Document:-
**A/CN.4/SR.1726**

# Summary record of the 1726th meeting

Topic:
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-
**1982, vol. I**

paragraph 2 of the annex, had been based on the corresponding wording of the Annex to the Vienna Convention, he thought that it might be presumptuous for the Commission itself to propose such wording to a conference of plenipotentiaries and that the wording used in subparagraph 2 (*a*) (i) of the annex was more appropriate. The Drafting Committee might also consider whether the words "of the dispute" should not be added, for the sake of clarity, at the end of paragraph 4 of the annex.

*The meeting rose at 1.05 p.m.*

---

## 1726th MEETING

*Monday, 14 June 1982, at 3.10 p.m.*

*Chairman:* Mr. Leonardo DÍAZ GONZÁLEZ

*later:* Mr. Paul REUTER

---

**Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/341 and Add.1,[1] A/CN.4/350 and Add.1-11, A/CN.4/353, A/CN.4/L.339, ILC (XXXIV)/Conf. Room Doc. 1 and 2)**

[Agenda item 2]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING[2] (*continued*)

ANNEX (Procedures established in application of article 66)[3] (*concluded*)

1. Mr. USHAKOV said that, since the annex also dealt with the conciliation procedure, he thought that, in article 66, paragraph 1, subparagraph (*b*), and paragraphs 2 and 3, the words "the procedure specified in the annex to the present articles" should be replaced by the words "the conciliation procedure specified in the annex to the present articles". It would thus be clear that recourse to that procedure was compulsory. If they so agreed, however, the parties to the dispute and, in particular, international organizations, might set that conciliation procedure in motion otherwise than by submitting a request to that effect to the Secretary-General of the United Nations. It was only in the absence of such agreement that they would submit a request to the Secretary-General. In that case, the procedure should be much simpler, both in drafting and in practical terms, than the one described in the annex and it should be provided that the list of conciliators would be drawn up exclusively on the basis of nominations by States.

2. Mr. NI said that he understood the difficulties encountered by some members as a result of the complex wording and numbering of the various parts of the annex. Such complexity was, however, unavoidable because of the many different cases covered, particularly in subparagraph 2 (*c*), where he wondered whether it might not be possible simply to allow the parties to agree among themselves on arrangements for conciliation. Referring to the question of the right of international organizations to nominate conciliators to be included in the list, he said that, since international organizations had the capacity to conclude treaties, they could be parties to disputes arising from such treaties and should therefore be entitled to nominate conciliators. Accordingly, he proposed the deletion, in the second sentence of paragraph 1 of the annex, of the square brackets around the words "and any international organization to which the present articles have become applicable".

3. Mr. CALERO RODRIGUES said that, if his own understanding was correct, Mr. Ushakov was not questioning the compulsory nature of the conciliation procedure under consideration, but, rather, seeking only to make that procedure more flexible. Mr. Ushakov's point was well-taken, because the main value of conciliation as a means for the settlement of disputes lay precisely in its flexibility and in the freedom it gave the parties to choose the conciliators who would settle the dispute. There was at present a deplorable tendency to make conciliation more rigid and to turn it into something like a system of judicial settlement imposed upon States.

4. In the procedure under consideration, the principle of compulsory conciliation could be combined with the freedom of the parties to choose the conciliators as they wished. To that end, however, it might be necessary to make some changes in the wording of article 66 and the first part of the annex. In that connection, he drew attention to the provisions of annex V of the recently adopted Convention on the Law of the Sea.[4] Those provisions applied to two different situations: first, to the ordinary conciliation procedure, which was voluntary, and, secondly, to compulsory submission to the conciliation provided for in Part XV, section 2, of that Convention. That system of compulsory conciliation was identical with the one now under discussion. He drew particular attention to annex V, article 10, of the Convention on the Law of the Sea, which stated that the parties could by agreement modify any provision of that annex. The parties could thus not reject conciliation itself, but they could by agreement modify the provisions governing conciliation in matters such as the composition and functions of the conciliation commission.

---

[1] Reproduced in *Yearbook ... 1981*, vol. II (Part One).

[2] The draft articles (arts. 1-80 and annex) adopted on first reading by the Commission at its thirty-second session appear in *Yearbook ... 1980*, vol. II (Part Two), pp. 65 *et seq.* Draft articles 1 to 26, adopted on second reading by the Commission at its thirty-third session, appear in *Yearbook ... 1981*, vol. II (Part Two), pp. 120 *et seq.*

[3] For the text, see 1724th meeting, para. 1.

[4] See 1699th meeting, footnote 7.

5. He nevertheless noted that there was one important procedural difference between the system now under discussion and the one which had been adopted by the Third United Nations Conference on the Law of the Sea. In the system under discussion (and, of course, in that of the 1969 Vienna Convention, from which it derived), provision was made for the submission of a request to the Secretary-General of the United Nations for the purpose of setting the conciliation procedure in motion. In the system embodied in the Convention on the Law of the Sea, notification had to be made to the other parties, and the Secretary-General was called upon to take action only in the event of failure by the parties to appoint conciliators. He proposed the adoption of a system such as the one embodied in the Convention on the Law of the Sea, which left the parties freedom of choice of procedures and methods without allowing them to evade their obligations under the system of compulsory conciliation.

6. Mr. LACLETA MUÑOZ said he agreed with Mr. Calero Rodrigues that the Secretary-General of the United Nations should be called upon to act only if the parties had failed to appoint conciliators. He saw no reason why the actual request for conciliation should be submitted to the Secretary-General. Any request by a party for arbitration or conciliation should be submitted to the other party or parties, not to the Secretary-General.

7. Mr. REUTER (Special Rapporteur) said that, from the legal point of view, there was not necessarily any link between the two comments made by Mr. Ushakov. The first related to the introduction of some flexibility in the conciliation procedure, which Mr. Ushakov had proposed with the support of Mr. Calero Rodrigues and Mr. Lacleta Muñoz. The introduction of such flexibility would, in theory, be possible, but only in the context of article 66, not in the annex. It could, in fact, be said that article 66 offered the parties to a dispute an opportunity to agree on a kind of "tailor-made" conciliation procedure. Technically, however, it would then be absolutely essential to set a time limit by which the parties must agree; otherwise, there would obviously be no further possibility for the parties to set in motion an automatic procedure for compulsory recourse to conciliation, one of the basic elements of the Vienna Convention.

8. There was nevertheless something to be said for making the conciliation procedure more flexible and it was quite understandable that the members who had taken part in the Third United Nations Conference on the Law of the Sea should want to share their experience and new ideas with the Commission. He would merely point out that the system provided for in the Convention on the Law of the Sea was absolutely contrary to the Vienna Convention. Since it had been impossible to establish compulsory jurisdiction, the intention of the Vienna Convention had been to provide for compulsory conciliation, but by means of a conciliation procedure designed to ensure some uniformity in the decisions of conciliation commissions; that, in particular, explained the role assigned to the Secretary-General of the United Nations. The choice between the law of the sea approach and the law of treaties approach was a political matter about which he had nothing to say. The Commission had, however, already decided to do away with the submission to the International Court of Justice of disputes relating to rules of *jus cogens*. That would seriously jeopardize the recourse procedures established by the Vienna Convention, and it was something to which the States that had accepted that Convention would probably not agree. The Commission could nevertheless deal with technical matters and propose alternatives, but the question was still one that would, basically, have to be decided by an intergovernmental conference. If there was no intergovernmental conference, article 66 and the annex would obviously disappear.

9. Mr. Ushakov had made a second proposal, unrelated to the first, to the effect that international organizations should not be placed on an equal footing with States and should not take part in the nomination of the conciliators who would be included in the list. Although that position of principle was a legitimate one, it was contrary to the wishes of many States and, moreover, absolutely contrary to the principle of equality in the establishment of conciliation procedures. If the Commission agreed that there should in any event be an automatic conciliation procedure when the parties to a dispute could not agree within a reasonable period of time and if it decided that international organizations were not entitled to nominate members of the list for conciliation procedures in which they themselves would take part, it would be making a political choice. It would thereby simplify the text, but its decision would be much more far-reaching.

10. Mr. CALERO RODRIGUES said that he fully agreed with the Special Rapporteur that international organizations should be allowed to nominate conciliators. He pointed out that, under the provisions on conciliation contained in the Convention on the Law of the Sea, any party to a dispute could institute proceedings by making a notification to the other party or parties concerned; the other party must then submit to conciliation. That system was not far removed in substance from that of article 66 and the annex of the 1969 Vienna Convention.

11. Mr. RIPHAGEN said that, throughout its discussions of the item under consideration, the Commission had never really deviated on any major point from the provisions of the Vienna Convention and that he saw no cogent legal reason to deviate from that convention in the matter of conciliation. He therefore urged the Commission to accept the proposed text of the annex. He also supported Mr. Ni's proposal for the deletion of the square brackets around the words "and any international organization to which the present articles have become applicable" in paragraph 1.

12. Mr. BALANDA said that the suggestion for the introduction of flexibility in the conciliation procedure

which had been made by Mr. Calero Rodrigues and Mr. Lacleta Muñoz further to Mr. Ushakov's comments was somewhat puzzling. It was apparent from the comments by States that almost all of them wanted the Commission to follow the Vienna Convention as closely as possible. It would be contrary to that wish to follow the procedure adopted by the Third United Nations Conference on the Law of the Sea and, thus, quite unlikely that, at a conference of plenipotentiaries, States would agree to depart from rules that were as fundamental as the ones contained in the annex.

13. He interpreted the provision in paragraph 1 stating that "A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph" to mean that, upon expiry of the five-year period for which they were nominated, conciliators would continue to carry out the task assigned to them until they had completed it. If that was so, that provision might be brought into line *mutatis mutandis* with the second sentence of article 13, paragraph 3, of the Statute of the International Court of Justice, which read:

> 3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

14. He did not see how it would be possible to reconcile, on the one hand, the proposal for the drawing up in advance of a list of conciliators by the Secretariat of the United Nations and, on the other hand, the freedom which paragraph 2 gave the parties to choose conciliators not included in that list. He shared the view of the members of the Commission who had stated that they were in favour of equality for States and international organizations in the nomination of the conciliators composing the list. That would ensure the equality of the parties.

15. In order to highlight the difference in the scope of the powers of the conciliators, who would have to choose their chairman from the list, and States, which might be able to choose conciliators not included in the list, it might be advisable to amend the words "The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman" in paragraph 2 of the annex by replacing the word "appoint" by the word "choose"; the amended sentence would then read: "The four conciliators shall, within sixty days following the date of the last of their own appointments, choose a fifth conciliator from the list, who shall be chairman."

16. Mr. LACLETA MUÑOZ said that he too was entirely convinced of the need to preserve the parallelism between the provisions of article 66 and the annex and the corresponding provisions of the Vienna Convention. He also agreed that international organizations must have the right to nominate persons whose names would be included in the list of conciliators. Actually, the provisions now under discussion were not completely parallel with those of the Vienna Convention. He drew the Commission's attention, for example, to the words "in the absence of any other agreed procedure" in paragraph 3 of article 66, which made the application of conciliation subject to the absence of agreement between the parties on any other means of settling their dispute and thus detracted from the compulsory nature of conciliation, whereas the arbitration system established by the Convention on the Law of the Sea did embody the principle of compulsory conciliation. He was also of the opinion that it was the parties, and not the Secretary-General, which must submit a dispute to conciliation. The Secretary-General became involved only if the parties had failed to nominate conciliators.

17. Mr. USHAKOV said that he failed to see how the system provided for in the Vienna Convention would be seriously jeopardized if the parties to a dispute were allowed to constitute the conciliation commission as they wished or if words such as "unless the parties by common consent agree to establish the conciliation procedure in another manner" were added at the end of article 66, subparagraph 1 (*b*). The equality it was proposed to preserve between States and international organizations for the appointment of conciliators did not, in fact, exist. It was only apparent, because an international organization would appoint as conciliators not persons who would be chosen from among its officials—something that would be out of the question—but, rather, nationals of its member countries. It would thus be very difficult, in legal, political and practical terms, for an international organization of a universal character composed of 150 or 160 member States to appoint two conciliators only from among the persons nominated by all those States. It would actually be preferable for international organizations not to take part in the nomination of the conciliators included in the list. He would, however, not insist on the suggestions which he had made concerning the text of the annex and which were intended only to simplify it.

18. Mr. STAVROPOULOS drew Mr. Ushakov's attention to the fact that article 66, paragraph 1, of the draft referred to paragraph 3 of article 65, which itself referred to Article 33 of the Charter of the United Nations. Now, Article 33 of the Charter called upon "the parties to any dispute" to

> seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies... or other peaceful means of their own choice.

It seemed to him that those words largely met the point raised by Mr. Ushakov.

19. Mr. USHAKOV said that, in article 66, paragraphs 2 and 3, the words "any other agreed procedure" in the phrase "in the absence of any other agreed procedure" did not refer to the conciliation procedure at all. There were means other than conciliation for the peaceful settlement of disputes from which the parties were free to choose. Compulsory conciliation came into play only if the parties to the dispute could not agree to set in motion another peaceful means of their own choice.

20. The CHAIRMAN, speaking as a member of the Commission, said that, in his view, the proposed system of compulsory conciliation would go much further than the provisions of Article 33 of the Charter, which, in addition to conciliation, mentioned several other means of settlement. He did not think that, in the present instance, the Commission could go further than the Charter itself. The provisions of the Convention on the Law of the Sea did not constitute a valid precedent in the present case because that Convention had not yet entered into force. He also did not think that the Vienna Convention should be taken as a binding model. The Commission could not confine itself simply to reproducing and adapting the provisions of the Vienna Convention, which many States had not ratified precisely because of the system of compulsory conciliation for which it provided.

21. In theory, it would, of course, be ideal if States accepted a system of compulsory arbitration or even compulsory jurisdiciton by the International Court of Justice. The fact of the matter was, however, that, in the present state of international relations, very few States were prepared to accept compulsory arbitration or jurisdiction. In conclusion, he said he agreed that it would be desirable to introduce greater flexibility in the provisions under discussion. The best course might, however, be to delete article 66 and the annex altogether.

22. Mr. JAGOTA said that the view expressed by the Chairman, speaking as a member of the Commission, reflected the position taken by India on the issue of compulsory conciliation. The provisions of article 66 and the annex of the Vienna Convention had constituted a compromise formula that had actually saved the United Nations Conference on the Law of Treaties in 1969. He himself had been responsible, together with Mr. Elias, for the drafting of that formula, and he well recalled the difficulties they had both had later with their own delegations. If the Commission were now to adopt the easy solution of deleting draft article 66 and the annex altogether, it would not thereby solve the problem under discussion. It would only be passing the problem on to the Sixth Committee of the General Assembly or to a conference of plenipotentiaries. Perhaps the Commission should retain article 66 and the annex and put them forward as a modest contribution to the stability of treaty relations.

23. As to flexibility, he pointed out that the draft now under discussion actually did contain some useful elements. In the first place, the question of methods of settlement under regional agreements (OAS, OAU, and others) was covered by the cross-reference in paragraph 3 of article 65 to Article 33 of the Charter, which called upon the parties to a dispute to seek a solution by "resort to regional agencies or arrangements". The draft thus clearly provided that a solution should be sought by regional means of settlement before the conciliation system came into play. Another important element of flexibility was introduced by the words "in the absence of any other agreed procedure" in article 66, paragraph 3, which made it clear that the conciliation procedure specified in the annex was of a residual nature.

24. In conclusion, he said that he found the system embodied in articles 65 and 66 and in the annex to be entirely in keeping with the Vienna Convention as well as with the system embodied in the Convention on the Law of the Sea and the general practice of the international community. The proposed system had the advantage of moving towards some form of compulsory procedure for the settlement of disputes. It would be advisable for the Commission to retain that element in its draft instead of leaving the whole matter to a conference of plenipotentiaries.

25. Mr. REUTER (Special Rapporteur) suggested that the annex should be referred to the Drafting Committee. Although the system provided for in the Vienna Convention allowed for the greatest flexibility, the Commission could go even further and delete article 66 and the annex altogether.

26. The CHAIRMAN, speaking as a member of the Commission, said that, in his view, the parties to a dispute could always agree on one of the means of settlement provided for in Article 33 of the United Nations Charter. The Secretary-General could also, by agreement with the parties, indicate an appropriate means. An example was to be found in an agreement between the United Kingdom and Venezuela,[5] which provided that the Secretary-General could, in the absence of agreement, be requested to designate one of the means of settlement provided for in Article 33 of the Charter.

27. The CHAIRMAN said that, since there were no further comments, he suggested that the Commission refer the draft annex to the Drafting Committee.

*It was so decided.*[6]

*Mr. Reuter took the Chair.*

## Co-operation with other bodies
[Agenda item 11]

### Statement by the observer for the Inter-American Juridical Committee

28. The CHAIRMAN invited Mr. Ortiz Martín, the observer for the Inter-American Juridical Committee, to address the Commission.

29. Mr. ORTIZ MARTÍN (Observer for the Inter-American Juridical Committee) said that he wished to reiterate the Committee's request that, when members of the Commission visited the Committee, they should give lectures as part of the international law courses which the Committee had been organizing for the past several years.

[5] Art. IV of the Agreement to resolve the controversy over the frontier between Venezuela and British Guiana, signed at Geneva on 17 February 1966 (United Nations, Treaty Series, vol. 561, p. 325).

[6] For consideration of the text proposed by the Drafting Committee, see 1740th meeting, paras. 2 and 69-78.

30. Referring to the Committee's recent activities, he said that, on the initiative of the Legal Sub-Secretariat of the OAS, the Committee had undertaken to prepare a draft inter-American convention on international jurisdiction for the extraterritorial validity of foreign judgements, which would supplement existing conventions. That topic had been discussed at the first and second Inter-American Specialized Conferences on Private International Law held at Panama City (1975) and Montevideo (1979), respectively and, in April 1980, at Washington D.C., where the first meeting of private international law experts had included in its agenda an item on international jurisdiction with a view to supplementing, where necessary, the rules of international procedural law. It had then drafted bases of international jurisdiction for the extraterritorial validity of foreign judgements, and the rapporteur entrusted with the topic had described the efforts made to find terms that would apply both to the common-law system and to the Latin American system of law.

31. The Inter-American Juridical Committee had then considered the bases of international jurisdiction and the replies of jurists to a questionnaire sent to them by the OAS General Secretariat. During the article-by-article consideration of that text, questions on the use of terms had been raised and amendments had been proposed. Various other documents had been prepared and, in January 1982, the Committee had decided that the bases should take the form of a convention, which, although it could stand on its own, might serve to implement article 2 (*d*) of the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, signed at Montevideo on 8 May 1979. In order to fill a gap in that article, the draft Convention contained a provison which would enable the States parties to the Montevideo Convention to apply the rules of that Convention in the event of a dispute but which would not prevent the draft Convention from remaining open for signature and accession by States that had not signed the Montevideo Convention. During the discussion of the title of the draft Convention, it had been agreed that the Spanish term "*competencia*" could be translated by the English term "jurisdiction". Restrictions on the subject-matter of judgements had been retained in the draft, but a provision had been added so that the States parties could declare that they would apply the rules of the Convention to one or more of the subject-matters not covered by that instrument; such a declaration could be made at any time. The draft Inter-American Convention would be useful to the American States, whether they belonged to the common-law system or to the Latin American system of law, and it would provide a universal standard for States other than those of the American continent which decided to accede to it.

32. Referring to the development of international law in the Americas, he said that private international law had originated in the Bologna School, but that public international law had been founded by Francisco de Vitoria, the author of two works which had served as a basis for the theory of international law. In *De Indis*, Vitoria had condemned the excesses committed against the American Indians by some conquistadors. He had also expressed the view that international law should apply not only to Christians, but to non-believers as well. Vitoria's views had been expanded by Francisco Suarez in his work entitled *De Legibus ac Deo legislatore*. After the discovery of America, Spain had undertaken to draw up a special statute for its overseas territories, as well as special constitutional and administrative rules, which had departed radically from the ideas prevalent in Europe during the colonial period. Spain had encountered peoples who had had their own cultures and had given them a special status under what had been called *Leyes de Indias*. The conquest of America had been described in accounts that had been hostile to the Spanish colonists, some of whom had, however, founded the nations of the future. They had all been Spanish, but not all had been conquistadors. The conquistadors had been warriors who had relied on the laws of war; the Spaniards had been colonists who had proselytized and built convents where the Spanish language and religion had been taught; they had experimented with new crops, established schools and universities for instruction in the arts, letters and sciences. Handicrafts had flourished at the time. The races had met and mixed.

33. The main legacy left by the Spaniards and Portuguese had, however, certainly been international law, which Vitoria had created in order to protect the new Latin American nations. International law was thus part and parcel of Latin American culture, as the people of America had realized at the end of the wars of independence, when Simón Bolívar had convened the first inter-American congress, with the idea of uniting all the peoples of America as one. That had been the first positive step in the work, conferences, meetings and institutes that had led to the establishment of the Pan-American Union, in which the United States of America had taken part and of which it had been a fervent supporter. International law had thus developed, because the representatives of the peoples of Latin America had gone on meeting and trying to establish a legal framework for the settlement of their disputes. In Europe, it had been only later, with the establishment of the League of Nations, that such an international union had been born. In Latin America, however, theories had continued to be put forward, including the Bustamente Code,[7] which had been adopted in 1928 and represented the first codification of uniform rules of private law.

34. It should also be borne in mind that the Treaty of Chapultepec[8] had paved the way for the establishment of the United Nations, whose Charter recognized the regional value of the OAS and its right to conclude its own treaties and conventions of all kinds. As a result of

[7] See 1709th meeting, footnote 9.

[8] Final Act of the Inter-American Conference on Problems of War and Peace adopted at Mexico City on 8 March 1945 (*The International Conferences of American States, Second Supplement, 1942-1954* (Washington, D.C., Pan American Union, 1958)).

current unrest, the Latin American countries would have to re-examine their constitutions and the treaties that bound them to determine whether they were operating properly and effectively or whether they should be amended or supplemented. In the final analysis, what the world needed was an international law that would be respected out of a concern for justice.

35. The CHAIRMAN thanked the observer for the Inter-American Juridical Committee for his masterly statement.

36. Mr. DÍAZ GONZÁLEZ said that it was an honour for him as a Latin American to welcome to the Commission a representative of the Inter-American Juridical Committee, which had been the first organization of its kind and was an example of the international co-operation established when Simón Bolívar had convened the 1826 Congress of Panama that had put an end to the colonial regime in the Americas. It had, of course, not done so completely, since there remained, even to the present day, colonialist enclaves to the elimination of which the major Powers were opposed.

37. Mr. Ortiz Martín had rightly spoken of the contribution of the Spanish-speaking peoples to the development of international law. Indeed, it had been in respect of Latin America that two international Powers, Spain and Portugal, had submitted their dispute to arbitration by a third Power, which had determined the extent of the two countries' conquests. Spain and Portugal had a love of the law, as also of equality and justice. In that connection, Mr. Ortiz Martín had suggested that the Inter-American Juridical Committee should recast the legal instruments that still bore the reflection of the old colonialist and imperialist Europe in an instrument of peace and justice designed to serve Latin America, rather than imperialism and colonialism. The Charter of the United Nations should also be revised. The common law and civil law traditions should be combined to form a law of justice and peace for the benefit of the Latin American States, not a law of force, as had thus far been the case.

38. As a Latin American member of the Commission, he would ask Mr. Ortiz Martín to convey to the Committee his concern for the future of international law in Latin America.

39. Mr. LACLETA MUÑOZ said that he had listened with pride to the account by the observer for the Inter-American Juridical Committee of the contributions made by Spain and the Spanish people to the development of international law. In the past, international law had often been criticized as the law of the European Powers and he was proud, too, that Spain had helped to break a vicious circle; it was nevertheless his opinion that only the first stone had been laid. With the emergence since the Second World War of so many newly independent States, it was essential to establish an international law which was of a universal character and would provide a firm basis for the peace and security of all nations. In his view, the work of the eminent jurists to whom Mr. Ortiz Martín had referred and the developments that had taken place since the imperialist links between Spain and Latin America had disappeared augured well for the future of the international community.

40. Mr. JAGOTA said that he was much impressed by the contribution of Latin America and the Spanish-speaking peoples to the development of international law. There had, however, been certain initial points of difference, particularly with regard to the law of the sea. For instance, he had at the outset viewed with some hesitancy the Latin American proposals for a 200-mile exclusive economic zone. However, following an official visit to New Delhi by the representatives of Argentina, Brazil, Ecuador and Peru to a United Nations Committee that had met in Colombo in 1971, he had been persuaded that it would ultimately be in India's best interests to have its own exclusive fishing zone. India had therefore been applying such zones since 1979.

41. He also welcomed the close co-operation between the Inter-American Juridical Committee and the Asian-African Legal Consultative Committee and the exchange of information that was taking place between the three regions.

42. Mr. CALERO RODRIGUES said that, as the observer for the Inter-American Juridical Committee had rightly observed, Latin America had made an important contribution to the development of international law. Specifically, it had undertaken some of the most important codifications of international law and had harmonized efforts to draw up legal instruments. There had been much discussion at the beginning of the century of whether or not there was a Latin American international law, and a Brazilian had even written a book on the subject.[9] That was, however, past history. There had been changes in Latin America, as throughout the entire world. Now the aim was to make international law universal.

43. Originally, international law had been a deformation of European law, with some contributions by the United States. At present, Latin America was making its own contribution, as were Asia and Africa, and the work of the Asian-African Legal Consultative Committee was a case in point. The Commission seemed to be in clear agreement that the new international law should differ from the old in that it should consolidate universal ideas and reflect the contributions of the developing countries. The Inter-American Juridical Committee's work in that area was particularly important. Advantage should also be taken of the fact that, within Latin America itself, some countries had made their contribution by reference to their common-law tradition. That contribution should likewise be taken into account with a view to achieving universality. Against that background, co-operation between the Commission and the Committee was of the utmost importance.

[9] M. A. de Sá Vianna, *De la non-existence d'un droit international américain* (Rio de Janeiro, Figueredo, 1912).

44. Mr. SUCHARITKUL, stressing the importance of co-operation in the development of international law, expressed appreciation for the contribution made by Latin America to the development of public and private international law.

45. Mr. FRANCIS said that the presence of the observer for the Inter-American Juridical Committee was indicative of the close links between the Commission and the Committee. The Committee's contribution to the development of international law was recognized throughout Latin America, and the challenge that Latin American jurists now faced was how to forge some means of ensuring compliance with international law. As a national of one of the small countries, he saw no other alternative for them and for Latin America than to devise a means for the peaceful settlement of disputes. He trusted that Latin American jurists would be ready and able to meet that challenge.

46. Mr. BALANDA, speaking on behalf of the African members of the Commission, stressed the importance of the contribution which Latin America had made and continued to make to the development of international law. That contribution had been particularly valuable during the work of the Third United Nations Conference on the Law of the Sea. It should also be noted that the European Convention on Human Rights[10] had been based on the example provided by Latin America. He expressed the hope that Latin American jurists would continue to work to establish the rule of law through co-operation among peoples and to ensure that the earth really belonged to mankind and not to individuals fighting among themselves. That was also the Commission's goal. It was seeking a common denominator in the different legal and political systems so that its members could combine their efforts to ensure the rule of international law. He wished to add Carlos Calvo's name to those of the distinguished jurists to whom reference had been made.

47. Mr. USHAKOV, speaking also on behalf of Mr. FLITAN and Mr. YANKOV, congratulated the observer for the Inter-American Juridical Committee and expressed the hope that the Committee and the Commission would continue to maintain close and fruitful ties.

48. Mr. McCAFFREY said that he came from a part of the United States that was strongly influenced by the Latin American legal tradition and by the Mexican legal system in particular, above all in the private sector. He had done fairly extensive research into the Mexican legal system in so far as it related to transnational problems between Mexico and the United States. He had therefore been particularly interested in the statement by the observer for the Inter-American Juridical Committee, and he welcomed the close working relationships between the Committee and the Commission.

*The meeting rose at 6.10 p.m.*

[10] Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (United Nations, *Treaty Series*, vol. 213, p. 221).

# 1727th MEETING

*Tuesday, 15 June 1982, at 10 a.m.*

*Chairman:* Mr. Paul REUTER

**Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/341 and Add.1,[1] A/CN.4/350 and Add.1-11, A/CN.4/353, A/CN.4/L.339, ILC (XXXIV)/Conf. Room Doc. 1 and 2)**

[Agenda item 2]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING[2] (*continued*)

ARTICLE 80 (Registration and publication of treaties)[3] (*concluded*)

1. Mr. STAVROPOULOS said that he wished to correct a statement he had made at the 1725th meeting (para. 13). He had said that there was a difference in treatment, in regard to application of Article 102 of the Charter, between international organizations and Members of the United Nations, since treaties submitted by the former were not published, whereas those submitted by the latter were registered and published. Having examined the 1946 regulations to give effect to Article 102 of the Charter of the United Nations (General Assembly resolution 97 (I)), however, he had discovered that treaties submitted by international organizations were in fact published. Article 12, paragraph 1, of the regulations read: "The Secretariat shall publish as soon as possible in a single series every treaty or international agreement which is registered or filed and recorded ...". In that context, "filed and recorded" meant registered by the United Nations or a specialized agency.

2. Mr. NI said that the question raised by article 80 was which types of treaties should be registered with the United Nations. General Assembly resolutions 97 (I) and 33/141 provided certain indications in that connection. Under article 1, paragraph 1, of the regulations in resolution 97 (I), treaties entered into by one or more Members of the United Nations had to be registered with the United Nations Secretariat; under article 4, paragraph 1, subparagraphs (*a*) and (*b*), the United Nations was required to register *ex officio* treaties to which it was itself a party and under which it was authorized to effect registration; and, under paragraph 2 of the same article, a specialized agency might register with the Secretariat a treaty entered into

[1] Reproduced in *Yearbook ... 1981*, vol. II (Part One).

[2] The draft articles (arts. 1-80 and annex) adopted on first reading by the Commission at its thirty-second session appear in *Yearbook ... 1980*, vol. II (Part Two), pp. 65 *et seq.* Draft articles 1 to 26, adopted on second reading by the Commission at its thirty-third session, appear in *Yearbook ... 1981*, vol. II (Part Two), pp. 120 *et seq.*

[3] For the text, see 1725th meeting, para. 32.