

Under clause (a) of Article 3 of the Statutes establishing this Committee, this Committee is required to examine questions that are under consideration by the International Law Commission and to arrange for its views to be placed before the Commission. It is further required to consider the reports of the Commission and to make its recommendations thereon to the Governments of the participating countries. Having regard to this specific function as laid down under its Statutes, the Committee has established official relations with the International Law Commission. The Commission is, therefore, represented at the Sessions of the Committee, the latter also sending a representative to attend the Sessions of the Commission in the capacity of an Observer.

Pursuant to the above-mentioned function under the Statutes, the Committee has been following the work of the International Law Commission on the Law of Treaties through its various stages, particularly in view of the paramount importance of this subject to the countries of Asian-African region. A representative of the Committee was present in the capacity of an Observer during the deliberations on the Law of Treaties at some of the Commission's Sessions when that subject was discussed. At the Thirteenth Session of the Commission, Mr. Hafez Sabek, the then Chief Justice of United Arab Republic, attended the Commission's meetings on behalf of this Committee. At the Fifteenth Session, this Committee was represented by Hon'ble Mr. Justice H.W. Tambiah of the Supreme Court of Ceylon. The Sixteenth Session was attended by Mr. Hafez Sabek and the Seventeenth Session by Dr. Hassan Zakariya, former Under Secretary of State for Foreign Affairs in the Government of Iraq. The reports of these representatives of the Committee, together with the reports of the International Law Commission on the work done by the Commission on the Law of Treaties, were generally considered by this Committee at its Sixth, Seventh and Eighth Sessions held during the years 1964, 1965 and 1966.

At its Eighth Session held in 1966, the Committee had the benefit of the presence of H. E. Dr. Mustafa Kamel Yasseen, the then President of the Commission, who stressed the need and urgency for this Committee to examine the Draft Articles prepared by the International Law Commission and to make its recommendations thereon, so as to assist the Governments of Asian and African countries prior to the holding of the Conference of Plenipotentiaries. The Committee, in response to this suggestion, decided to place this subject as the first item on the agenda of its Ninth Session.

At its Ninth Session held in New Delhi in December 1967, the Committee had before it for consideration a report on the subject prepared by Dr. Sompong Sucharitkul, the Committee's Special Rapporteur, and a set of 35 questions prepared by the Secretariat of the Committee in relation to the Draft Articles formulated by the Commission. After initial observations made by the Delegations bringing forth additional points for consideration, the Committee appointed three sub-committees, the first on Draft Articles 1 to 22, the second on Draft Articles 23 to 38 and the third on Draft Articles 39 to 75. The function of each of these Sub-Committees was to take note of the observations made by the Delegations in the plenary Session, and then to submit its report to the main Committee for its consideration. The three Sub-Committees presented their reports, and after detailed discussions thereon in the plenary Session, the Committee drew up and adopted an Interim Report in the form of comments on such Draft Articles formulated by the Commission which, in its opinion, required special consideration by the Member Governments. The Interim Report was placed before the Conference of Plenipotentiaries and was also circulated to all the Asian and African Delegations participating in that Conference. It was decided to carry forward the subject to the Tenth Session of the Committee as a priority item for its final consideration, especially on the points that might arise in the course of deli-

berations of the Conference of Plenipotentiaries during its First Session.

The First Session of the Conference of Plenipotentiaries on the Law of Treaties was held in Vienna from 26th of March to 26th of May, 1968. The Committee was represented at this Session by Mr. R.J. Hayfron-Benjamin, Solicitor-General of Ghana, in the capacity of an Observer. The later part of the Session was also attended by Mr. B. Sen, Secretary of the Committee.

The Second Session of the United Nations Conference on the Law of Treaties was scheduled to be held in Vienna from the 9th of April to 21st of May, 1969. At this Session, the Conference was to consider those questions which had been deferred by the Committee of the Whole of the First Session of the Conference, namely Articles 1, 5 *bis*, 8, 12, 16, 17, 26, 36, 37, 55, 62 *bis*, 66 and 76 of the Draft Articles, and the amendments that had been moved to those Draft Articles during the First Session of the Conference. Further, a multi-lateral convention was to be drawn up to become the codified law in the matter of treaty relations between States.

Realising the paramount importance of the Session of the Conference in international relations, various States and groups of States had held mutual consultations amongst themselves with a view to enabling them to formulate their views in preparation for the Vienna Conference. The representatives of Western European States had met in Strasbourg in November 1968, under the auspices of the European Committee of Legal Co-operation, with a view to formulating a common stand on the various issues that were to come up at the Second Session of the Conference. Similar consultations had been held among the Socialist countries in Eastern Europe, the countries in the American Continent and the Member States of the Arab League.

Taking a cue from these developments, a suggestion was made in the meetings of the Afro-Asian Group at the First Session of the Conference on the Law of Treaties, to utilise the Tenth regular Session of this Committee for the purpose of holding consultations between the Asian and African countries on the Law of Treaties. The suggestion was approved, and consequently, the Tenth Session of this Committee, held from 21st to 30th January 1969 at Karachi, was attended by high level delegations of eleven of the Member Governments of this Committee, namely, Ceylon, Ghana, India, Indonesia, Iraq, Japan, Jordan, Pakistan, Sierra Leone, Thailand and the United Arab Republic. Thirteen other Governments sent their representatives to attend the Session and participate in the discussions on the Law of Treaties. These were: Afghanistan, Cambodia, Congo (Kinshasa), Cyprus, Iran, Kenya, Mongolia, Morocco, Nigeria, the Philippines, Singapore, Turkey and the Republic of Korea. In addition, ten Governments informed the Committee that they would be prepared to consider the recommendations of the Karachi Session.

At the Karachi Session, the Committee devoted two plenary meetings in reviewing the work of the First Session of the Vienna Conference on the Law of Treaties. All the participants recalled the manner in which the entire Asian-African Group at that Conference had been kept united under the leadership of H. E. Dr. T. O. Elias, Attorney-General of Nigeria. They expressed the view that it was absolutely essential to maintain the same unity during the Second Session of the Conference also. The Committee then decided to consider in detail some of the important and controversial topics which were to come up at the Second Session of the Conference, and for that purpose, two Sub-Committees were constituted.

The First Sub-Committee, under the Chairmanship of H. E. Miss E. H. Laurens of Indonesia, went into questions

relating to Article 62 *bis* (Procedure for settlement of differences relating to invalidation, termination, withdrawal from or suspension of the operation of treaties); Article 76 (Procedure for the settlement of disputes concerning interpretation and application of the provisions of the Convention on the Treaties); Article 5 *bis* (Participation in general multi-lateral treaties) and provision of final clauses including the question of applicability of the Convention on the Law of Treaties. All the Delegations of Member Countries of this Committee were represented on this Sub-Committee. The representatives of non-Member Governments also participated in the discussions in this Sub-Committee.

The Second Sub-Committee, under the Chairmanship of Dr. Ahmad S. Al Koshari of the United Arab Republic, considered questions relating to Article 2 (Definitions), Article 12 *bis* (Expression of consent of States to be bound by Treaties), Articles 16 and 17 (Reservations to Treaties), Article 69 *bis* (Effect of severance of diplomatic relations on treaty relations between States) as well as the question of incorporating a provision for contracting out of the Convention on Treaties.

Both the Sub-Committees presented their reports at the plenary meeting of the Committee held on the 30th of January 1969, when the reports were adopted. It was decided to circulate these reports to all the Asian and African States. The Secretariat of the Committee prepared two volumes of briefs for the assistance of the Delegations of Asian-African States to the Second Session of the Vienna Conference. The Committee also sent its representatives to the Second Session of the Conference in order to co-ordinate the work of the Delegations of its Member States.

## (II) TEXT OF DRAFT ARTICLES ON THE LAW OF TREATIES ADOPTED BY THE INTERNATIONAL LAW COMMISSION

### PART I

#### INTRODUCTION

##### Article 1

##### The scope of the present articles

The present articles relate to treaties concluded between States.

##### Article 2

##### Use of terms

##### 1. For the purposes of the present articles :

(a) "Treaty" means an international agreement concluded between States in written form and governed by International Law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

(b) "Ratification", "Acceptance", "Approval", and "Accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.

(c) "Full Powers" means a document emanating from the competent authority of a State designating a person to represent the State for negotiating or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty.

(d) "Reservation" means a unilateral statement, however phrased or named, by a State, when signing, ratifying, acceding to, accepting or approving a treaty, whereby it purports to exclude or to vary the legal effect of certain provisions of the treaty in their application to that State.

(e) "Negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty.

(f) "Contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force.

(g) "Party" means a State which has consented to be bound by the treaty and for which the treaty is in force.

(h) "Third State" means a State not a party to the treaty.

(i) "International organization" means the inter-governmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

#### Article 3

#### **International agreements not within the scope of the present articles**

The fact that the present articles do not relate :

(a) To international agreements concluded between States and other subjects of international law or between such other subjects of international law; or

(b) To international agreements not in written form ; shall not affect the legal force of such agreements or the application to them of any of the rules set forth in the present

articles to which they would be subject independently of these articles.

#### Article 4

#### **Treaties which are constituent instruments of international organizations or are adopted within international organizations**

The application of the present articles to treaties which are constituent instruments of an international organization or are adopted within an international organization shall be subject to any relevant rules of the organization.

### PART II

#### CONCLUSION AND ENTRY INTO FORCE OF TREATIES

##### SECTION I : CONCLUSION OF TREATIES

#### Article 5

#### **Capacity of States to conclude treaties**

1. Every State possesses capacity to conclude treaties.

2. States members of a federal union may possess a capacity to conclude treaties if such capacity is admitted by the federal constitution and within the limits there laid down.

#### Article 6

#### **Full Powers to represent the State in the conclusion of treaties**

1. Except as provided in paragraph 2, a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of express-

ing the consent of the State to be bound by a treaty only if;

(a) He produces appropriate full powers; or

(b) It appears from the circumstances that the intention of the States concerned was to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State;

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(b) Heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;

(c) Representatives accredited by States to an international conference or to an organ of an international organization, for the purpose of the adoption of the text of a treaty in that conference or organ.

#### Article 7

##### Subsequent confirmation of an act performed without authority

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 6 as representing his State for that purpose is without legal effect unless afterwards confirmed by the competent authority of the State.

#### Article 8

##### Adoption of the text

1. The adoption of the text of a treaty takes place by the unanimous consent of the States participating in its drawing up except as provided in paragraph 2.

2. The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States participating in the conference, unless by the same majority they shall decide to apply a different rule.

#### Article 9

##### Authentication of the text

The text of a treaty is established as authentic and definitive :

(a) By such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or

(b) Failing such procedure, by the signature, signature *ad referendum* or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

#### Article 10

##### Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when :

(a) The treaty provides that signature shall have that effect;

(b) It is otherwise established that the negotiating States were agreed that signature should have that effect;

(c) The intention of the State in question to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1 :

(a) The initialling of text constitutes a signature of the treaty when it is established that the negotiating State so agreed;