

THE
INTERNATIONAL LAW ASSOCIATION
(Founded 1873)

3, PAPER BUILDINGS, TEMPLE, LONDON, E.C.4.

MULTIS MELIOR PAX UNA TRIUMPHIS

REPORT
OF THE
FIFTY-EIGHTH CONFERENCE
HELD AT
MANILA

August 27th, 1978, to September 2nd, 1978.

1980

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PREFACE

The 58th Conference of the International Law Association was held between August 27th and September 2nd 1978 at the Philippine Plaza Hotel in Manila, Republic of the Philippines. The Conference was attended by 524 members and their guests, from 39 countries. It attracted considerable interest and publicity in newspapers and on television, in the Philippines and in other countries of the region.

The success of the Manila Conference must be largely attributed to the energy and dedication of the President of the Association, Professor Enrique Syquia, with the support of the officers and members of the Philippine Branch, founded in 1974. Our Philippine hosts made every effort to ensure that all participants enjoyed as much traditional local hospitality and sight-seeing as possible during the Conference week, and particularly warm gratitude extends to President Ferdinand E. Marcos, Mrs. Imelda Romualdez Marcos (the First Lady), the Hon. Carlos P. Romulo (Foreign Minister), Mr. Raymon D. Bagatsing (Mayor of Manila), the late Chief Justice Fred Ruiz Castro, and to all the members of the Supreme Court of the Philippines.

The Conference was opened by President and Mrs. Marcos at a splendid inaugural session in the Philippine International Convention Centre. Both their addresses have been included in this volume, together with the speeches of the then retiring President of the Association, Dr. A. Rodriguez Sastre, and Professor Syquia.

The Philippine Branch, following local custom, invited a number of very distinguished people to speak after meals to which all ILA members and guests were invited. The reader will find in this volume a record of the address of General Romulo given at the Mayor's lunch on the Monday of the Conference week; of a speech at dinner that day at the Philippine Plaza by His Excellency Lazar Mojsov, President of the General Assembly of the United Nations; of Lord Wilberforce's inspiring address as Chairman of the Executive Council at lunch on the Tuesday; and of the speech at the Chief Justice's dinner on the Wednesday given by His Excellency Judge Jimenez de Arechaga, President of the International Court of Justice. The Judge received an honorary degree from the University of St. Thomas, Manila, on the Saturday at a ceremony attended by some members of the ILA.

The working programme of the Conference comprised seventeen working sessions, which are reported in this volume. One was the

"Monetary Law Workshop", now a regular feature of the ILA Conferences. Three of the others were continuation sessions. In addition to the Committee Reports reprinted in Part II, a number of valuable Branch reports were submitted. A list of Branch reports and other papers "on the table" can be found on page 525.

One session was devoted to "State Immunity", which the Association plans to study once more. Subsequently on November 17th, 1978, in London a number of expert speakers contributed to an open meeting on this subject – and a working committee has since been formed. Another session considered a report on the "Theory and Methodology of International Law", which gave rise to a lively exchange of views.

The achievements of the Conference included an important resolution which emerged from the sessions on Human Rights, urging States to ratify the UN Covenants on Human Rights and take an "integrated approach" towards the implementation of civil and political rights, and social, economic, and cultural rights.

Another resolution recommends for adoption as a model for multi-lateral and bilateral treaties, a Draft Convention on Expatriation of Accused Persons for Trial and Sentence and Repatriation for Enforcement of Sentence. The establishment of an International Criminal Court and a Commission of Criminal Inquiry was also considered.

The sessions on the Law of the Sea provided the forum for discussion of the "Exclusive Economic Zone" and other issues under consideration by the Third United Nations Conference on the Law of the Sea.

A number of members supported an exceptional resolution on "legal aspects of a New International Economic Order", recommending the establishment of a working committee in this field. The Closing Session accepted this resolution and the Executive Council has subsequently appointed a committee and fixed its terms of reference.

Among the other topics considered at the working sessions were value clauses in international monetary operations; transit rights of landlocked states; draft articles for the regulation of the flow of international watercourses; the Comité Maritime Internationale Draft Convention on the Unification of Certain Rules concerning Civil Jurisdiction; the demarcation of air space and outer space; a

draft model agreement on humanitarian relief operations; and trans-frontier pollution. A new committee on international commercial arbitration was planned.

An up to date list of members has been included in Part III of this volume. As a measure of economy, a smaller size type than usual has been used for members' contributions at the working sessions.

The Editor of this volume is Vanessa Hall-Smith, Secretary of the Association until September 1979.

On June 8th, 1979, Professor Daniel O'Connell, Q.C. died after a brief illness. His work as Director of Studies since 1974 is behind the scenes of much that the reader will find in this Conference Report, and in several earlier volumes. His solid contributions to the work of the Association also extend over many years prior to his appointment as Director. He was very active and happy at the Manila Conference, whence all who were present have pleasant and appreciative memories of him. At the time of his death he was Chichele Professor of International Law at Oxford, and Vice-President of the Australian Branch of the Association. He was buried in his homeland, New Zealand. Losing him is very grievous.

JOHN EDWARDS
Hon. Secretary-General.

FINANCIAL REPORT BY THE HON. TREASURER (1977-1978)

It has been decided not to insert in the Conference Report—as in the past—the Annual Accounts for the year preceding that in which the Conference was held. A statement of the figures for one year only would not, it was felt, enable members to assess the true financial situation of the Association nor its possible future developments. For that purpose, there is now given a summary—for the years 1977 and 1978—of the main items of Receipts and Payments, followed by short Notes on the figures so presented.

HEADQUARTERS ACCOUNT RECEIPTS AND PAYMENTS ACCOUNT FOR THE YEAR ENDED 31st DECEMBER, 1978

1977		1978
	Receipts	
	Subscriptions:	
8,949	From Branches	14,642·04
999	From Members of Headquarters	756·29
<hr/>		<hr/>
9,948		15,398·33
8,908	Madrid Conference Fees	—
297	Donations	100·00
—	State Immunity Conference	301·10
2,582	Miscellaneous Receipts	3,355·77
<hr/>		<hr/>
21,735		19,155·20
	Payments	
14,466	Office Expenses	13,790·58
79	Travelling Expenses	—
877	Printing and Distribution	9,998·98
<hr/>		<hr/>
15,422		23,789·56
6,313	Excess of (payments)/receipts	(4,634·36)
(105)	Profit/(Loss) on holding foreign currency	404·6
<hr/>		<hr/>
£6,208	(Deficit/Surplus transferred to General Funds	£(4,229·68)

Note on Receipts

The considerable increase in Branch contributions is due to the collection in 1978 of arrears dating from 1977 and 1976. The amount of miscellaneous income mainly represents the sale of ILA products viz. Conference Reports, Index and Centenary publications.

Note on Payments

As regards the regular expenditure, the small decrease in office expenses in 1978 was caused by fortuitous circumstances: in 1977 a major advance had to be made for "Rent and Rates", which was recovered in 1978; this resulted in a £1,000 advantage; in 1977 the Association also paid accountancy charges for 1977 and 1976.

The effect on the 1978 Accounts resulting from these adjustments was partly set off by an increase—as foreseen—in salaries, pension and national insurance, in the cost of essential redecorations and a sharp rise in postage and telephone charges.

The cost of editing, printing and distributing of the Madrid Conference Report amounted to nearly £10,000 viz. some £1,000 over the amount of Conference fees collected. It is this expense which in the end largely accounts for the deficit of £4,300 incurred in 1978.

General Note

Considering the years 1977 and 1978 together, the conclusion must be that the overall financial position remained much the same in comparison with previous years: in fact extra income in any one year from Conference fees is balanced by expenditure the next year in connection with the Conference Report.

The contributions—income, both from Branches and HQ members, continue to cover—*grosso modi*—the regular expenditure.

The ILA's financial reserves, styled as "General Funds", increased in 1977 to £21,464 thanks to a surplus of Receipts over Payments of £6,200. In 1978 they were reduced to £17,235 owing to the deficit in that year of £4,300.

Finally mention must be made, with gratitude and appreciation, of the grants amounting to nearly US \$6,500 in 1977 and 1978 from UNESCO. Thanks to this financial assistance the Association was able to undertake activities by way of research, organising meetings of experts on special subjects and the publication of reports, which it would otherwise have been difficult or impossible to arrange.

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MANILA CONFERENCE RESOLUTIONS

HUMAN RIGHTS

The 58th Conference of the International Law Association held in Manila from August 27th to September 2nd, 1978,

Recognising that the universal implementation of human rights remains a matter of the greatest urgency and the gap between promise and performance in this field remains substantial, so that concerted efforts, nationally and internationally, are required to achieve full realization of human rights, both civil and political, and economic, social and cultural, throughout the world;

Convinced that the protection of human rights is a matter of international concern; that the claim that violations of human rights within a country are matters of exclusive domestic concern and hence may not be subject to international appraisal, is unfounded in international law; and further that actions (including the making of allegations), consistent with the principles of the U.N. Charter, taken in respect of violations of internationally recognized rights, are not violations of state sovereignty;

Convinced further that the universal implementation of human rights would be advanced by a re-affirmation of the validity of the standards set out in the Universal Declaration of Human Rights and by wider ratification of the U.N. Covenants on Human Rights;

Believing that it is important to re-affirm that civil and political rights and economic, social and cultural rights are interdependent so that an integrated approach needs to be adopted for their realization; that even in situations where a *bona fide* proclamation of emergency may be in force, such rights as are recognised to be non-suspendable by Article 4 of the U.N. Covenant on Civil and Political Rights should not be suspended; and further that a person accused of commission of a crime, including a crime against the state or a political crime, should be assured the rights and safeguards extended to an accused person by the U.N. Covenant on Civil and Political Rights.

Having considered the Report of the International Committee on Human Rights and the reports of its sub-committees which are incorporated in the Report and having taken into account the deliberations in the Committee on Human Rights during the Conference;

Declares that the standards set out in the Universal Declaration of Human Rights remain universally valid today as they were when the Declaration was adopted in 1948;

Urges that States unless they have already done so, should:

- (a) take prompt steps to ratify the U.N. Covenants on Human Rights;
- (b) adopt an "integrated approach" to the realization of civil and political rights on the one hand, and economic, social and cultural rights on the other;
- (c) refrain from suspension, even in situations where a *bona fide* proclamation of emergency has been made, of those rights which were recognized as non-suspendable, by Article 4 of the U.N. Covenant on Civil and Political Rights;
- (d) assure to persons accused of committing a crime, including a crime against the state or a political crime, the rights and safeguards extended to an accused person by the U.N. Covenant on Civil and Political Rights.

Records its appreciation of the work done by the International Committee on Human Rights and its sub-committees, and, noting from the Report of the Committee, including those of its sub-committees, that various issues have been identified for further study expresses the hope that substantial progress will be made by the Committee and its sub-committees with their respective studies to enable them to submit reports to the 59th Conference of the International Law Association.

SPACE LAW

The 58th Conference of the International Law Association, held in Manila from August 27th to September 2nd, 1978,

Re-emphasising the view expressed by a resolution of the 53rd Conference that the freedom of outer space for exploration and use is a principle of general international law and thus a principle valid independently of any treaty;

Considering that the space at and above the altitude of about 100 km. above sea level has been growingly acknowledged by states as well as by experts in the field of outer space activities as outer space;

Recommends that, in as much as a conventionally-based international rule regarding the lower boundary of outer space to be formulated is likely to touch the upper limit of air space, the Space Law Committee should study the question as to whether the sovereignty above the surface territory of states extends to the lowest boundary of outer space;

Suggests that the study of this question should be made in conjunction with I.C.A.O.

Being convinced of the importance of establishing a rule of freedom of passage for spacecraft through the air space of other states for the purpose of putting them into orbit or for returning them to earth, welcomes the growing support for the establishment of such a rule, being aware that the final formulation of this rule should take into consideration the political and economic implications involved both for states active in the exploration and use of outer space and for all other states concerned;

Recommends that the problem of the settlement of space law disputes be studied by the Space Law Committee in order to present a report to the 59th Conference of the International Law Association.

INTERNATIONAL WATER RESOURCES LAW

The 58th Conference of the International Law Association, held in Manila from August 27th to September 2nd, 1978,

Having received and considered the Report of the Committee on International Water Resources Law;

Welcomes and appreciates the Report, particularly the Articles on the Regulation of the Flow of Water of International Watercourses contained therein; and

Requests the Committee to submit its final report on Regulation to the next Conference of the International Law Association and to continue its work on the remaining items of its terms of reference.

INTERNATIONAL CRIMINAL LAW

The 58th Conference of the International Law Association, held in Manila from August 27th to September 2nd, 1978,

Having regard to the Draft Convention on Expatriation of Accused Persons for Trial and Sentence and Repatriation for Enforcement of Sentence, contained in the second interim report of the International Criminal Law Committee;

Recommends that this Draft Convention be adopted as a model for multilateral and bilateral treaties while recognizing:

- (a) that certain provisions may be amended according to particular needs of some states or be subject to reservations in multilateral treaties, and
- (b) that while the recommendation concerns both Part I and Part II of the Draft Convention, some states may adopt only Part II dealing with transfer of sentenced persons to the state of their citizenship for enforcement of sentence and re-insertion of the offender into his national society.

LAW OF THE SEA

The 58th Conference of the International Law Association held in Manila from August 27th to September 2nd, 1978,

Thanks Mr. Robert B. Krueger and Mr. Myron H. Nordquist, Professor L. F. E. Goldie and Mr. Nadaisan Logaraj for their valuable reports on various aspects of the Law of the Sea; and

Requests the Chairman of the Committee on the Law of the Sea, in consultation with the Vice-Chairman and the rapporteurs and members of the Committee, to arrange for the presentation at the 59th Conference of the Association of a report (or reports) on such aspect (or aspects) of the Law of the Sea that seem most appropriate at the time in the light of the further progress of the Third United Nations Conference on the Law of the Sea.

INTERNATIONAL MONETARY LAW

The 58th Conference of the International Law Association held in Manila from August 27th to September 2nd, 1978,

Having regard to the Report of the Committee on International Monetary Law;

Recalling the resolution of the 57th Conference of the International Law Association requesting the Committee to continue its work on value clauses in international operations including a study of model clauses, and to report at the 58th Conference of the International Law Association, taking into account the possible need for adjustment where a unit of account based on a combination-of-currencies and resorted to in an international operation should cease to exist or be modified;

Considering that the Second Amendment to the I.M.F. Articles of Agreement does not eliminate monetary hazards, while international transactions in the field of trade, services and capital movements, both non-governmental and in a public international law context, presuppose a minimum of legal certainty concerning their monetary aspect;

Considering that the Second Amendment to the I.M.F. Articles of Agreement increases the difficulties arising in the interpretation of existing value and, in particular, gold clauses in private transactions as well as in international conventions, while entailing at the same time the disappearance of traditional gold clauses from such arrangements in the future;

Considering the expanding use of units of account based on combination-of-currencies clauses, in particular the I.M.F. Special Drawing Right definition, in inter-governmental arrangements, and which is bound to continue beyond the treaties and other international instruments referring to such a device already;

Considering that where governments encourage the introduction of combination-of-currencies units of account devoid of a link to gold, they should maintain the validity of those units and permit adjustment where such a unit ceases to exist or is modified:

I. **Suggests:**

Where, either in a public or private international law context, parties who wish to use a clause referring to a combination-of-currencies unit defined by an inter-governmental organisation, are well advised to consider carefully whether in fact such clauses offer sufficient protection; and to clarify in advance:

1. Whether, in case the definition of the unit would be modified by the organisation, they wish their clause to be construed:
 - (i) as referring to the unit as it was defined at the time when the clause was adopted; and, in such a case, whether they wish to reserve—either to themselves or to a specified person or entity—the right to take into account, in some cases or to a certain extent, subsequent modifications of the unit by the organisation; or
 - (ii) as referring to the unit as it may subsequently be modified, from time to time, by the organisation and, in such a case, whether they wish to reserve—either to themselves or to a specified person or entity—the right to disregard, in some cases or to a certain extent, such modifications; and

2. Whether, in case the unit would cease to exist, they wish their clause to be construed:
 - (i) as referring to the currencies composing the basket—either at the time when the clause was adopted (in the case of 1. (i) above)—or at the time when the unit ceased to exist (in the case of 1. (ii) above); or
 - (ii) according to some other specified rules.
- II. **Requests** the Committee on International Monetary Law:
1. to continue its work on value clauses in international operations with special emphasis on units of account based on combinations of currencies, in particular those widely used outside their original setting, e.g. by non-members of the (inter-governmental) organisations concerned, and to report again at the 59th Conference of the International Law Association, considering as well the maintenance of value in real terms and the currency of payment;
 2. to submit a proposal as to other specific subjects of its research and study.

INTERNATIONAL COMMERCIAL ARBITRATION

The 58th Conference of the International Law Association held in Manila from August 27th to September 2nd, 1978,

Recognizing that Professor Martin Domke has served as Chairman of the Committee on International Commercial Arbitration with distinction for many years;

Recommends that this Committee acknowledges its gratitude to Professor Domke by proposing to the Executive Council of the International Law Association that Professor Martin Domke be appointed Honorary Chairman of the Committee on International Commercial Arbitration, and

Recognizing further that the working session of the Committee on International Commercial Arbitration has elicited enthusiastic response from participants with a keen interest in International Commercial Arbitration and that such interest needs to be fostered and actively promoted;

Recommends to the Executive Council that the Committee on International Commercial Arbitration be restructured whereby it shall comprise members actively interested in the theory and practice of international commercial arbitration; and