENDE.

Bolivia has broken ground on a \$5 million plant to process antimony at Vinto, some 150 miles south of La Paz. Funds for the new plant, which is in the Oruro mining region, came from Czechoslovakia.

COMIBOL, the Bolivian state mining concern, will make two *pesos*' profit per dollar's worth of production as a result of the October peso devaluation, instead of losing 1.50 *pesos* as previously. Mining cooperatives, however, have complained that restrictive measures which accompany the devaluation will force them into bankruptcy.

One of the largest copper deposits in Brazil estimated at 60 million tons, has been discovered in the state of Bahia.

Siderúrgia del Orinoco (SIDOR) has sold 3,500 tons of steel to the Soviet Union — perhaps the first commercial transaction of any importance between Venezuela and a communist country.

Alleging heavy indebtedness on the part of the Pignatari group to the *Banco Nacional de Desenvolvimento Econômico*, to the *Instituto Nacional de Providência Social*, and to the *Programa de Integração Social*, the government of Brazil has announced the takeover of the whole group, for which it is to pay almost \$300 million. The government alleged that the disorganization of the group's finances was clear evidence of its inability to handle the \$250 million Caraiba copper mining project. In addition to the Caraiba project, the state is acquiring control of a wide range of metallurgical and mining enterprises previously controlled by Pignatari. Government officials have indicated that the state does not propose to manage the various companies once the affairs of the group have been set in order, and a buyer from the private sector is found. This has given rise to press speculation that foreign companies will participate in the deal.

Chile and the other three members of the Council of Copper exporting countries (CIPEC) Peru, Zarie and Zambia, have agreed not to move into markets where Chilean copper has been hit by Kennecott's

embargoing tactics. At a meeting in Santiago, CIPEC also agreed to suspend dealings with Kennecott "while it persists in acts of aggression against Chile".

Latin American governmental reaction to President Nixon's proposal of April, 1973, to dispose of certain strategic materials was — as expected — sharp and prompt. Strong protests were made at appropriate U.S. governmental levels to point out the potential injury to many of the Latin American nations, and to urge, at least, gradual disposal over a number of years to soften the impact on individual economies. In some quarters the charge of economic aggression was leveled once again against the U.S.

MONEY AND BANKING

In an effort to induce investment banks to assume a greater role in underwriting corporate securities in Brazil, improve the access to domestic sources of long-term funds needed for company expansion through the issuance of shares and debentures, and encourage savers to invest in securities, the International Finance Corporation (IFC) has extended a \$5 million line of credit to a syndicate of six private development banks in Brazil: *Banco de Investimento do Brasil*, *Banco Bozano-Simonsen de Investimento*, *Banco Itaú de Investimento*, *Banco Real de Investimento*, *Banco de Investimento de Minas Gerais* and *Banco Finasa de Investimento*. The proceeds will be used within the framework of revolving Capital Market Development Fund (FUMCAP), a scheme maintained by the Central Bank and presently capitalized at about \$42 million. IFC's gross commitments in Brazil now total \$103.2 million.

Brazil has suggested at the U.N. the setting up of a private Inter-American Reinsurance Bank which would save Latin America a substantial portion of the \$60 billion a year it pays to foreign insurance companies, mostly of Western Europe.

The Chilean Central Bank signed two credit agreements with the National Bank of Hungary for a total value of \$20 million for the purchase of capital goods.

After a two-day meeting at the end of January, 1973, the "Globe of Paris" announced that creditor nations have agreed with Chile to postpone until May, 1973 further negotiations on rescheduling of Chilean debt payments that fall due this year. In Santiago, this is being officially taken as a sign of confidence in Chile. Much will depend, however, on

Chile's relations with the United States, which accounts for about half of Chile's outstanding foreign debt of \$4 billion, and particularly on the course of the dispute over compensation for the nationalized copper mines.

Exchange controls formerly imposed on the *quetzal*, the Guatemalan currency, have been recently abolished by the Government. Henceforth the *quetzal* — sometimes called "the hardest currency in the world" will be freely convertible, at par with the United States dollar.

The Government of Jamaica has broken the Jamaican dollar's link with sterling and pegged it to the U.S. dollar at the rate of J\$1.00 to US\$1.10, a devaluation of 6.5%. The move follows a sharp fall in Jamaica's foreign reserves.

The United States devaluation of the dollar, in February, resulted in various adjustments of world currencies. Within the Caribbean grouping, the Bahamas altered its par value and depreciated by 12.7% in terms of gold, a depreciation of 3.1% against the U.S. dollar. The Bahamian dollar is now at par with the U.S. dollar.

The Latin American Association of Development Finance Agencies (ALIDE) has acquired its sixty-first member, the *Banco Gubernamental de Fomento* of Puerto Rico. ALIDE, with headquarters in Lima, Peru, fosters cooperation among its members in nineteen countries, seeking to maintain a constant reciprocal flow of systematic data and to undertake the study of common problems, for the purpose of perfecting their individual and collective performance, and encouraging their decisive participation in the processes of Latin American economic integration.

TELECOMMUNICATIONS

A Latin American telecommunications consortium proposed by Mexico is expected to begin operations in the first quarter of this year, according to the Mexican Communications Ministry. Aimed at displacing United States telecommunications concerns in Latin America, it is to consist of state communication agencies from Brazil, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela.

A 1,200 pound satellite — Anik I — made possible direct telephone calls between Ottawa and points as remote as the village of Resolute, above the Arctic Circle. Anik I was put into synchronous orbit November, 1972 and is the world's first commercially operated synchronous national

communications satellite. It is the first of three Aniks ordered by Telsat Canada from Hughes Aircraft Co. of California. Hughes has stated that the company was invited by Brazilian officials to make a presentation regarding a national satellite and a system of ground stations that would be similar to the Canadian system. The project would transfer advanced technology to Brazil "under a plan by which Brazil's technical skills would be enlisted to participate directly in the manufacture of the ground portion of the proposed communications system."

RCA is to transfer a complete factory for manufacturing color television sets to Brazil taking advantage of the Government's consent to such transfers. The company is also considering moving other factories from Hong Kong to Brazil.

The Government of Paraguay has signed an agreement with Japan for a \$13 million loan to be used to build a ground station for satellite communications and a microwave communications system.

Atlantic area operational representatives of Intelsat met in Lima in late January, 1973 to coordinate operational requirements of satellite communications in the area. Thirty countries in the Americas, Europe and Africa were represented at the meeting which dealt with frequency and channel assignments, mutual air, and emergency plans, among other aspects.

THE OCEANS

THOMAS A. CLINGAN, JR.
Professor of Law
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SEABEDS COMMITTEE MEETS IN NEW YORK

The March/April meeting of the United Nations Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction (Seabeds Committee) concluded a five-week working session at the United Nations in New York on April 6, 1973. The next session of the Committee is presently scheduled for July/August at Geneva. This eight-week working session is the last scheduled meeting of the Seabeds Committee prior to the organizational session of the Conference on the Law of the Sea to take place in New York next fall. The first substantive work of the Conference will begin in the spring of 1974 in Santiago, provided that sufficient preliminary work can be completed prior to that time.

During the immediate past session, the work of the three subcommittees of the Seabeds Committee proceeded at varying rates. Subcommittee I, dealing with problems of the seabeds beyond national jurisdiction, through its working group of thirty-three nations, proceeded with the task of attempting to hammer out major areas of agreement and disagreement. Most of its working time was spent on a second reading of draft articles embodying the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof Beyond the Limits of National Jurisdiction, of 28 January, 1972 [A/RES/2749(XXV)]. Working Group I of Subcommittee I utilized three basic devices to illustrate areas of basic disagreement: (1) bracketed phrases, (2) footnotes, and (3) alternate texts. Upon completion of the second reading, the working group began a discussion of articles based upon an anonymous draft concerning machinery for a deep-seabed regime. While some progress was made during the five weeks of work, much remains for the summer session.

Subcommittee II, dealing with the Territorial Seas and Straits, provided the forum for general debate on these subjects, and, toward the

end of the session, a working group of the whole was established to begin substantive work in these areas. It was clear, however, that the working group, chaired by Mr. Kedati of Tunisia, was not prepared to start the arduous task of setting down areas of agreement and disagreement until the summer session. While it first appeared that the working group might begin by attacking the "List of Subjects and Issues Relating to the Law of the Sea" adopted as a general work programme last summer, taking each issue in order, it was finally agreed that the group would first consider items 1 through 7 of the list as a unit, with participants free to discuss any item within that unit, without reference to priority. This list includes:

1. International Regime for the Sea-Bed and the Ocean Floor Beyond National Jurisdiction.
2. Territorial Sea.
3. Contiguous Zone.
4. Straits Used for International Navigation.
5. Continental Shelf.
6. Exclusive Economic Zone Beyond the Territorial Sea.
7. Coastal State Preferential Rights or other Non-Exclusive Jurisdiction Over Resources Beyond the Territorial Seas.

It was agreed that the remainder of the issues would be considered as a second work bloc. Several major interventions were made in Subcommittee II, to be discussed below, that will be of help to the working group in identifying areas of agreement and disagreement this summer.

Subcommittee III proceeded with its work through the establishment of two working groups. Working Group I is concerned with the subject of Marine Pollution. For part of its time, this working group seemed to concentrate on draft articles submitted by Canada, but, following an intervention by the United States, the discussion was broadened. A second working group was established, chaired by Poland, to deal with the subject of Scientific Research. This working group had no time to address itself to the substance of the problem, and deferred its work until this summer. It is of note, however, that while Subcommittee III is formally charged with the issues concerning freedom of scientific research in the oceans, all subcommittees are free to discuss the subject, and considerable discussion on the subject was heard in all three subcommittees during this session.

Major Interventions

During the work of the Seabeds Committee, there were several major interventions and initiatives of note. These will be briefly described. On the part of the United States, speeches were made concerning fisheries, marine pollution, scientific research, straits, and a provisional regime for deep sea mineral exploitation.

On April 2, 1973, John Norton Moore, U.S. Chief Delegate, intervened on the subject of international straits. This intervention was in partial response to a seven-nation draft, introduced by the Philippines, proposing a more or less restrictive approach to the passage of vessels through straits used for international navigation. It was their position that regulation of navigation in straits is appropriate to achieve a satisfactory balance between the interests of coastal states and the general interests of international maritime navigation. These interests, they asserted, were best protected by the principle of innocent passage. The principle of innocent passage is more carefully delimited in the seven-power draft, containing specific restrictions concerning vessels with special characteristics, such as nuclear powered ships and warships, and suggesting that the coastal state has the right to be compensated for works to be undertaken to facilitate passage. All of these restrictions, and more of like kind, were found to be inconsistent with the right of free transit claimed to be the appropriate regime for international straits by the United States. In response to the fear of some that unhampered traverse of international straits by vessels and aircraft would pose an unreasonable threat to the coastal state, particularly in terms of pollution, the U.S. intervention of April 2 proposed that all surface ships "transiting straits comply with applicable IMCO regulations and procedures intended to promote the safety of navigation and that state aircraft normally comply with similar ICAO regulations and procedures." The U.S. also proposed that strict liability be established for all vessels, including warships, and state aircraft, for accidents caused by deviation from relevant IMCO and ICAO regulations. After thus offering to give up certain high seas rights previously thought to be a part of the U.S. position on international straits, Mr. Moore went on to reemphasize the fundamental premise of that position: "As reiterated in our August 10, 1972 statement, the United States and others have made it clear that their vital interests require that agreement on a 12-mile territorial sea be coupled with agreement on free transit of straits used for international navigation and these remain among the basic elements of our national policy which we will not sacrifice."

One of the major new interventions on the part of the United States dealt with the problem of an interim or provisional regime for the exploitation of mineral resources of the oceans. This issue has been a difficult one for several years. As it may be recalled, Resolution 2574 of the 24th General Assembly declared that pending the establishment of an international regime, States and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the ocean floor beyond the limits of national jurisdiction. This declaration was opposed by several nations, including the U.S. In response to a need to clarify its position on the issue, the U.S. proposed that States agree to a provisional regime to explore and exploit the natural resources of the seabed in accordance with those terms to be agreed upon at the forthcoming conference prior to the effective date of the convention, but consistent with its terms. Mr. Moore of the United States referred to precedent for agreeing to implement the terms of an agreement prior to its effective date on a voluntary basis. The proposal was received with interest by many States, who agreed to study it carefully before the summer session.

In the general area of marine pollution, the basic areas of disagreement appeared in interventions by Canada and the United States. The Canadian intervention, by Mr. J. A. Beesley, submitted to Subcommittee III on March 14, placed heavy emphasis on the role of the coastal State in setting standards with regard to marine pollution. This emphasis was spelled out in the Canadian draft articles on marine pollution of March 9 [A/AC.138/SC.III/L.28], which places upon State the basic obligation to protect and preserve the marine environment. The United States intervention of April 2, on the Competence to Establish Standards for the Control of Vessel Source Pollution, however, listed as a fundamental objective of the Law of the Sea Conference the protection of the freedom of navigation, and declared that in pursuit of that "only a system of exclusively international standards will provide an effective means to control vessel source pollution while protecting the community interest in both of these fundamental objectives." This difference in approach, coastal v. international standards, provided a focus for substantial debate on the pollution issue which will carry over to the summer session.

With regard to marine resources, two major interventions should be noted. First, in a major paper discussing anadromous and highly migratory fish species, the United States reaffirmed and amplified its fisheries position. This position favors a species approach of fisheries management.

On a broader plane, Ambassador Aguilar of Venezuela introduced draft articles sponsored by Colombia, Mexico, and Venezuela, putting into proposed treaty language the substance of the Declaration of Santo Domingo (4 *Law. Am.* 576-580, 1972). The language of this draft is included as an appendix to this report.

Scientific research commanded the attention of several nations. The USSR submitted a draft article for discussion in the working group of Subcommittee I, as a part of the work on general principles, calling for essentially uncontrolled access to a wide band of waters for the purpose of scientific research. The Chinese delegation, however, doubted that research by private institutions within the developed countries could ever be "pure" or "open," and suggested instead, that either the coastal State (in waters near its shore or in an economic resource zone) or an international regime (beyond those limits) have the right to regulate the conduct of scientific research. The U.S. position on scientific research remained unchanged from that stated last summer. While submitting no draft articles, the U.S. advocated unrestricted research in the high seas beyond the limits of national jurisdiction. Within the territorial seas, consent of the coastal State in whose waters the research is to be conducted would be required. The U.S. last August advocated that in these waters, a vessel seeking to perform open research should guarantee participation by scientists and others from the coastal state, data sharing, open publication of results, and non-interference with other uses and protection of the environment. At the spring session, the U.S. made two interventions on the subject of science. The first was a speech explaining the workings of the theory of plate tectonics, and the value of this study to the world community, given by Mr. John Albers of the Geological Survey. The second was an address by Dr. Philip Handler, President of the National Academy of Sciences, before Subcommittee III. This speech reemphasized the need for freedom of scientific research on a global scale. In addition to showing the relationship between research and resource discovery, research and global natural phenomena, and research and pollution, Dr. Handler gave the opinion that "Free intellectual inquiry about the oceans should be encouraged not only because of its importance in understanding our world but also because of its importance to the human spirit." The Handler and Albers speeches were reinforced by an exhibit showing the international nature of the Deep Sea Drilling Project, and a visit to the research vessel Knorr, from the Woods Hole Oceanographic Institution. The latter was heavily attended by delegates from around the globe.

COLOMBO-VENEZUELAN TALKS

Negotiations between Colombia and Venezuela on the delimitation of the marine and submarine areas of each country came to a close in Rome in April, 1973 without an agreement having been reached on the subject. Colombian observers were of the opinion that the matter ought to be referred to the International Court of Justice at The Hague, in accordance with the treaty signed by both countries in 1939. The negotiations, which extended over a period of three years and were held first in Caracas and later in Rome, were characterized by a spirit of friendliness and mutual understanding and both sides were of the opinion that the fact that an agreement had not been reached in Rome did not preclude the possibility of one being concluded at some time in the future.

U.S./USSR ENVIRONMENTAL PROTECTION COOPERATION

On September 23, 1972, the United States and the Soviet Union completed a memorandum of implementation on cooperation in the field of environmental protection. Agreement was reached upon specific cooperative projects in eleven different subject areas.

In the area of water pollution, it was agreed that projects would be undertaken concerning studies and modeling of river basin pollution; protection and management of lakes and estuaries; effects of pollutants upon aquatic ecological systems and permissible levels of pollution; and, prevention or treatment of discharges.

Groups will also be assigned to work on the prevention and clean-up of oil pollution in the marine environment and the effect of pollutants on marine organisms. With respect to the first subject, the two sides agreed to exchange visits and information on technologies and techniques for the prevention and clean-up of oil discharges in the marine environment. Vessel design, traffic control, shore facilities and offshore oil drilling safeguards will be discussed. With regard to effects of pollutants, visits and information will be exchanged concerning the chemical aspects of marine pollution and their effects, including the chemical and biological analyses of fish and the rehabilitation of sea life following major pollution incidents.

OCEAN DUMPING CONVENTION

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matters was drawn up at the Inter-Governmental

Conference on the Dumping of Wastes at Sea, in London last November. In broad outline, the Convention divides the ocean dumping problem into two parts. Dumping of certain substances, considered as highly toxic, is prohibited, except that a special permit for dumping may be issued by a contracting party when the alternative would pose an "unacceptable risk relating to human health and admitting no other feasible solution." Even in such case, the party seeking to dump must consult other countries likely to be affected, and such international organizations as appropriate. Such materials include, among others, organohalogen compounds, mercury and mercury compounds, cadmium and cadmium compounds, persistent plastics, crude oil, high level radioactive wastes, and materials produced for biological and chemical warfare.

Other than the above, materials may be dumped after issuance of a permit by the coastal State having appropriate jurisdiction. Each contracting party is required to apply the measures required to implement the Convention to vessels and aircraft registered in its territory, vessels and aircraft loading in its territory matter which is to be dumped, and vessels and aircraft and fixed or floating platforms under its jurisdiction believed to be engaged in dumping. In issuing permits, parties must consider the characteristics and composition of the matter, the proposed dumping site and method of deposit, and general considerations and conditions affecting amenities, marine life, and other uses of the sea. An exception to the requirement for a permit is allowed where dumping is necessary to secure the safety of human life or of vessels.

HAZARDS OF MARITIME TRANSIT

A workshop on the subject of Hazards of Maritime Transit will be held jointly by the Law of the Sea Institute of the University of Rhode Island, the University of Miami Law School, and the Government of the Bahamas, at Nassau, N.P., on May 7-10, 1973. This workshop, to be attended by individuals from several nations, including Canada, Spain, Venezuela, Trinidad and Tobago, Fiji, the Philippines, Japan, Peru, and the United States, will be hosted by the government of the Bahamas. The meeting, by invitation only, is designed to explore in an informal atmosphere, the problems rising from intensified carriage of certain cargoes through areas of limited access.

Among the specific topics to be discussed are the nature and intensity of maritime commerce in areas of high congestion, the authority of coastal

states in international straits as opposed to the world need to maximize vessel mobility, pollution of the sea by oil and other hazardous substances, and the problems surrounding the construction of "superports" and other forms of floating or fixed offshore platforms.

In addition, there will be panel discussions on pollution and on national positions regarding the hazards of maritime transit before and during the third Law of the Sea Conference. Mr. John Norton Moore, Chief Delegate of the United States to the Seabeds Committee, will make a report to the participants concerning recent developments in the Committee with respect to marine pollution.

The major papers and a rapporteur's summary of the meeting will be published at a later date, and will be available from the Director, Law of the Sea Institute, University of Rhode Island, Kingston, R.I.

EXPO '75—JAPAN

The Japanese Association for the International Ocean Exposition plans to hold "Expo '75" focusing upon the theme "The Sea We Would Like to See." The purpose of the exhibition is to explore the ramifications of the relations between man and the sea, and make projections for the future. Highlights of the exposition, as it is now planned, will include "Aquapolis"—the world's first "city" on the ocean floor; fisheries display, including ocean farming; shipping displays; and a "deep sea travel simulator." The organizers are stressing the need for mutual cooperation in the oceans, rather than nationalistic or commercial competition; thus, they say, the prime focus of the event must be on the beauty and magnificence of the sea, and exhibits should allow visitors to experience the nature of the sea directly.

MISCELLANEOUS

According to a recent news service publication, Kennecott Copper Company is sponsoring seabed manganese nodule planning for international cooperation. Negotiations have been held in Tokyo with executives of Sumitomo Shoji, Mitsubishi Corporation, and Mistui & Company Ocean Development Corporation. The service further reported that Kennecott was seeking to obtain information concerning the Japanese continuous line bucket dredging system which could operate to bring ore up from depths up to 12,000 feet.

The legislation pending before the U.S. Congress at the end of the last legislative session with regard to licensing of U.S. citizens on a non-interference basis to remove minerals from the deep seabed (S. 2801), has been reintroduced in the new session in the form of H.R. 9. The U.S. State Department has testified before the Congress in opposition to the bill, preferring instead support for the U.S. initiative before the United Nations' seabed committee for a provisional regime. The legislation would offer protection to citizens of reciprocating foreign nations as well as those from the U.S., thus, some claim, encouraging unilateral action of nations to mine the seabeds prior to international agreement.

The National Oceanic and Atmospheric Administration has announced that it plans to hold a major national planning conference to take a fresh look at the oceans' potential for meeting national economic and social needs between now and the end of the century. The conference, titled "The Oceans and National Economic Development," will be held in Seattle, Washington, on July 17-19, 1973. It will deal with the ocean's energy and mineral resources, the ocean's living resources, the oceans as a recreational resource, coastal zone management, regional organizations and economic development of marine resources, and marine transportation's role in meeting energy needs.

A new approach has been taken by the International Center for Marine Resource Development of the University of Rhode Island, Kingston, R.I., with regard to planning of marine programs. The Center's program provides for the establishment of advisory teams which would travel to various countries upon request, holding planning workshops to aid decision makers responsible for government and national educational planning. The team would make an advanced study of a country or region to develop an integrated university marine program on marine resources. A pilot study has been prepared for a workshop in Tanzania. Information on this project can be obtained from Nelson Marshall, Director of the Center.

APPENDIX

April 2, 1973
U.N. Doc. A/AC.138/SC.II/L.21

COLOMBIA, MEXICO AND VENEZUELA: DRAFT OF TREATY

Territorial Sea

Section I. General Provisions

Article 1. 1. The coastal State has sovereignty over an area of the sea immediately contiguous to its territory and inland waters designated as the territorial sea.

2. The sovereignty of a coastal State extends to the sea-bed and subsoil and the superjacent air space of the territorial sea.

3. The sovereignty of the coastal State is exercised in accordance with the provisions of these articles and other rules of international law.

Article 2. The breadth of the territorial sea shall not exceed 12 nautical miles to be measured from the applicable baselines.

Article 3. Without prejudice to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

Section II. Limits (Applicable baselines and delimitation between States)

. . . .

Section III. Right of Innocent Passage

. . . .

Patrimonial Sea

Article 4. The coastal State has sovereign rights over the renewable and non-renewable resources which are found in the waters, in the sea-bed and in the subsoil of an area adjacent to the territorial sea called the patrimonial sea.

Article 5. The coastal State has the right to adopt the necessary measures to ensure its sovereignty over the resources and prevent marine pollution of its patrimonial sea.

Article 6. The coastal State has the duty to promote and the right to regulate the conduct of scientific research within the patrimonial sea.

Article 7. The coastal State shall authorize and regulate the emplacement and use of artificial islands and any kind of facilities on the surface of the sea, in the water column and on the sea-bed and subsoil of the patrimonial sea.

Article 8. The outer limit of the patrimonial sea shall not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea.

Article 9. In the patrimonial sea, ships and aircraft of all States, whether coastal or not, shall enjoy the right of freedom of navigation and overflight with no restrictions other than those resulting from the exercise by the coastal State of its rights within the area.

Article 10. Subject only to the limitations established in the preceding article, the coastal State shall respect the freedom to lay submarine cables and pipelines.

Article 11. 1. The coastal State shall exercise jurisdiction and supervision over the exploration and exploitation of the renewable and non-renewable resources of the patrimonial sea and over allied activities.

2. In exercising such powers, the coastal State shall take appropriate measures to ensure that such activities are carried out with due consideration for other legitimate uses of the sea by other States.

Article 12. In exercising the freedoms and rights this Convention confers on other States, the latter shall not interfere in the activities referred to in the preceding articles.

Continental Shelf

Article 13. The term "continental shelf" means:

- a. The sea-bed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to the outer limits of the continental rise bordering on the ocean basin or abyssal floor;

- b. The sea-bed and subsoil of analogous submarine regions adjacent to the coasts of islands.

Article 14. The coastal State exercises sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources.

Article 15. In that part of the continental shelf covered by the patrimonial sea, the legal regime provided for the latter shall apply.

With respect to the part beyond the patrimonial sea, the regime established by international law for the continental shelf shall apply.

High Seas

Article 16. Freedom of navigation, overflight and the laying of submarine cables and pipelines shall exist in the high seas. Fishing in this zone shall be neither unrestricted nor indiscriminate.

Article 17. The coastal State has a special interest in maintaining the productivity of the living resources of the sea in an area adjacent to the patrimonial sea.

Regional Agreements

Article 18. No provision of this Treaty shall be interpreted as preventing or restricting the right of any State to conclude regional or sub-regional agreements to regulate exploitation or distribution of the living resources of the sea, preservation of the marine environment or scientific research, or as affecting the legal validity of existing agreements.

AVIATION

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UNITED STATES-CUBA HIJACKING AGREEMENT

The United States and Cuba reached an understanding on February 15, 1973 on the subject of hijacking. In the absence of diplomatic relations the format used in 1965 for the Freedom Airlift Program, with the Swiss acting as intermediaries, was used by the parties.

The text of the Agreement entitled "Memorandum of Understanding on Hijacking of Aircraft and Vessels and Other Offenses" follows:

The Government of the United States of America and the Government of the Republic of Cuba, on the bases of equality and strict reciprocity, agree:

FIRST: Any person who hereafter seizes, removes, appropriates or diverts from its normal route or activities an aircraft or vessel registered under the laws of one of the parties and brings it to the territory of the other party shall be considered to have committed an offense and therefore shall either be returned to the party of registry of the aircraft or vessel to be tried by the courts of that party in conformity with its laws or be brought before the courts of the party whose territory he reached for trial in conformity with its laws for the offense punishable by the most severe penalty according to the circumstances and the seriousness of the acts to which this Article refers. In addition, the party whose territory is reached by the aircraft or vessel shall take all necessary steps to facilitate without delay the continuation of the journey of the passengers

The contribution of David Feldman, J. D., University of Miami School of Law is gratefully acknowledged.

and crew innocent of the hijacking of the aircraft or vessel in question, with their belongings, as well as the journey of the aircraft or vessel itself with all goods carried with it, including any funds obtained by extortion or other illegal means, or the return of the foregoing to the territory of the first party; likewise, it shall take all steps to protect the physical integrity of the aircraft or vessel and all goods, carried with it, including any funds obtained by extortion or other illegal means, and the physical integrity of the passengers and crew innocent of the hijacking, and their belongings, while they are in its territory as a consequence of and in connection with the acts to which this Article refers.

In the event that the offenses referred to above are not punishable under the laws existing in the country to which the persons committing them arrived, the party in question shall be obligated, except in the case of minor offenses, to return the persons who have committed such acts, in accordance with the applicable legal procedures, to the territory of the other party to be tried by its courts in conformity with its laws.

SECOND: Each party shall try with a view to severe punishment in accordance with its laws any person who, within its territory, hereafter conspires to promote, or promotes, or prepares, or directs, or forms part of an expedition which from its territory or any other place carries out acts of violence or depredation against aircraft or vessels or any kind or registration coming from or going to the territory of the other party or who, within its territory, hereafter conspires to promote, or promotes, or prepares, or directs, or forms part of an expedition which from its territory or any other place carries out such acts or other similar unlawful acts in the territory of the other party.

THIRD: Each party shall apply strictly its own laws to any national of the other party who, coming from the territory of the other party, enters its territory, violating its laws as well as national and international requirements pertaining to immigration, health, customs and the like.

FOURTH: The party in whose territory the perpetrators of the acts described in Article FIRST arrive may take into consideration any extenuating or mitigating circumstances in

those cases in which the persons responsible for the acts were being sought for strictly political reasons and were in real and imminent danger of death without a viable alternative for leaving the country, provided there was no financial extortion or physical injury to the members of the crew, passengers, or other persons in connection with the hijacking.

FINAL PROVISIONS: This Agreement may be amended or expanded by decision of the parties.

This agreement shall be in force for five years and may be renewed for an equal term by express decision of the parties.

Either party may inform the other of its decision to terminate this Agreement at any time while it is in force by written denunciation submitted six months in advance.

This Agreement shall enter into force on the date agreed by the parties.

Done in English and Spanish texts, which are equally authentic.

The United States-Cuban accord was the subject of a hearing before the Subcommittee on Inter-American Affairs of the Committee on Foreign Affairs of the House of Representatives on February 20, 1973.

CUBAN AIRLIFT

On March 22, 1973, the Cuban government informed the U. S. State Department that the list of those qualified to leave the country was running out and only ten more flights were required to exhaust the list. April 6, 1973 marked the end of the Airlift Program which began in 1965.

FOREIGN CARRIERS' ON-ROUTE CHARTERS

A unanimous CAB decision requiring foreign carriers to obtain prior Board approval for on-route charters, if their governments restrict U. S. carriers' operations, has been approved by President Nixon. The Board said the action would "place the U. S. government on a parity with other governments in relation to the control of on-route charters." Most foreign countries exercise advance approval powers which the Board

said imposes a "real burden on the (U. S.) carriers and has adverse consequences for them as well as for travel agents and the ultimate charterers."

The Board added that the restrictive policies of several foreign nations "fully justify the Board in equipping itself with the tools to combat such restrictions as may be unwarranted."

Specifically, the Board cited Israel's total ban on charters; bans on inclusive tour charters and split charters by six European nations plus Japan, Australia, Bermuda and Brazil; volume, price and other charter restrictions by nine European nations plus Australia, Bermuda, Mexico, Japan and Tahiti; first-refusal restrictions by Ireland, Mexico, Brazil, Venezuela, Canada, Australia and Ethiopia; and the imposition of a charter ban as a bilateral negotiation tactic by Belgium and Japan.

The decision revises the Board's economic regulations to provide that foreign carriers will remain entirely free to conduct on-route charters without prior Board approval unless the Board affirmatively invokes the new rule. However, once the rule is imposed, the foreign carrier must apply for a "statement of authorization" before it performs any on-route charter. Whether the applicant's government grants similar privileges to U. S. carriers will be a primary factor in the Board's approval of such applications. No change will be made in present procedures applicable to off-route charters.

The Board stressed its intent to use the new authority only as necessary to deter and retaliate against unwarranted restrictions of foreign governments, and emphasized that the rules are not a departure from the CAB's traditional liberal charter policy. The new regulations provide for a ten-day period in which the President may stay or disapprove the Board's actions on any prior approval application. Such additional protection, said the Board, should negate any possibility that foreign governments will use the new regulations as the basis for further restrictive actions against U. S. charter operations.

USER CHARGES

An historically little known item of airline expenses — user charges — is skyrocketing. Included under this heading are, landing fees, traffic control and en route navigation charges, fuel through-put charges and head taxes which are paid by the airlines. The increase recently has been

in excess of 15% per year for U. S. flag international operations. U. S. carriers paid \$82 million in user charges in 1969 and \$125 million in 1972.

Looking at landing fees extreme variations exist, for example: a B-707 landing at Detroit costs \$20, at Lisbon it is \$230, New York is \$340 and the charge at Prestwick is \$808. The average landing fee for a 747 in the United States is \$250, at foreign airports the average is \$1,120. There is growing concern about the impact of these charges on airline economics and on international balance of payments.

In order to provide specific recommendations for standardization and equity in the area of international user charges, ICAO, in 1956 and 1958, held conferences on charges for airports and enroute facilities and services respectively. Again in 1967 another ICAO conference on airport and enroute charges was held, and that conference developed the current ICAO publication entitled "Statements by the Council to Contracting States on Charges for Airports and Route Air Navigation Facilities." Once again the international user charge situation, and particularly the ICAO document just referred to, were reviewed at a conference completed in Montreal on February 23, 1973.

At the heart of the matter is the fact that foreign user charges cannot be negotiated, and United States airlines have no leverage on foreign governments. Although U. S. diplomatic efforts in several instances have produced limited results (particularly by bilateral agreements), it appears that other means of solving the international user charge problem must be found.

AIR SPACE LIMITS

The United States on March 21, 1973 protested what it claimed was an unprovoked attack by Libyan Mirage jet fighters on an American C-130 aircraft over international waters. The United States had previously informed Libya that it could not recognize its claim to restrict aircraft within 100 miles of Tripoli, the Libyan capital, since it would restrict air space extending over international waters.

PRECLEARANCES

U. S. Customs and Treasury officials are attempting to stop preclearances, in effect some twenty years, under the premise that a halt

to the preclearance program will aid in the fight against the introduction of narcotics into the United States. Preclearance allows returning U. S. travelers to undergo processing at certain foreign airports rather than upon arrival in the United States.

One of the primary complaints of Customs is that preclearance is an ineffective screening device forcing U. S. employees to work in foreign airports without the authority for successful processing. It has been suggested that if Canada, Bermuda and the Bahamas will grant U.S. agents the right to make arrests on their soil, some of the problems could be eliminated.

There is much controversy over the issue, partially because of a lack of conclusive evidence to support Customs charges and the potential inconvenience to airline passengers.

Congress is scheduled to make a final decision on the matter prior to June 30, 1973.

SUPERSONIC TRANSPORT

The Joint Subcommittee on Priorities released a report, "Federal Transportation Policy," which states, "no action to finance civil aircraft development in general through public loans or guarantees should be permitted to become a disguised authorization for the SST." It further states that without delay, the Federal Aviation Authority should prohibit sonic booms by civil aircraft over U.S. territory; supersonic airlines should be required to meet the noise and emission standards now imposed on subsonic planes. The Chairman of the Subcommittee implied he will try to kill \$28 million of the \$42 million NASA Research & Development budget request. The FAA has since moved to ban supersonic flights over the U.S. by civilian aircraft.

TRANSPORTATION SUBSIDIES

The Joint Economic Committee, composed of House and Senate members of the U.S. Congress, has released five studies, part of a report entitled: "The Economics of Federal Subsidy Program — Part 6: Transportation Subsidies," covering all modes of transportation, calls for an end to many of the transportation subsidies, and proposes measures to restore competition and improved service in the transport industries.

The studies recommend dismantling the Interstate Commerce Commission, eliminating Government regulation of truck and rail rate structures, and cutting off subsidies to the maritime freight industry. One study attacks the program of subsidy to small "feeder" airlines, which failed to provide quality service to communities and has encouraged the unnecessary purchase of fancy large aircraft, creating "junior trunk lines" which aspire to serve large cities thus causing subsidy costs to double. It suggests direct Federal Government contracts with air taxis to insure service to small towns. Another study criticizes the general aviation subsidy and calls for increases in airway and airport charges to insure that non-commercial aircraft pay their fair share. The study said that the taxpayers contribute \$3,500 per aircraft per year, with 98% of that going to noncommercial aircraft.

HEAD TAXES

Legislation approved by the House Commerce Committee on April 11, 1973 would, among other things, bar local-level head taxes on airline passengers. The legislation contains several features in conflict with a similar measure passed by the Senate in February. Both bills would, in effect, overturn a Supreme Court ruling on head taxes.

MUTUAL AID PACT

The retention of provisions existing between a number of major trunk carriers whereby certain percentages of revenues are returned to the struck carrier by other mutual aid pact carriers was approved by the CAB. Meanwhile, legislation has been introduced to outlaw such pacts under H.R. 3282.

The CAB in its majority opinion in part stated, ". . . the Mutual Aid Agreement is an effort on the part of the carriers collectively to strengthen the bargaining position of the individual carrier. We conclude that it is not contrary to the public interest for the carriers to do so, in the form and to the extent provided in the Agreement now before us. As we have found, the Agreement does not so alter the bargaining balance as to lift from the carriers heavy economic incentives to settle work disputes and hence does not remove the pressures essential for collective bargaining in good faith. At the same time, the Agreement does afford the carriers a greater measure of influence over labor costs

than they would have without the Agreement. Since labor accounts for nearly half of all airline costs and since increases in labor costs ultimately are reflected in higher fares and rates to the traveling and shipping public, additional restraints consistent with collective bargaining are, in our opinion, not contrary to the public interest”

INTER-AMERICAN BAR ASSOCIATION

JOHN O. DAHLGREN
Secretary General
Inter-American Bar Association

XVIII CONFERENCE — RIO DE JANEIRO, BRAZIL

The Council of the Inter-American Bar Association met last January 29-30 in Mexico City to discuss the program and plans for the XVIII Conference to be held in Rio de Janeiro, August 18-24, 1973. The *Barra Mexicana-Colegio de Abogados*, with Lic. Benjamin Flores Barroeta as its President, was the host association for the meeting. Dr. Theophilo de Azeredo Santos, President of the *Instituto dos Advogados Brasileiros*, the host association for the XVIII Conference, and also Chairman of the Organizing Committee, attended the meeting and advised that plans were well advanced in Brazil and that the Federal Government, the Government of the State of Guanabara and the Minister of Justice have assured their full support to the host association.

In addition to the topics approved for consideration by the Committees during the Conference, there will be three principal topic-themes to be considered by the overall Conference, i.e. 1) Law and Technology; 2) Capital Markets; 3) Law on Latin American Integration. Three experts will make presentations of these subjects during the general sessions American Integration.

Further information on the XVIII Conference and other IABA's activities can be obtained by writing directly to: John O. Dahlgren, Esq., Secretary General, IABA, 1730 K Street, N.W., Suite 315, Washington, D. C. 20006.

(*) Topics marked with an asterisk are translations from original Spanish texts.

(**) Those marked with two asterisks are topics suggested since the Council meeting in Mexico.

TOPICS FOR XVIII CONFERENCE

Main Topic-Themes to be presented at general sessions by specially designated experts:

1) Law and Technology 2) Capital Markets 3) Law on Latin American Integration.

The following topics have been approved by the Council for consideration by the Committees during the Conference. Additional or revised topics may be approved at a later date. This list reflects the new Committee structure.

I. PUBLIC INTERNATIONAL LAW

**Topic 1. Uniform standards for legislation on tourism.

**Topic 2. Business Men's Visas to the United States.

Sec. A. Oceanography and the Law of the Sea

Topic 1. The establishment of clear responsibility for regulating fisheries.

Topic 2. The need to assure conservation of the resources of the sea.

Topic 3. The protection of the economic interests of Coastal states in such resources of the sea.

Topic 4. International cooperation in fisheries research and development.

Sec. B. United Nations and Hemispheric Organizations

Sec. C. Juridical Defense of Western Democracy

Sec. D. Inter-American Air Law

*Topic 1. Legal aspects of air transportation and tourism as related to integration and development (jointly with Com. XI, Sec. A, topic 4).

II. PRIVATE INTERNATIONAL LAW

*Topic 1. Inter-American Specialized Conference on Private International Law convoked by the OAS to be held in 1973.

Topic 2. International judicial cooperation in penal matters.

*Topic 3. Attachment before judgment and actual collection of pensions or alimony (specially in connection with foreign judgments).

Sec. A. International Judicial Procedure

Topic 1. The Hague Conventions on private international law.

III. CONSTITUTIONAL LAW

Sec. A. Defense of Independence of the Judiciary and Irremovability of Judges

*Topic 1. Assurance of representative elections.

*Topic 2. Financing of Courts.

*Topic 3. Enforcement of judicial decrees and judgments.

Sec. B. Delay and Congestion in the Courts

Topic 1. Study of the various systems established in the American countries to prevent delay and congestion in the Courts.

Sec. C. Constitutional Problems of Latin American Integration

*Topic 1. Constitutional crisis and changes.

*Topic 2. Workable models of constitutional structures.

*Topic 3. What forms of Court structures are compatible with development and freedom.

IV. MUNICIPAL LAW

Sec. A. Housing Law

Topic 1. The use of condominiums in Latin America.

V. CIVIL LAW

Sec. A. Law of the Person and of the Family
(Law of the person, paternity, heirship, domestic relations).

**Topic 1. Inter-American recognition and enforcement of judgments of divorce, custody, alimony and maintenance.

*Sec. B. Law of Personal Property, Obligations and Contracts
(Civil Liability Negligence, Contracts).*

- *Topic 1. Compulsory automobile insurance to cover civil responsibility.

Sec. C. Intellectual and Industrial Property

- Topic 1. Industrial property licenses under existing and proposed legislation, and work in this area undertaken by the OAS and the Commission of the Agreement of Cartagena.
- **Topic 2. Support to the Meeting of Governmental Experts on Industrial Property convoked by the OAS to be held in 1973.
- *Topic 3. The role of patents in the transfer of technology to developing countries.
- Topic 4. Juridical problems of intellectual and industrial property.
- Topic 5. Inter-American Institute on Copyright.

VI. CIVIL AND COMMERCIAL PROCEDURE

Sec. A. Inter-American Commercial Arbitration

- Topic 1. Comparative study of the law and practice of commercial arbitration in the countries of Latin America.
- Topic 2. The use of arbitration to resolve economic disputes between foreign private entities and host Governments or quasi-Government corporations.
- Topic 3. Consequences to Inter-American Commercial Arbitration of the accession by Latin American Governments to the U.N. 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

VII. COMMERCIAL LAW

Sec. A. Banking Laws and Trusts

- *Topic 1. Bank financing for economic integration.
- *Topic 2. Uniform law on securities and credit certificates (jointly with Com. XI, Sec. A, topic 5).

Sec. B. Transportation

Topic 1. The application of a Unified Code of Highway Safety to the Pan American Highway.

Sec. C. Corporation Law

*Topic 1. Multinational corporations (jointly with Com. XI, Sec. A, topic 1).

*Topic 2. Joint ventures.

Sec. D. Insurance

*Topic 1. Insurance against political risks.

*Topic 2. Uniform law on inter-American insurance.

Sec. E. Bankruptcy

*Topic 1. Comparative study of Bankruptcy laws in the American countries.

Sec. F. Communications

Topic 1. Influence of technology on developing communications laws of the Americas.

Topic 2. Legal problems in connection with membership in IN-TELSAT.

Topic 3. Comparative communications laws of the Americas.

Topic 4. Legal aspects of direct satellite communication.

VIII. CRIMINAL LAW AND PROCEDURE

Topic 1. Death penalty in connection with hijacking.

Topic 2. Crimes connected with drugs.

Topic 3. The law on transplants.

Topic 4. Kidnapping.

**Topic 5. Extradition.

*Topic 6. Legislation on juvenile delinquency in America.

IX. LABOR LAW

Topic 1. Comparative study of the labor laws in force in the Western Hemisphere.

X. FISCAL LAW*Sec. A. Taxation*

Topic 1. Relations between tax authorities and tax payers.

Topic 2. Continuation of studies on effect of inflation on taxation.

Topic 3. Tax Haven in America.

*Sec. B. Customs Law***XI. LEGAL ASPECTS OF DEVELOPMENT AND INTEGRATION***Sec. A. Legal Aspects of Economic Development and Integration*

*Topic 1. Multinational corporations. (jointly with Com. VII, Sec. C, topic 1).

*Topic 2. Nature of juridical relations between foreign private entities and the National Government.

*Topic 3. Science and technology and its influence in law.

*Topic 4. Legal aspects of air transportation and tourism as related to integration and development (jointly with Com. I, Sec. D).

*Topic 5. The role of securities legislations and capital market's improvement in assisting the economic development of a country (jointly with Com. VII, Sec. A, topic 2).

Sec. B. Monopoly and Restrictive Commercial Practices

*Topic 1. Model Antitrust Law

XII. LEGAL EDUCATION*Sec. A. Inter-American Academy of International and Comparative Law*

Sec. B. Deans of Law School in the Western Hemisphere

- **Topic 1. The role of the Law Schools in the promotion of economic integration in the Americas.

XIII. LEGAL DOCUMENTATION

- Topic 1. Studies on progress of all projects on Digesting, Indexing and Codifying throughout the Hemisphere.

XIV. ACTIVITIES OF LAWYERS

Sec. A. Professional Standards of Conduct

Sec. B. Assistance and Social Security for Lawyers

- **Topic 1. Unemployment insurance for lawyers.

Sec. C. Legal Aid

Sec. D. Problems in Starting the Legal Profession

- *Topic 1. Statement of the problems in starting a legal practice.

XV. NATURAL RESOURCES

Sec. A. Oil and Gas Laws

- Topic 1. Studies of recent oil and gas laws.

Sec. B. Laws Concerning Agriculture

- Topic 1. Survey of current agrarian reform laws.

Sec. C. Environmental Law

- *Topic 1. Legal problems on ecology and pollution

XVI. SPACE LAW

- Topic 1. Impact of Space Law on general international law.

- Topic 2. Legal aspects of earth resources and the earth environment.

Topic 3. Legal regime of earth orbital stations.

Topic 4. Legal problems concerning the Moon and other celestial bodies.

XVII. MILITARY LAW

Topic 1. Study of the source, specialized training, use, and status of lawyers in the armed forces of the hemisphere.

Topic 2. Study of national laws of the countries of the hemisphere relative to voting rights of members of the armed forces.

Topic 3. Study of military sentencing in the countries of the hemisphere.

Topic 4. Study of rules and regulations for the rehabilitation of military prisoners in the countries of the hemisphere.

XVIII. HUMAN RIGHTS

*Topic 1. Science and technology in relation to human rights.

*Topic 2. Exhaustion of internal resources in the inter-American system for the protection of human rights.

*Topic 3. Evaluation of factors in each country causing delay in the ratification of the American Convention on Human Rights (Costa Rica, 1969).

*Topic 4. Means to promote cultural, social and economic rights.

*Topic 5. Establishment of National Committees on Human Rights and coordination of their activities with the appropriate agencies of the U.N. and the O.A.S.

XIX. FOOD AND DRUG LAW

*Topic 1. Government regulations in the pharmaceutical industry.

Topic 2. Current developments and trends of the Latin American food and drug law.

XX. NUCLEAR LAW

- Topic 1. Support to the Special Legal Committee of the Inter-American Nuclear Energy Commission.
- Topic 2. Ratification of/or Adherence to the Vienna Convention on Civil Liability for Nuclear Damage.
- Topic 3. Establishment of national legislation and regulations governing peaceful nuclear energy activities.

XXI. ADMINISTRATIVE LAW AND PROCEDURE

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United States: Draft Legislation on the *Jurisdictional Immunities of Foreign States*.

France: Tribunal Decision in *Chilean Copper Corporation's Plea of Sovereign Immunity in Third Party Attachment*.

United Nations General Assembly:

Resolution on *Measures to Prevent International Terrorism*.

Resolution on *Peaceful Uses of the Seabed and Ocean Floor*.

Resolution on *Permanent Sovereignty Over Natural Resources*.

2. Wisconsin Law Review, Volume 1972, No. 3, contains, among others, the following articles on "Law and Society in Developing Nations:"

The Communication of Law and the Process of Development. R. S. Seidman.

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The Legal System and Socialism. J. A. Viera-Gallo.

The New Development: Can American Law and Legal Institutions Help Developing Countries? T. M. Franck.

Public Corporations in Ghana. A Case Study in Legal Importation. R. C. Pozen.

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3. The *International Lawyer*, Vol. 7, No. 1, January 1973, contains, among others, the following articles.

Banking Secrecy in Swiss and International Business. W. Meier.

Political Cobwebs Beneath the Sea. D. P. Stang.

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CALENDAR OF EVENTS

DATE—1973	EVENT	INQUIRIES TO:
June 4 - 29	XVII Annual Summer Program of the Parker School of Foreign Comparative Law, New York City	Prof. Willis L. M. Reese, Director Parker School of Foreign & Comparative Law Columbia University 435 W. 116th St. New York, N.Y. 10027
July 2 - 20	First Session, The Hague Academy of Int'l Law, The Hague	Secretariat The Hague Academy of Int'l Law Peace Palace The Hague, The Netherlands
July 2 - August 10	Institute on Int'l and Comparative Law, Paris	University of San Diego School of Law Institute on Int'l & Comparative Law Alcala Park San Diego, Cal. 92110
July 23 - August 10	Second Session, The Hague Academy of Int'l Law, The Hague	Secretariat The Hague Academy of Int'l Law Peace Palace The Hague, The Netherlands
August 18 - 24	XVIII Conference, Inter-American Bar Association, Rio de Janeiro, Brazil	John O. Dahlgren, Esq. Secretary General, IABA 1730 K St., N.W. Suite 315 Washington, D. C. 20006

- August 26 - 31 VI World Conference on World Peace Through Law and IV World Assembly of Judges, Abidjan, Ivory Coast Abidjan World Conference Coordinator Center
400 Hill Bldg.
Washington, D. C. 20006
- Sept. 24 - 30 VII Jornadas Iberoamericanas de Derecho Aeronáutico y del Espacio, Seville, Spain. Dr. Enrique Mapelli y López
Secretario General
Instituto Iberoamericano de Derecho Aeronáutico y del Espacio
Duque de Medinaceli 4
Madrid 14, España
- November (To be announced) Law of the Sea Conference, United Nations, New York