

ASIAN-AFRICAN LEGAL
CONSULTATIVE COMMITTEE



REPORT OF THE SEVENTEENTH,
EIGHTEENTH AND NINETEENTH SESSIONS
HELD IN KUALA LUMPUR (1976), BAGHDAD
(1977) AND DOHA (1978)

Prepared and Published by :
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Printed by Anil Ahuja at :

IMPRESSIONS

New Delhi - 110003.

CONTENTS

	<i>Pages</i>
I. INTRODUCTION	1
II. LAW OF THE SEA	
Introductory	19
Issues before First Committee of UNCLOS III	24
Issues before Second Committee of UNCLOS III	51
Issues before Third Committee of UNCLOS III and Settlement of Disputes	58
III. SUCCESSION OF STATES IN RESPECT OF TREATIES	63
IV. ENVIRONMENTAL LAW	73
V. RECIPROCAL ASSISTANCE IN REGARD TO PREVENTION AND INVESTIGATION OF ECONOMIC OFFENCES AND PROSE- CUTION OF OFFENDERS	95
VI. TERRITORIAL ASYLUM	113
VII. INTERNATIONAL TRADE LAW MATTERS	
Standard/Model Contracts suited to the needs of the Region	123
International Commercial Arbitration	131
International Legislation on Shipping	155
Law relating to the International Sale of Goods	162

1. INTRODUCTION

The Asian-African Legal Consultative Committee, originally established in 1956 by seven Asian states, serves as a forum for consultation and co-operation between its member governments in the field of international law and economic relations and more particularly in matters which are under consideration of the United Nations, its various organs and agencies. The Committee has at present thirty-seven participating states within its membership and a large number of other states from all parts of the world enjoying observer status at the Committee's annual sessions and special meetings. The Committee also maintains official relations with the United Nations and other major international organisations.

Historical perspective

With over one hundred states regaining their independence in the two decades following the Second World War and the establishment of the United Nations Organisation, these countries in the Asian-African region began to play an important role in international affairs, in an effort to redress the imbalances which had taken firm root during successive centuries of colonial rule. This could only be achieved through a collective effort in which the newly independent states co-operated closely and acted together in the pursuit of this goal. The first effective step towards such fruitful co-operation among Asian-African states was the convening of the Bandung Conference in 1955 which led to the evolution of the five principles of peaceful co-existence which were to govern their relations with their neighbours. The success of the Bandung Conference inspired the countries of the region to take effective measures for regional co-operation in various fields of activity including the progressive development and codification of international law. Much had to be done in this field especially in view

of the fact that international law was primarily a product of the colonial powers of Western Europe of the sixteenth, seventeenth and eighteenth centuries. These norms and principles, in the creation of which over a hundred newly independent states of Asia and Africa and Latin America had no say, whatsoever, had to be examined, reviewed and reformulated to meet the requirements of the social, economic and political framework of the second half of the twentieth century. It was against this backdrop that in November 1956, following the recommendations of the meeting of the Heads of Delegations of Asian-African countries held in Bandung, seven Asian states (Burma, Ceylon, India, Indonesia, Iraq, Japan and Syria) took the initiative of forming a Consultative Committee, to be known as the Asian Legal Consultative Committee, to assist the Governments of the region in formulating a common approach and a common policy towards the progressive development and codification of international law which had been undertaken by the various agencies of the United Nations.

The Committee held its first session in New Delhi in 1957. The then Prime Minister of India, Pandit Jawahar Lal Nehru, in the course of his inaugural address expressed his sentiments for the future functioning of the Committee as an effective forum for regional co-operation and suggested that its membership should embrace participation of not only Asian states, but African states as well. The suggestion of the Indian Prime Minister was accepted and as from 19 April 1958 the Statute of the Committee was amended accordingly and it was renamed as the "Asian-African Legal Consultative Committee." Since then, the membership of the Committee has continued to increase and at present thirty seven Asian and African Governments participate in the work of the Committee. They are as under :—

Full members : Arab Republic of Egypt, Bangladesh, Democratic People's Republic of Korea, Gambia, Ghana, India, Indonesia, Iran, Iraq, Japan, Jordan, Kenya, Kuwait, Libyan Arab Jamahiriya, Malaysia, Mauritius, Nepal, Nigeria,

Oman, Pakistan, Philippines, Qatar, Republic of Korea, Sierra Leone, Singapore, Somali Democratic Republic, Sri Lanka, Syria, Tanzania, Thailand, Turkey, Uganda, United Arab Emirates and Yemen Arab Republic.

Associate members : Botswana, Ethiopia and Saudi Arabia.

Functions

The functions of the Committee and the scope of work of its Secretariat are governed by Article 3 of the Committee's Statutes and the directions given by the Committee from time to time at its various sessions. In the light of this, the work of the Committee and its Secretariat broadly falls under the following heads:

- (a) Consideration of specific legal problems referred by any member government ;
- (b) Examination of matters which are before the International Law Commission and other U.N. agencies in the fields of international law and trade law, such as UNEP, UNCITRAL and UNCTAD with a view to making recommendations thereon to assist member governments;
- (c) Preparation of background material and arranging exchange of views on matters of common interest and on important questions which are to come up before diplomatic conferences;
- (d) Collection of material and rendering of advice on confidential basis by the Secretariat on any question of interest to a member government upon request;
- (e) Undertaking of publications on matters of common interest which may be authorised by the Committee.
- (f) Preparation of standard/model contracts suited to the needs of the region and promotion of their use as widely as possible;

- (g) Promotion of the institution of arbitration as an effective means for the settlement of international commercial disputes and to establish regional centres of commercial arbitration in the various parts of the Asian-African region towards that end;
- (h) Training of officers of member governments in the technique of research and handling of international legal questions.

Sessions of the Committee and the Secretariat

The Committee meets once annually by rotation in the various member countries. The Sub-Committees and Working Groups appointed by the Committee meet during the inter-sessional periods also, whenever necessary. So far the Committee has met in nineteen sessions. 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), twelfth in Colombo (1971), thirteenth in Lagos (1972), fourteenth in New Delhi (1973), fifteenth in Tokyo (1974), sixteenth in Teheran (1975), seventeenth in Kuala Lumpur (1976), eighteenth in Baghdad (1977), and the nineteenth in Doha (State of Qatar) in January 1978. At the sessions member countries are represented by high level delegations which have included Chief Justices, Cabinet Ministers, Attorneys-General, Judges and senior officials of the Ministries of Foreign Affairs and of Law and Justice. A large number of non-member Asian and African countries, countries from outside the Asian-African region, and inter-governmental organisations are usually represented by their legal experts in the capacity of observers at the sessions of the Committee.

The Committee maintains its permanent Secretariat in New Delhi for day to day work and for implementation of the decisions taken by it at its sessions. The Secretariat is headed by the Secretary-General which is an elective post.

The Deputy Secretary-General and Assistant Secretaries-General are the other principal officers who are assisted by administrative and technical personnel. Each member State accredits a Liaison Officer to the Secretariat and all decisions on policy matters are taken by the Secretary-General in consultation with the Liaison Officers.

Relationship with other organisations

As early as in 1960 the Committee had entered into official relations with the International Law Commission which maintains such links only with two other regional organisations, namely the European Committee on Legal Cooperation and the Inter-American Juridical Committee. The Committee also maintains official relationships with various United Nations organisations and agencies, such as the United Nations Secretariat, UNCTAD, UNCITRAL, ECE, ECA, ESCAP, UNEP, IMCO, FAO and UNHCR. As a result of these arrangements, the Committee is invited to be represented at all conferences and meetings convened by the United Nations or its agencies in the field of law. The representatives of these bodies also attend the Committee's sessions from time to time.

Apart from the United Nations and its agencies, the Committee also maintains official relations with various regional organisations and certain specialised inter-governmental organisations. This includes the League of Arab States, the Commonwealth Secretariat, the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (UNIDROIT), the Inter-American Juridical Committee of the OAS and the European Committee on Legal Co-operation of the Council of Europe.

Membership and finance

Membership in the Committee, which falls into two categories, namely Full Members and Associate Members, is open to all Asian and African Governments. As set out in the Statutory Rules of the Committee, membership is obtained

by a government's acceptance of the Statutes and Statutory Rules of the Committee by a communication addressed to the Secretary-General of the Committee. Associate members do not participate in the management of the organisation but they can fully participate in the discussions in the Committee and are entitled to receive all documentation.

Each member government contributes towards the expenses of the Secretariat whilst the major portion of the expenses in connection with the holding of the sessions is borne by the country in which the session is held. A full member government pays a contribution according to a formula adopted by the Committee. Associate members pay a fixed contribution.

Resume of work done by the Committee

One of the functions assigned to the Committee at its inception was the examination of questions that were under consideration of the International Law Commission and to arrange for the views of the Committee to be placed before the Commission. The International Law Commission, which was set up in 1948 by the U.N. General Assembly for the purpose of promoting the progressive development and codification of international law, had a large number of topics included in its programme of work embracing a variety of issues. It was considered important to place before that body the Asian-African viewpoint so that such views could be taken into account in the course of deliberations of the Commission which would ultimately lead to the codification and progressive development of international law.

An equally important task, which was entrusted to the Committee, was to consider legal problems referred to it by any of the member governments and to make such recommendations to governments as it thought fit. This advisory role of the Committee was particularly important in its early

years as the newly independent states in the Asian-African region were faced with many difficult problems having an international legal content and were anxious to take a concerted approach to these issues and for this purpose were keen to be guided by the views of an expert body composed of the leading jurists of the region. As a result, at its inception there were as many as twelve different subjects which the member governments wanted the Committee to consider. These included questions concerning Restrictions on the Immunity of States in respect of Commercial Transactions; Extradition of Fugitive Offenders; Status and Treatment of Aliens including the question of Diplomatic Protection and State Responsibility; Dual Nationality; Law of the Sea; Reciprocal Recognition and Enforcement of Foreign Judgments in Matrimonial Matters; and Legal Aid.

By the time the Committee held its third session in Colombo in 1960, it was already in a position to make its recommendations on the question of Diplomatic Immunities and Privileges on which a United Nations Conference of Plenipotentiaries was due to convene the following year. The Committee's recommendations on this subject not only dealt with the draft articles prepared by the International Law Commission, but included certain draft formulations of its own. At the United Nations Conference on Diplomatic Relations held in Vienna in 1961, the Committee's recommendations on the subject were officially circulated as a conference document, and some of its recommendations were incorporated in the Convention that was adopted at that Conference.

For the next seven or eight years beginning with its Tokyo Session held in 1961, the Committee's programme of work followed a uniform pattern. It continued to meet annually for a period of two weeks with the participation of eminent jurists from member countries and was able to make substantial progress on the subjects referred to it by the member governments. The Committee's recommendations on several of these subjects were finalized and

reports submitted. Among the various subjects dealt with by the Committee during this period, particular mention may be made of its recommendations on the question of the Legality of Nuclear Tests, adopted at its Cairo Session held in 1964; the Principles concerning the Status and Treatment of Aliens, finalised at the Tokyo Session in 1961; and the Principles concerning the Rights of Refugees, adopted at its Bangkok Session in 1966, which paved the way for the U. N. Declaration on Territorial Asylum the following year. The Committee's recommendations on nuclear tests, which were in the nature of pioneering work, attracted the attention of the United Nations and later of the World Court in the complaint filed before it by Australia and New Zealand against France. Recommendations were also finalised on the question of Immunity of States in respect of Commercial Transactions; Principles for Extradition of Fugitive Offenders; Free Legal Aid; Arbitral Procedure; Dual Nationality; Reciprocal Enforcement of Foreign Judgments, the Service of Process and the Recording of Evidence among States both in Civil and Criminal Cases; and Relief against Double Taxation. In addition, the Committee at its New Delhi session held in 1967 discussed the merits of the judgment of the World Court in the *South West Africa Cases* and the status of South West Africa. The Committee also examined the International Law Commission's work on the Law of Treaties, the Law of International Rivers, the Revision of the U. N. Charter, Codification of the Principles of Peaceful Co-existence, and the Law of Outer Space.

A major change in the Committee's programme of work and the method of its functioning came in 1969 when it was decided that the Committee should, in addition to its advisory role to its member governments, assist its member states in the preparations for international conferences of plenipotentiaries convened by the United Nations. The initiative in this respect came from Dr. T. O. Elias, the then Minister of Justice and now a Judge of the International Court of Justice, during the Vienna

Conference on the Law of Treaties. That was the first major law-making conference which was attended by a large number of delegations from the newly independent states of Asia and Africa. Dr. T. O. Elias, who was the Chairman of the Committee of the Whole at that Conference and also the Chairman of the Afro-Asian Group suggested that the Committee should prepare a study on some of the important questions and arrange for a meeting which would enable the Asian and African delegations to have full and frank exchange of views on the crucial issues on this subject. The Karachi Session of the Committee held in 1969, on the eve of the second session of the Vienna Conference on the Law of Treaties, was utilised for this purpose and these discussions paved the way for the settlement of the outstanding issues at that session and the successful conclusion of the Convention on the Law of Treaties.

In December 1970, the U.N. General Assembly decided to convene the Third Conference on the Law of the Sea. A suggestion was made that the Committee should take up this subject with a view to assisting its member governments and other governments of the region in the preparations for the proposed conference, having regard to the significant role played by the Committee in connection with the Conference on the Law of the Treaties. From then onwards, the Law of Sea has continued to remain a priority item on the Committee's programme of work as well as the agenda of its annual sessions beginning with the twelfth session held in Colombo in 1971. The Committee's Secretariat has assisted its member governments and other governments in the region by preparing useful studies and discussion papers. Apart from this, inter-sessional consultations on a regular basis have been carried on through meetings of its sub-committees and working groups.

Almost at the same time as the Committee addressed itself to the consideration of the Law of the Sea, it was