Regional and International Activities

Isadoro Zanotti

Follow this and additional works at: http://repository.law.miami.edu/umialr

Recommended Citation

Isadoro Zanotti, Regional and International Activities, 10 U. Miami Inter-Am. L. Rev. 1020 (1978)
Available at: http://repository.law.miami.edu/umialr/vol10/iss3/17
Regional and International Activities

ISIDORO ZANOTTI*

ORGANIZATION OF AMERICAN STATES

GENERAL ASSEMBLY

The General Assembly of the Organization of American States (OAS) held its eighth regular session in Washington, D.C., from June 21 to July 1, 1978. The following is a summary of some of the resolutions adopted by the Assembly.

Panama Canal

The Assembly congratulated the United States and Panamanian governments for having brought the Panama Canal negotiations to a successful conclusion. The successful conclusion, the Assembly felt, demonstrated the two countries' commitment to peace and the firm purpose of the member states of the Organization to resolve disputes arising among themselves by peaceful procedures.

In another resolution the General Assembly authorized the General Secretariat of the OAS to accept for deposit the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, its Protocol, and the instruments of accession thereto; and asked the governments of the United States and Panama to transmit those documents which they now have or, later receive, to the General Secretariat. The Assembly also declared that the Protocol shall be open to accession as of the date of entry into force of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal between the United States and Panama. The Assembly invited all members of the OAS and the other nations of the world to accede to the Protocol in accordance with their own constitutional provisions.

Amendment of the OAS Charter

The amendment process of the OAS Charter has been a very painful one. It began in 1973 and has been at a standstill since 1976.

---

* Former Deputy Director, Department of Legal Affairs, General Secretariat of the Organization of American States; General Rapporteur and member of the Council, Inter-American Bar Association; member of the Board, Inter-American Bar Foundation.
The General Assembly, at its last session expressed its desire that the Permanent Council resume its work on the amendment of the OAS Charter on the basis of previous mandates. It requested the Permanent Council to study the difficulties that have arisen to date, determine the points on which there is full agreement, and prepare the final documents for examination. The Assembly recommended that the Permanent Council consider the advisability of establishing a Special Committee made up of all member states which would make an in-depth examination of the difficulties that have arisen in restructuring the inter-American system.

Economic and Social Matters

The General Assembly took note of the contents of the annual report submitted to it by the Inter-American Economic and Social Council (CIES). The Assembly emphasized that the analysis presented in the first part of the CIES' annual report shows that major obstacles in the way of development of the Latin American and Caribbean countries continue to exist and have been increased by the growing trade protectionism practiced by the industrialized nations. The report stated that, among other factors, increased protectionism, the worldwide economic recession, and the impasse in the establishment of a more balanced world economic order, have interfered with the effectiveness of international cooperation for Latin American development.

In another resolution dealing with transnational enterprises, the General Assembly affirmed that the guidelines of conduct for transnational enterprises set forth in the Aide Mémoire presented by the Latin American Group at the Third Preparatory Working Group on Transnational Enterprises at the Meeting of Ministers of Foreign Affairs held in Washington, D.C., in January 1975, constitute valuable material for preparing a code of conduct for transnational enterprises. The resolution of the Assembly spells out these guidelines, and an appendix contains a summary of the United States position on Latin American principles with respect to this matter.

On the other hand, the Assembly dealt with protectionist trends in trade, and reiterated the deep concern of the member states regarding the movement toward greater protectionism in the developed countries, which has a negative impact on exports from developing countries and adversely affects their national development plans. The Assembly pointed out to the developed countries that the measures
they adopt because of protectionist pressures are contrary to the principles of the Declaration on the Establishment of a New International Economic Order, which calls for greater access to the markets of developed countries for products from developing countries.

On the question of inter-American cooperation in special economic situations, the Assembly stated that the governments of the member states may hold periodic consultations with one another for the purpose of exchanging information on any international economic and financial problems that might affect them. If, as a result of these consultations, it becomes necessary to plan and coordinate certain specific measures of cooperation deemed appropriate in solving the short-term problem identified in these consultations, the member states shall endeavor, individually or collectively, to adopt joint measures of cooperation.

The General Assembly also dealt with the inter-American cooperation for development. It pointed out that, given the state of current international economic relations and the joint efforts on the part of the countries to affect a change in them, it is necessary to explore new forms of economic cooperation at the inter-American level. It also expressed that it is urgently necessary to encourage an inter-American dialogue and consultation on economic, social, scientific, educational, and cultural problems that are strictly within the competence of the region, or of such problems that transcend regional boundaries. The Assembly indicated that it is necessary to define the terms of reference for regional multilateral discussions on such specific matters as employment, income distribution, investment, currency and financial problems, international trade, technological development, scientific research, education and, in general, all matters concerning the quality of life of the peoples of the Americas.

The Assembly recalled that in 1976 it decided to convene a special session of the General Assembly to review all matters concerning inter-American cooperation for development. The Assembly instructed the Inter-American Economic and Social Council (CIES) and the Inter-American Council for Education, Science and Culture (CIECC) to prepare and review, as soon as possible, the terms of reference in the economic, social, educational, scientific and cultural fields for the special session. It instructed the Permanent Council to consider the recommendations of CIES and CIECC, and then, if it seems desirable in light of those recommendations, convene a group of high-level government experts to draw up a preliminary draft ac-
tion plan on inter-American cooperation for development, which would be submitted to the special session of the General Assembly for its consideration.

**Terrorism**

The General Assembly instructed the Permanent Council to continue its studies aimed at establishing the general guidelines and common criteria that will make it possible to conclude agreements on the preparation of a draft convention on terrorism in general. It requested the Permanent Council, in cooperation with the Inter-American Juridical Committee, to prepare draft conventions on specific aspects of international terrorism such as hostage taking, which were not included in the 1971 Convention. It authorized the Permanent Council, once the draft conventions are prepared, to consult with the governments of the member states on the advisability of convening a specialized inter-American conference to study and adopt such instruments. The Assembly also recommended to the Permanent Council that it concurrently undertake studies and research to establish the underlying causes of international terrorism.

**Human Rights**

Four different resolutions of the General Assembly dealt with problems of human rights. In one of those resolutions the Assembly took note of the annual report of the Inter-American Commission on Human Rights, and observed with satisfaction that the American Convention on Human Rights ("Pact of San José, Costa Rica") had been ratified by the governments of ten countries, and that the Minister of Foreign Affairs of Peru had indicated that his government would shortly ratify the Convention. The Assembly invited those member states that have not already done so to sign and ratify the Convention. It recommended that the member states continue to adopt and apply pertinent measures and legislative provisions to preserve and maintain the full effectiveness of human rights in accordance with the American Declaration of the Rights and Duties of Man. It requested the Inter-American Juridical Committee to prepare, in cooperation with the Inter-American Commission on Human Rights, a draft convention defining torture as an international crime.

Two other resolutions dealt with the situation of human rights in Paraguay and Uruguay. The Assembly made an appeal to the governments of these two countries to adopt and put into effect the rec-
recommendations contained in the reports of the Inter-American Commission on Human Rights concerning the two countries.

In another resolution the General Assembly congratulated the Inter-American Commission on Human Rights on its continuing efforts to promote and defend human rights. The Assembly recommended that the member states cooperate with the Commission, duly supply it with the pertinent information, take all measures required to facilitate the work of the Commission, and refrain from any retaliation against individuals and institutions that cooperate with the Commission.

It is worthwhile to note that no resolutions or recommendations were approved by the General Assembly concerning the duties of individuals or institutions in the broad context of rights and duties of human beings.

**American Convention on Human Rights, 1969**

*The Inter-American Commission on Human Rights under the Convention*

The present Inter-American Commission on Human Rights was created by the Fifth Meeting of Consultation of Ministers of Foreign Affairs held in Santiago, Chile, in 1959. Its statute was approved by the Council of the OAS.

The American Convention of Human Rights, the “Pact of San José, Costa Rica”, adopted by a specialized Inter-American Conference on November 22, 1969, entered into force on July 18, 1978, with the deposit by Grenada of its instrument of ratification of the Convention. The Deposit brought the total number of ratifying states to eleven, the number required under the terms of Article 74 of the Convention, for the convention to enter into force. As of July 18, 1978, the following member states of the OAS had deposited their respective instruments of ratification of or adherence to the Convention at the OAS General Secretariat: Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Panama and Venezuela. Peru deposited its instrument of ratification on July 28, 1978, and Jamaica was expected to deposit its instrument of ratification early in August.

Article 33 of the Convention provides that the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights “shall have competence with respect to matters relat-
ing to the fulfillment of the commitments made by the States Parties to this Convention."

The Convention, therefore, contains provisions concerning two international organs: The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

There has been a great deal of discussion concerning the Inter-American Commission on Human Rights which was created in 1959 and which continues to function. At the last regular session held in June 1978 of OAS General Assembly, the Delegation from Costa Rica presented a draft resolution concerning the transition from the present Commission to that provided for in the Convention. There was an understanding in the Assembly that the Permanent Council should study this point. Actually, the Permanent Council is considering the problems of the so-called transition period. It is felt that there should not be two Commissions, but instead one continuing Commission. Questions such as what rules the Commission should apply for member States of the OAS which have not ratified the Convention, and what should be applied to those that have ratified, are now being studied by the Permanent Council in connection with the Commission.

There is a feeling in diplomatic circles that it will be convenient to convene a special session of the OAS General Assembly in order to approve any criteria or recommendations that the Permanent Council might prepare on these complex matters.

According to Article 34 and paragraph 1 of Article 36 of the Convention, the Inter-American Commission on Human Rights shall be composed of seven members who shall be persons of high moral character and recognized competence in the field of human rights. They shall be elected in a personal capacity by the General Assembly of the OAS from a list of candidates proposed by the governments of the member states. Article 36, paragraph 2, provides that each of those governments may propose up to three candidates who may be nationals of the states proposing them, or of any other member state of the OAS. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

In accordance with Article 37, the members of the Commission shall be elected for a term of four years and may be reelected only once. No two nationals of the same state may be members of the Commission.
The functions of the Commission are specified in Articles 41 through 43 of the Convention. The Commission will prepare its statute to be submitted to the General Assembly for approval and adopt its own Regulations.

The Convention confers on the Secretary General of the OAS some specific functions. For example, Article 79 stipulates that upon the entry into force of the Convention, the Secretary General shall, in writing, request each member state of the OAS to present, within ninety days, its candidates for membership on the Inter-American Commission on Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented, and transmit it to the member states of the Organization at least thirty days prior to the next session of the General Assembly. Under Article 80, the members of the Commission shall be elected by secret ballot of the General Assembly from the list of candidates prepared according to Article 79.

The Secretary General of the OAS has already sent out notes to the Missions and Delegations of all the OAS member states, asking them, in accordance with Article 79 and 80 of the Convention, to transmit to their governments the request to present to the General Secretariat the names of their candidates for membership on the Commission.

Inter-American Court of Human Rights

One of the outstanding innovations in the field of human rights brought about by the 1969 Convention is the creation of an Inter-American Court of Human Rights. According to Article 52 of the Convention, the Court shall consist of seven judges, nationals of the member states of the Organization, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates. No two judges may be nationals of the same state.

Article 53 of the Convention provides that the judges of the Court shall be elected by secret ballot by an absolute majority vote of the States Parties to the Convention, in the General Assembly of the OAS, from a panel of candidates proposed by those States. Under Article 54, the judges of the Court shall be elected for a term of six
years and may be reelected only once. The term of three judges chosen in the first election shall expire at the end of three years.

The Inter-American Commission on Human Rights, according to Article 57, shall appear in all cases before the Court. It is provided in Article 60 that the Court shall draw up its Statute, which it shall submit to the General Assembly for approval. The Court will adopt its own rules of procedure, and will appoint its own Secretary.

On the question of the jurisdiction of the Court, Article 61 of the Convention provides that only the Commission and states which are parties to the Convention shall have the right to submit a case to the Court. In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 to 50 be completed. These procedures are among the procedures provided for the Commission.

The recognition or acceptance of the jurisdiction of the Court is provided for in Article 62, according to which a State party may, upon depositing its instrument of ratification or adherence to the Convention, or at any subsequent time, declare that it recognizes as binding *ipso facto*, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of the Convention. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of the Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration or by a special agreement.

Present in diplomatic circles and among members of the legal profession is the belief that most of the States Parties to the Convention will not recognize as binding *ipso facto*, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of the Convention. They may accept such jurisdiction for specific cases.

Possibly the most important function of the Court is that provided for in Article 64 of the Convention, the consultative function, which is expected to be exercised more than the other functions. The article stipulates that all member states of the OAS (not only the States Parties to the Convention) may consult the Court regarding the
interpretation of the Convention or of other treaties concerning the protection of human rights in the American states. Within their sphere of competence, the principal organs of the OAS may in like manner consult the Court. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

As can be concluded from Article 64 of the Convention, the consultative function or competence of the Court is very broad. The Court will have good opportunities to develop important opinions requested either by member states of the OAS or by the principal organs of the Organization.

Articles 81 and 82 of the Convention deal with the first election of the judges of the Court, as follows: Upon the entry into force of the Convention, the Secretary General shall, in writing, request each State Party to present, within ninety days, its candidates for membership on the Inter-American Court of Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented and transmit it to those States which are Parties to the Convention at least thirty days prior to the next session of the General Assembly. The judges of the Court shall be elected in the General Assembly, from the list of the candidates by secret ballot of the States Parties to the Convention.

It is clear, therefore, that only the States which are Parties to the Convention may present candidates for the Court, and only these States can vote for the election of the judges. During a session of the General Assembly, either regular or extraordinary, the American States which are Parties to the Convention will convene for the purpose of electing the judges of the Court.

According to Article 58, the seat of the Court will be established by decision of the Party States to the Convention during a meeting of the General Assembly of the OAS. During its latest regular session held in June 1978, the General Assembly recommended that the seat of the Court be established in the territory of Costa Rica. It is worthwhile to recall that Costa Rica was the seat of the Central American Court of Justice which existed for about ten years from 1909 to 1918. This was the first international tribunal of its kind to be created in the world.
FIFTH COURSE ON INTERNATIONAL LAW

The Fifth Course on International Law, organized by the Inter-American Juridical Committee in collaboration with the OAS General Secretariat, was held in Rio de Janeiro at the Getulio Vargas Foundation headquarters from August 7 to September 1, 1978.

The major topics studied and discussed at the Course were: The Inter-American System and other topics of public international law, such as the new treaties on the Panama Canal, standards on peaceful settlement of inter-American disputes, institutional framework of inter-American relations, the new international economic order and its impact on the Inter-American System, the procedure of consultation, legal aspects of economic integration in Latin America, human rights, the public international law in the present world situation and the impact of international politics on its development, nuclear law, and topics of the Second Inter-American Specialized Conference on Private International Law (CIDIP-II).

The director of the Fifth Course was Dr. Isidoro Zanotti; also the Director of the four previous courses.