

ASIAN-AFRICAN  
LEGAL  
CONSULTATIVE COMMITTEE

REPORT OF THE TWELFTH  
SESSION HELD IN COLOMBO

From 18th to 27th January, 1971

THE SECRETARIAT OF THE COMMITTEE  
New Delhi-24, (India)

*Published by :*

THE SECRETARIAT OF THE COMMITTEE  
20, Ring Road, Lajpat Nagar-  
New Delhi-24. (India)

*Printed at :*

SHIV NARAIN PRINTERS  
11186-A, Doriwalan, Karol Bagh,  
New Delhi-5.

## REPORT OF THE TWELFTH SESSION COLOMBO 1971

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## I. INTRODUCTORY

### Establishment and functions of the Committee

The Asian Legal Consultative Committee, as it was originally called, was constituted in November 1956 by the Governments of Burma, Ceylon, India, Indonesia, Iraq, Japan and Syria to serve as an advisory body of legal experts and to facilitate and foster exchange of views and information on legal matters of common concern among the Member Governments. In response to a suggestion made by the then Prime Minister of India, the late Jawahar Lal Nehru, which was accepted by all the then participating countries, the Committee's name was changed to that of *Asian-African Legal Consultative Committee* as from the year 1958, so as to include participation of countries in the African continent. The present membership of the Committee is as follows :—  
*the Arab Republic of Egypt, Burma, Ghana, India, Indonesia, Iran, Iraq, Japan, Jordan, Kenya, Kuwait, Malaysia, Nepal, Nigeria, Pakistan, the Philippines, Sierra Leone, Sri Lanka, Syrian Arab Republic, and Thailand as Full Members* and the *Republic of Korea and Mauritius as Associate Members.*

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), second in Cairo (1958), third in Colombo (1960), fourth in Tokyo (1961), fifth in Rangoon (1962), sixth in Cairo (1964), seventh in Baghdad (1965), eighth in Bangkok (1966), ninth in New Delhi (1967), tenth in Karachi (1969), eleventh in Accra (1970) and the twelfth in Colombo from 18th to 27th January, 1971.

#### **Office-bearers of the Committee and its Secretariat**

During the twelfth session held in Colombo the Committee elected Honourable Mr. T. S. Fernando, Q. C., President of the Court of Appeal of Sri Lanka, and Hon. Tan Sri Haji Abdul Kadir bin Yusof, Attorney-General and Minister for Legal Affairs of the Federation of Malaysia, respectively as the President and Vice-President of the Committee for the year 1971-72.

The Committee maintains its permanent Secretariat in New Delhi (India) for day-to-day work and for implementation of the decisions taken by the Committee at its sessions. The Committee functions in all matters through its Secretary-General who acts in consultation with the Liaison Officers appointed by each of the participating countries,

#### **Co-operation with other organisations**

The Committee maintains close relations with and receives published documentation from the United Nations, some of its organs such as the International Law Commission, the International Court of Justice, the United Nations High Commissioner for Refugees, the United Nations Commission on International Trade Law (UNCITRAL), the United Nations Conference on Trade and Development (UNCTAD) and the Food and Agriculture Organisation (FAO); the Organisation of African Unity (OAU); the League of Arab States; the International Institute for the Unification of Private Law (UNIDROIT); and the Hague Conference on Private International Law. The Committee has been co-operating 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 it has sponsored a training scheme which may be availed of by officials of Asian and African Governments.

The Committee is empowered under its Statutory Rules to have at its sessions Observers from international and regional inter-governmental organisations. The International Law Commission is usually represented at the Committee's sessions by its President or one of the members of the Commission. The Secretary-General of the United Nations has also been represented at various sessions of the Committee.

The Committee sends 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. The Committee was represented at the U.N. Conference of Plenipotentiaries on Diplomatic Relations as also on the Law of Treaties. The Committee is also invited to be represented at the meetings of the UNCTAD, UNCITRAL and various inter-governmental organisations concerned in the field of law.

### Immunities and Privileges

The Committee, the representatives of the Member States participating in its sessions, the Secretary-General of the Committee and the members of the Secretariat are accorded certain immunities and privileges in accordance with the provisions of the Committee's Articles on Immunities and Privileges.

### Membership and Procedure

The membership of this Committee is open to Asian and African governments who accept the Statutes and Statutory Rules of the Committee. The procedure for membership as indicated in the Statutory Rules is for a Government to address a note to the Secretary-General of the Committee, stating its acceptance of the Statutes and Statutory Rules. There is also provision for Associate Membership under conditions set out in the Statutory Rules.

### Financial Obligations

Each Member Government contributes towards the expenses of the Secretariat, whilst a part of the expenses for holding of the session are borne by the country in which the session is held. The contributions towards the expenses of the Secretariat of each Member Country at present vary between £900 (sterling) and £1500 (sterling) per annum depending upon the size and national income of the country. Associate Members, however, pay a fixed fee of approximately £450 (sterling).

### Resume of work done by the Committee

During the past fifteen years of its existence the Committee had to concern itself with all the three types of activities referred to in clauses (a), (b) and (c) of Article 3 of its Statutes, namely examination of questions that are under consideration by the U.N. International Law Commission; consideration of legal problems referred by Member Govern-

ments; and consideration of legal matters of common concern.

The subjects on which the Committee has been able to make its final reports (recommendations) so far include "Diplomatic Immunities and Privileges", "State Immunity in respect of Commercial Transactions", "Extradition", "Status and Treatment of Aliens", "Dual or Multiple Nationality", "Legality of Nuclear Tests", "Arbitral Procedure", "Recognition and Enforcement of Foreign Judgments in Matrimonial Matters", "Reciprocal Enforcement of Foreign Judgments, Service of Process and Recording of Evidence, both in Civil and Criminal Cases", "Free Legal Aid", "Relief against Double Taxation", "the 1966 Judgment of the International Court of Justice in the *South West Africa Cases*", and the "Law of Treaties".

The Committee had also finalised its recommendations on the subject of "Rights of Refugees" at its eighth session held in Bangkok (1966), but at the request of one of its Member Governments it had decided to reconsider its recommendations in the light of new developments in the field of international refugee law. The subject was accordingly given further consideration by the Committee at its tenth and eleventh sessions.

The subjects on which the Committee has made considerable progress are "the Law of International Rivers", "International Sale of Goods and related topics" and "the Law of the Sea with particular reference to peaceful uses of the sea-bed and ocean floor lying beyond the limits of national jurisdiction". At its eleventh session the Committee decided to include the "Law of the Sea and Sea-bed" as a priority item on the agenda of its twelfth session, having regard to the recent developments in the field and the proposal for convening of a United Nations Conference of Plenipotentiaries to consider various aspects of this subject. Having regard to the great importance of the problems concerning

the Law of the Sea to the countries of the Asian-African region, it was also decided to invite all such countries to participate in the discussions on the subject at the twelfth session. The main object underlying this Committee's taking up the Law of the Sea is to provide a forum for mutual consultation and discussions among the Governments of Asian and African States and to assist them in making concerted and systematic preparations for the forthcoming U.N. Conference.

Some of the other topics which are pending consideration of the Committee include "Diplomatic Protection and State Responsibility", "State Succession", "Commercial Arbitration" and "International Shipping Legislation".

#### **Publications of the Committee**

The full reports, including the verbatim record of discussions together with the recommendations of the Committee are made available only to the Governments of the Member States of the Committee. The Committee, however, brings out regularly shorter reports on its sessions for general circulation and sale. So far it has published reports on its first to eleventh session. The Committee has also published five special reports entitled as under :—

- (1) The Legality of Nuclear Tests—Report of the Committee and Background Materials.
- (2) Reciprocal Enforcement of Foreign Judgments, Service of Process and Recording of Evidence, both in civil and criminal cases—Report of the Committee and Background Materials.
- (3) The Rights of Refugees—Report of the Committee and Background Materials.
- (4) Relief against Double Taxation and Fiscal Evasion—Report of the Committee and Background Materials.

- (5) *South West Africa Cases*—Report of the Committee and Background Materials.

The Secretariat of the Committee has recently published its compilation of the *Constitutions of African States* with the co-imprint of M/s Oceana Publications, Inc., New York. It had earlier brought out its compilation of the *Constitutions of Asian Countries* in the year 1968. The Secretariat has made considerable progress on the preparation of a *Digest of important decisions of the municipal courts of Asian and African countries on international legal questions* as also a *Digest of Treaties and Conventions registered with the United Nations Secretariat* to which an Asian or African State is a party.

This Committee, at its third session held in 1960, had decided on the suggestion of the Government of India that it would proceed to prepare a Study including a compilation of the Laws and Regulations on "Commerce and Industry and connected labour problems" in the Asian and African countries. To begin with, the Study was confined to Member Countries of the Committee on the following three topics :—

- (1) Foreign Investment Laws and Regulations ;
- (2) Laws and Regulations relating to Control of Import and Export Trade ; and
- (3) Laws and Regulations relating to Control of Industry.

The Secretariat of the Committee has already published in mimeographed form its studies on the first two topics. The Secretariat has now expanded the scope of these studies by including the laws and regulations of all Asian and African countries on these topics.

## II. BUREAU OF THE TWELFTH SESSION

PRESIDENT OF THE SESSION      Hon. Mr. T.S. Fernando, Q.C.

VICE-PRESIDENT      Hon. Tan Sri Haji Abdul Kadir bin Yusof,  
Attorney-General & Minister for Legal Affairs,  
Federation of Malaysia.

SECRETARY TO THE COMMITTEE      Mr. B. Sen.

CONFERENCE OFFICER      Mr. R. Vandergert,  
Assistant Secretary (Legal).  
Ministry of Defence and External Affairs,  
Government of Ceylon.

CHAIRMAN OF THE SUB-COMMITTEE ON THE LAW OF THE SEA      Hon. Dr. T.O. Elias,  
Attorney-General of the Federation of Nigeria.

*Later*      Mr. D. Ogundere,  
Deputy Solicitor-General of Nigeria.

RAPPORTEUR      Mr. Christopher W. Pinto,  
Legal Adviser,  
Ministry of Defence and External Affairs,  
Government of Ceylon.

CHAIRMAN OF THE SUB-COMMITTEE ON THE INTERNATIONAL SALE OF GOODS      Hon. Mr. Sharifuddin Pirzada,  
Attorney-General for Pakistan.

RAPPORTEUR

Dr. S.P. Jagota,  
Director,  
Legal and Treaties Division,  
Ministry of External Affairs,  
Government of India.

JOINT RAPPORTEUR

Mr. S.S. Basnayake,  
Advocate,  
Supreme Court of Ceylon.

CHAIRMAN OF THE SUB-COMMITTEE ON INTERNATIONAL RIVERS

Dr. A.R.B. Amerasinghe,  
Chief Legal Officer,  
Insurance Corporation of Ceylon.

RAPPORTEUR

Mr. K. Uchida,  
Second Secretary,  
Embassy of Japan,  
New Delhi.

DELEGATES OF PARTICIPATING  
COUNTRIES AND OBSERVERS  
ATTENDING THE TWELFTH SESSION

A. Delegations of Member States

BURMA	<i>Not Represented</i>
CEYLON	
Member (Leader of Delegation)	Mr. T.S. Fernando, Q.C.
Alternate Member	Mr. Nihal Jayawickrama, Permanent Secretary to the Ministry of Justice.
Adviser	Dr. A.R.B. Amerasinghe, Chief Legal Officer, Insurance Corporation of Ceylon.
Adviser	Mr. S.S. Basnayake.
Adviser	Mr. H.L. de Silva
Adviser	Dr. L.J.D. Fernando, Chairman, Mineral Sands Corporation.
Adviser	Mr. T.L.D. Fernando, Crown Counsel.
Adviser	Mr. C. Gunasingham, Director of Foreign Relations, Ministry of External Affairs.
Adviser	Mr. W. Pathirana, Director of Fisheries.

Adviser	Mr. D.B. Pattiarachchi, Director, Geological Survey Department.
Adviser	Mr. C.W. Pinto, Legal Adviser, Ministry of External Affairs.
Adviser	Mr. M. Sanmuganathan, Additional Permanent Secretary, Ministry of Constitutional Affairs.
Adviser	Mr. R.S. Wanasundara, Deputy Solicitor-General.
Adviser	Miss Suriya Wickremasinghe.
Adviser	Mr. G.F.P. Withane, Vice-Chairman, Ceylon Petroleum Corporation.
GHANA	
Member (Leader of Delegation)	Hon. N.Y.B. Adade, M.P. Attorney-General and Minister of Justice.
Alternate Member (upto 19.1.71)	H.E. Mr. P.K. Owusu-Ansah, High Commissioner for Ghana in India.
Alternate Member (from 20.1.71)	Mr. W.W.K. Vanderpuye, Director, Legal & Consular Division, Ministry of Foreign Affairs, Accra.
Adviser	Mr. J.O. Amui, State Attorney, Attorney-General's Office, Accra.