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ASIAN-AFRICAN
LEGAL
CONSULTATIVE COMMITTEE

REPORT OF THE TENTH SESSION
KARACHI
1969

CONTINUING LETTERS
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KARACHI
1969

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REPORT OF THE TENTH SESSION
Held in Karachi (Pakistan) From 21st to
31st January 1969

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I. INTRODUCTORY

Establishment and Functions of the Committee

The ASIAN LEGAL CONSULTATIVE COMMITTEE, as it was originally called, was constituted by the Governments of BURMA, CEYLON, INDIA, INDONESIA, IRAQ, JAPAN and SYRIA as from the 15th of November, 1956, to serve as an Advisory Body of Legal Experts, to deal with problems that may be referred to it, and to help in the exchange of views and information on legal matters of common concern between the participating countries. In response to a suggestion made by the then Prime Minister of India, Mr. Jawahar Lal Nehru, which was accepted by all the participating countries in the Asian Legal Consultative Committee, the Statutes of the Committee were amended with effect from the 19th of April, 1958, so as to include participation of the countries in the African continent. Consequent upon this change in the Statutes, the name of the Committee was altered and it was renamed as the ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE. Membership of the Committee is open to the countries in the Asian and African continents in accordance with the provisions of its Statutes and Statutory Rules.

The UNITED ARAB REPUBLIC, upon its formation by the merger of Egypt and Syria, became an original participating country in the Committee in the place of SYRIA. SUDAN was admitted to the Committee with effect from the 1st of October, 1958, PAKISTAN from the 1st of January, 1959, MOROCCO from the 24th of February, 1961, THAILAND from the 6th of December, 1961, GHANA from the 28th of October, 1963, JORDAN from the 1st of January, 1968, and SIERRA LEONE from the 1st of October, 1968. The Republic of the PHILIPPINES was admitted as an Associate Member from October, 1969.

The Committee is governed in all matters by its Statutes and Statutory Rules. Its functions as set out in Article 3 of the Statutes are :

- “(a) To examine questions that are under consideration by the International Law Commission and to arrange for the views of the Committee to be placed before the said Commission; to examine the reports of the Commission and to make recommendations thereon to the Governments of the participating countries;
- (b) To consider legal problems that may be referred to the Committee by any of the participating countries and to make such recommendations to Governments as may be thought fit;
- (c) To exchange views and information on legal matters of common concern and to make recommendations thereon, if deemed necessary; and
- (d) To communicate with the consent of the Governments of the participating countries the points of view of the Committee on international legal problems referred to it to the United Nations, other institutions and international organisations.”

The Committee normally meets once annually by rotation in the countries participating in the Committee. Its First Session was held in New Delhi (1957), the Second in Cairo (1958), the Third in Colombo (1960), the Fourth in Tokyo (1961), the Fifth in Rangoon (1962), the Sixth in Cairo (1964), the Seventh in Baghdad (1965), the Eighth in Bangkok (1966), the Ninth in New Delhi (1967), and the Tenth Session was held in Karachi from 21st to 31st of January, 1969.

The Committee has its permanent Secretariat in New Delhi for the conduct of day to day work. A section of the

Secretariat is charged with the task of collection of materials and preparation of background papers for assisting the Committee in its deliberations during the sessions. The Committee functions in all its matters through its Secretary who acts in consultation with the Liaison Officers appointed by each of the participating countries.

Office-bearers of the Committee and its Secretariat

At its Tenth Session held at Karachi in January, 1969, the Committee elected the Member for Pakistan, Mr. Syed Sharifuddin Pirzada, Attorney-General of Pakistan, and the Member for Jordan, Hon'ble Mr. Shukri Al Muhtadi, Legal Adviser to the Prime Minister of Jordan, respectively as President and Vice-President of the Committee for the year 1969-70.

The Committee at its First Session decided to locate its permanent Secretariat in New Delhi (India). The Committee also decided at its First, Second, Fourth, Sixth, Seventh and Ninth Sessions that Mr. B. Sen, Senior Advocate of the Supreme Court of India, should perform the functions of the Secretary to the Committee.

Co-operation with other Organisations

The Committee maintains close relations with and receives published documentation from the United Nations, the International Law Commission, the International Court of Justice, the United Nations Commission on International Trade Law (UNCITRAL), the United Nations Conference on Trade and Development (UNCTAD), the International Institute for the Unification of Private Law (UNIDROIT), the Hague Conference on Private International Law, the Organisation of African Unity, and the League of Arab States. The Committee has taken steps to co-operate with the United Nations in its Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law,

and as part of that Programme the Committee has decided to sponsor two scholarships to be awarded to the nationals of Asian and African countries.

The Committee is empowered under its Statutory Rules to admit to its Sessions Observers from international and regional inter-governmental organisations. The International Law Commission was represented at the Committee's Fourth, Fifth, Sixth and Seventh Sessions respectively by Dr. F. V. Garcia-Amador, Dr. Radhabinod Pal, Mr. Eduardo Jimenez de Arechaga and Prof. Roberto Ago, at its Eighth and Ninth Sessions by Dr. Mustafa Kamil Yasseen, and at its Tenth Session by H. E. Dr. A. H. Tabibi. The Secretary-General of the United Nations was represented at the Committee's Fifth Session by Mr. Oscar Schachter of the U. N. Secretariat, at the Sixth Session by Mr. Luis Moreno Verdin, Director of U. N. Information Centre, Cairo, and at the Seventh Session by Mr. Dik Lehmkuhl, Director, U. N. Information Centre, Baghdad. The Organisation of American States was represented by Dr. F. V. Garcia-Amador at the Committee's Sixth Session. The Arab League sent Observers to the Committee's Second, Fifth, Sixth, Seventh, Eighth, and Ninth Sessions. The International Law Association of the U. S. S. R. sent Observers to the Committee's Eighth, Ninth and Tenth Sessions. Further, the American Society of International Law and the International Law Association (German Section) were also represented at the Committee's Tenth Session.

The Secretary of the Committee has discretion to invite the Specialised Agencies and other U. N. bodies keeping in view the agenda of a particular session. Since the subject of the Rights of Refugees is of particular interest to the Office of the U. N. High Commissioner for Refugees, it has been invited to be represented at the Committee's Sixth, Seventh, Eighth and Tenth Sessions when that subject was on the agenda of those Sessions.

The Committee deputed observers to the sessions of the International Law Commission in response to a standing invitation extended to it by the Commission. The United Nations also invites the Committee to be represented at all Conferences convoked by it for consideration of legal matters. At the Vienna Conference on Diplomatic Relations, 1961, the recommendations of this Committee on that subject were considered by the Conference of Plenipotentiaries as a basic document, and in fact some of the recommendations of the Committee were accepted in preference to those mentioned in the working papers. The Committee was also represented at the U. N. Conference of Plenipotentiaries on the Law of Treaties which had met in two sessions at Vienna. The Committee participated in the Second United Nations Conference on Trade and Development held in New Delhi in February-March, 1968, and in the First Meeting of the Advisory Group of International Trade Centre of the UNCTAD/GATT held in Geneva from 28th to 31st May, 1968.

The Sessions of the Committee

First Session (New Delhi, 1957) : During the First Session the Committee discussed and drew up interim reports for submission to the Governments of the participating countries on three subjects, namely 'Diplomatic Immunities and Privileges', 'Principles of Extradition' and 'Immunity of States in respect of Commercial Transactions'. These subjects were, however, carried forward for further consideration at the next session.

Second Session (Cairo, 1958) : During the Second Session the Committee had before it five main subjects for consideration namely 'Diplomatic Immunities and Privileges', 'Principles of Extradition', 'Immunity of States in respect of Commercial Transactions', 'Dual Nationality' and 'the Status and Treatment of Aliens'. It also discussed briefly questions relat-

ing to 'Free Legal Aid' and 'Reciprocal Enforcement of Foreign Judgments in Matrimonial Matters'.

The Committee finalised its Reports on 'Diplomatic Immunities and Privileges' and 'Immunity of States in respect of Commercial Transactions' which were submitted to the participating governments.

Third Session (Colombo, 1960): The Committee at its Third Session considered the comments of the participating governments on its reports on 'Diplomatic Privileges and Immunities' and 'Immunity of States in respect of Commercial Transactions' which it had finalised at its preceding Session. The Committee reaffirmed the view it had taken in its Report on 'Immunity of States in respect of Commercial Transactions'¹, but it made certain changes in its Report on Diplomatic Immunities and Privileges in the light of the comments received from the participating governments. The latter report was placed before the United Nations Conference of Plenipotentiaries on Diplomatic Relations convoked in 1961.

The Committee gave detailed consideration to the topics of 'the Status of Aliens' and 'Principles of Extradition' and drew up provisionally the principles governing these topics in the form of draft articles. These provisional draft articles were submitted to the participating governments for their comments.

The Committee also generally considered questions relating to 'Dual Nationality' and the recommendations of the International Law Commission on 'Arbitral Procedure'. The Committee decided to take up at its next Session the question of 'The Legality of Nuclear Tests', 'Conflict of Laws relating to International Sales and Purchases' and 'Relief against Double Taxation'.

1. A.A.L.C.C. *Report of the Third Session, Colombo, 1960.*

Fourth Session (Tokyo, 1961): At the fourth Session the Committee discussed in detail the subjects of 'Extradition' and 'the Status of Aliens' on the basis of the provisional draft articles adopted at its third Session. The Committee revised the draft articles in the light of comments made by the delegations present and adopted its Final Reports for submission to the participating governments.²

The topics relating to 'Diplomatic Protection of Citizens Abroad' and 'State Responsibility for Maltreatment of Aliens' were also generally considered by the Committee.

The Committee gave special attention to the questions of the Legality of Nuclear Tests. After a general discussion the Committee unanimously decided to place the subject as the first item on the agenda of the Fifth Session considering it to be a matter of utmost urgency.

The Committee gave further consideration to the subjects of 'Free Legal Aid' and 'Recognition and Enforcement of Foreign Judgments in Matrimonial Matters'. It decided to publish the reports of the Special Rapporteur on both these topics.³

Fifth Session (Rangoon, 1962): At the fifth Session the Committee discussed in detail the subjects of 'Dual or Multiple Nationality' and 'The Legality of Nuclear Tests'. The Committee drew up a set of draft articles embodying the principles relating to elimination or reduction of dual or multiple nationality.⁴ It was decided that these draft articles should be submitted to the participating governments for their comments and that the subject be placed before the Committee

2. A.A.L.C.C. *Report of the Fourth Session, Tokyo, 1961.*

3. A.A.L.C.C. *Report of the Fourth Session, Tokyo, 1961.*

4. For background materials prepared by the Secretariat on the subject of Dual or Multiple Nationality, refer A.A.L.C.C. *Report of the Fifth Session, Rangoon, 1962.* For final Report of the Committee on this subject, refer A.A.L.C.C. *Report of the Sixth Session, Cairo, 1964.*

for fuller consideration in the light of comments that might be received from the member governments.

The Committee discussed the question of 'the Legality of Nuclear Tests' on the basis of materials collected by the Secretariat on the scientific and legal aspects of nuclear tests. The Committee heard the views and expressions of opinion on the various aspects of the question from the delegates present and took note of the written memoranda presented by some of the member governments. On the basis of these discussions the Secretary of the Committee drew up a Draft Report for consideration of the Committee. After a general discussion the Committee decided that the Secretariat should submit the Draft Report to the participating governments for their comments, and that the subject be placed before the next session of the Committee as a priority item on the agenda.

The Committee also considered the subject of 'Arbitral Procedure'. It decided that a report should be drawn up on 'Arbitral Procedure' incorporating the views expressed by the Delegations.⁵

Sixth Session (Cairo, 1964): At the sixth Session the Committee finalised its recommendations on the subjects of 'Dual or Multiple Nationality'⁶ and 'The Legality of Nuclear Tests'⁷. It also discussed the subjects of 'The Rights of Refugees' and 'The U.N. Charter from the Asian-African Viewpoint' which were referred to the Committee by the Government of the U.A.R. The questions relating to 'Reciprocal Enforcement of Foreign Judgments, Service of Process and Recording of Evidence in Civil and Criminal Cases', referred

5. A.A.L.C.C. *Report of the Fifth Session, Rangoon, 1962*, pages 184-188.

6. A.A.L.C.C. *Report of the Sixth Session, Cairo, 1964*, pages 33-36.

7. A.A.L.C.C. *The Legality of Nuclear Tests* (New Delhi : 1964)

by the Government of Ceylon, were considered by a Sub-Committee appointed at this Session.

The Committee also considered certain questions relating to the Vienna Convention on Diplomatic Relations, 1961; the Vienna Convention on Consular Relations, 1963; and the Vienna Convention on Nuclear Damage, 1963.

Seventh Session (Baghdad, 1965): During the seventh Session the Committee finalised its recommendations on the subject of 'Reciprocal Enforcement of Foreign Judgments, Service of Process and Recording of Evidence in Civil and Criminal Cases'⁸, and considered in detail the topics of 'The Rights of Refugees' and 'The U.N. Charter from Asian-African Viewpoint'. It also took up for preliminary discussion the topics of 'Law of Outer Space' and 'Codification of the Principles of Peaceful Co-existence', both referred by the Government of India. The topic of 'Relief against Double Taxation' and 'Diplomatic Protection and State Responsibility' were given consideration by Sub-Committees appointed at the Session.

Eighth Session (Bangkok, 1966): During the eighth Session the Committee finalised its consideration of the subject of 'The Rights of Refugees' by formulating general principles governing the subject in a Final Report which it adopted unanimously and decided to submit it to the Government of the U.A.R. and other participating governments.⁹

The topic of 'Relief against Double Taxation' was given consideration by a Sub-Committee. The Sub-Committee

8. A.A.L.C.C. *The Reciprocal Enforcement of Foreign Judgments* (New Delhi : 1966).

9. A.A.L.C.C. *The Rights of Refugees—Report of the Committee & Background Materials* (New Delhi : 1967). The Principles adopted by the Committee at its Bangkok Session have been referred for re-consideration at the request of the Government of Pakistan.

prepared a report on the topics not covered by the Sub-Committee appointed at the Seventh Session.

The subject of 'Peaceful Co-existence' was also examined by a Sub-Committee. The Sub-Committee presented an Interim Report dealing with some of the aspects as it did not have sufficient time to discuss all aspects of the matter. The Committee, therefore, directed the Secretariat to continue its study of the subject and to revise the draft articles prepared by it in the light of discussions at this Session and to place the revised draft articles before it at the next Session.

At the request of the Delegation of Ghana the Committee took up the 1966 Judgment of the International Court of Justice on the South West Africa Cases and certain questions arising therefrom under Article 3 (c) of its Statutes. After a general discussion, the Committee decided to place this subject as a priority item on the agenda of its next Session and directed the Secretariat to study the points raised in the course of discussions at this Session and to prepare a comprehensive brief to facilitate deliberations at the next Session.

The Committee also considered the subject of the Law of Treaties which it had taken up at its Seventh Session as a matter arising out of the work of the International Law Commission. After taking note of the statement of the Chairman of the International Law Commission, present at the Session, on the scope of work of this Committee *vis-a-vis* the law of treaties, the Committee decided to examine the draft articles on the Law of Treaties at its next Session as a priority item with a view to formulating proposals and suggestions from the Asian-African viewpoint. The Committee appointed Dr. Sompong Sucharitkul as Special Rapporteur on the subject with the request that he prepare a report on the specific points arising out of the Commission's draft articles which required consideration by the Committee from an Asian-African perspective.

Ninth Session (New Delhi, 1967): During the ninth Session the Committee finalised its recommendations on the subject of 'Relief against Double Taxation'¹⁰ and consideration of certain questions relating to the 1966 Judgment of the International Court of Justice in the South West Africa Cases.¹¹ However, the subject principally discussed during this Session was the Law of Treaties. The Committee had before it the Report on the subject prepared by Dr. Sompong Sucharitkul, the Special Rapporteur. The Secretariat of the Committee also placed before the Committee a set of 35 questions for its consideration in relation to the draft articles formulated by the International Law Commission. After initial observations made by the Delegations bringing forth additional points for consideration, the Committee appointed 3 Sub-Committees. The function of each of these Sub-Committees was to take note of the observations made by the Delegations in the plenary and then to submit its report to the main Committee for its consideration. The three Sub-Committees presented their reports, and after detailed discussions on them in the plenary, the Committee drew up an Interim Report in the form of comments on such of the I. L. C.'s draft articles as in its opinion required consideration by the Member Governments. The Committee directed its Secretariat to submit the Interim Report to the Member Governments and to place that Report at the disposal of the Delegations of the Asian-African States to the U. N. Conference of Plenipotentiaries on the Law of Treaties. The Committee also directed the Secretariat to transmit a copy of the Interim Report to the United Nations requesting it to place the same before the Conference of Plenipotentiaries on the Law of Treaties. The Committee designated an Observer to represent

10. A.A.L.C.C. *Relief against Double Taxation & Fiscal Evasion—Report of the Committee & Background Materials*. (New Delhi ; 1968).

11. A.A.L.C.C. *South West Africa Cases—Report of the Committee & Background Materials* (New Delhi ; 1968).

the Committee at the First Session of the Conference of Plenipotentiaries.

The Committee took up for preliminary discussion the subject of the Law of International Rivers, referred to it by the Governments of Iraq and Pakistan. The Delegations of Iraq and Pakistan made their preliminary statements indicating the points which they wished to be studied by the Committee, and the Delegations of Ceylon, India, Indonesia, Japan and the U. A. R. expressed their agreement to consider the subject. The Committee directed the Secretariat to prepare a brief for its consideration at its next Session.

Tenth Session of the Committee: The Tenth Session of the Committee was held in Karachi (Pakistan) from January 21 to 31, 1969. This Session was primarily devoted to the Law of Treaties in order to provide a forum for consultations among the Asian and African States on the subject in preparation for the Second Session of the U.N. Conference of Plenipotentiaries which was held in Vienna from 9th April to 21st May, 1969. Apart from the Delegations of eleven of the Member States of the Committee, namely Ceylon, Ghana, India, Indonesia, Iraq, Japan, Jordan, Pakistan, Sierra Leone, Thailand and the United Arab Republic, this Session was attended by the representatives of the Governments of Afghanistan, Cambodia, Congo (Kinshasa), Cyprus, Iran, Kenya, Mongolia, Morocco, Nigeria, the Philippines, Singapore, Turkey and the Republic of Korea. In addition, observers from the U. N. International Law Commission, Office of United Nations High Commissioner for Refugees, I.L.A. of U.S.S.R., I.L.A. (German Section) and the American Society of International Law also attended this Session.

The Committee devoted two plenary meetings in reviewing the work of the First Session of the Conference of Plenipotentiaries on the Law of Treaties, and thereafter it proceeded to consider in detail some of the important and controversial topics which were to come up at the Second Session of the Confer-

ence of Plenipotentiaries. The Sub-Committees presented their reports at the plenary meeting of the Committee held on the 30th of January, 1969, when these reports were adopted. It was decided to circulate the reports of the two Sub-Committees to the Delegations of all the Asian and African States attending the Second Session of the Conference of Plenipotentiaries. The Committee also decided to depute an Observer to the Second Session of the Conference in order to coordinate the work of the delegations of its Member States.

The other subjects considered at this Session were the Law of International Rivers and the Rights of Refugees.

The subject of the Law of International Rivers was discussed by the Committee at its plenary meetings held on the 24th and 25th of January, 1969. Taking note of the statements made by the Delegations present at the Session and the Observer for Nigeria and the work done by the International Law Association and other governmental and non-governmental bodies on this topic, the Committee affirmed that the development and codification of the principles governing this topic were of vital significance to the emerging countries of Asia and Africa, particularly in the context of their food and agricultural programmes. It was, therefore, decided by the Committee to appoint an Inter-Sessional Sub-Committee to give detailed consideration to this subject. The proposed inter-Sessional Sub-Committee is to meet at New Delhi prior to the holding of the Eleventh Session of the Committee and will be composed of the representatives of the Member Governments with a quorum of five Member Governments. The Sub-Committee is authorised to co-opt any person having expert knowledge of the subject to assist in its deliberations. The President and Secretary of the Committee will ex-officio be eligible to attend the meetings of the Sub-Committee. The terms of reference to this Sub-Committee are preparation of a draft of articles on the Law of Inter-