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Adviser	Dr. R. P. Anand, Reader in International Law, Indian School of International Studies.

INDONESIA

Member and Leader of the Delegation	H. E. Mr. Mohammad Razif, Ambassador of Indonesia in India.
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IRAQ

Member and Leader of the Delegation	Dr. Hassan Al-Rawi, Director-General, Legal and Treaty Department, Ministry of Foreign Affairs.
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Alternate Member	Mr. Nizar el-Kadi, Counsellor, Embassy of the Republic of Iraq, New Delhi.
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Member and Leader of the Delegation	Mr. K. Nishimura, Member of the Atomic Energy Commission.
Adviser	Mr. A. Watanabe, Ministry of Foreign Affairs.
Adviser	Mr. K. Suehiro, Third Secretary, Embassy of Japan, New Delhi.
PAKISTAN	
Member and Leader of the Delegation	Sheikh Ghias Mohammad, Attorney-General of Pakistan.
Alternate Member	Mr. S. Azam Ali, C.S.P., Member, Central Board of Revenue.
U.A.R.	
Member and Leader of the Delegation	Hon'ble Mr. Adel Younes, Chief Justice of the U.A.R.
Alternate Member	Prof. Hamed Sultan, Professor of International Law, Cairo University.
SPECIAL INVITEE UNDER RULE 7(5)	Hon'ble Mr. Justice M. Hidayatullah, Judge, Supreme Court of India.
SECRETARY to the Committee	Mr. B. Sen, Senior Advocate, Supreme Court of India and Hony. Legal Adviser, Ministry of External Affairs.

OBSERVERS

INTERNATIONAL LAW COMMISSION	H. E. Dr. M. K. Yasseen, Member, International Law Commission.
INTERNATIONAL LAW ASSOCIATION OF THE U.S.S.R.	Mr. Boris V. Kudrayavtsev, First Secretary, Embassy of the U.S.S.R., New Delhi.
LEAGUE OF ARAB STATES	Mr. Abbas Seif El-Nasr, Chief Representative and Head of Mission, League of Arab States Mission, New Delhi.
ALGERIA	Mr. Bachir Ould-Rouis, Charge d'Affaires a.i., Embassy of the Democratic and Popular Republic of Algeria, New Delhi.
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JORDAN	Mr. Sameh Faraj, Second Secretary, Embassy of Jordan, New Delhi.
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LIAISON OFFICERS OF PARTICIPATING
COUNTRIES ON THE COMMITTEE

BURMA	U Tin Hline, Second Secretary, Embassy of Burma, New Delhi.
CEYLON	Mr. V. L. B. Mendis, Deputy High Commissioner, Ceylon High Commission, New Delhi.
GHANA	Mr. A. E.K. Ofori-Atta, Counsellor, Ghana High Commission, New Delhi.
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* As on 1st August, 1968.

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THAILAND	Dr. Suchati Chuthasmit, First Secretary, Embassy of Thailand, New Delhi.
UNITED ARAB REPUBLIC	Mr. Moustafa O. A. M. Badr, Second Secretary, Embassy of the United Arab Republic, New Delhi.

III. AGENDA OF THE NINTH SESSION

- I. *Administrative and Organisational Matters :*
 1. Adoption of the Agenda.
 2. Election of the President and Vice-President.
 3. Election of the Secretary for the term :
April 1968 to March 1970.
 4. Admission of Observers to the Session.
 5. Consideration of the Secretary's Report and Committee's programme of work.
 6. Date and Place of the Tenth Session.
- II. *Matters Arising out of the Work done by the International Law Commission under Article 3 (a) of the Statutes :*
 1. Consideration of the Report of the Committee's Observer (Mr. J. H. Rizvi) on the work done by the International Law Commission at its Nineteenth Session.
 - *2. Law of Treaties (Consideration of the Draft Articles adopted by the International Law Commission).
- III. *Matters Referred to the Committee by the Governments of the Participating Countries under Article 3 (b) of the Statutes :*

Law of International Rivers (Referred by the Governments of Iraq and Pakistan) for preliminary statements only.
- IV. *Matters of common concern taken up by the Committee under Article 3 (c) of the Statutes :*
 1. Relief against Double Taxation—(Referred by the Government of India)—Consideration of the Reports

of the Sub-Committees appointed at the Seventh and Eighth Sessions.

- *2. World Court Judgment on South West Africa Cases (Referred by the Government of Ghana).
3. Uniform Transport Law (Taken up by the Committee at the suggestion of UNIDROIT) *for preliminary discussion only.*

* Priority items.

IV. LAW OF TREATIES

(CONSIDERATION OF THE DRAFT ARTICLES
ADOPTED BY THE INTERNATIONAL LAW
COMMISSION AT ITS EIGHTEENTH SESSION)

I. INTRODUCTORY NOTE

The General Assembly of the United Nations by Resolution No. 2166 (XXI) adopted on the 5th of December 1966 decided to convene an International Conference of Plenipotentiaries to meet in two sessions during the early part of 1968 and 1969 to consider the Law of Treaties. In pursuance of this Resolution the Conference of Plenipotentiaries has been convened to meet in Vienna for its First Session from the 26th March to the 26th of May 1968. The final text adopted by the International Law Commission on the Law of Treaties during its Eighteenth Session will form the basic proposal for consideration of the Conference of Plenipotentiaries. The results of the work of this Conference will be embodied in an international convention and other instruments as might be deemed appropriate. This will be the first attempt to draw up a general international convention codifying the Law of Treaties.

The Conference of Plenipotentiaries to which all the member countries of the United Nations have been invited to participate is of special significance to the Asian and African countries as this will be the first time that these nations will have a voice in formulating a uniform set of general principles on the Law of Treaties. Furthermore, the fact that many of these countries had in the past been subjected to unequal treaties and have on their independence inherited treaty rights and obligations by reason of their being part of former colonial territories and empires, makes the participation of Asian and African countries in this Conference of Plenipotentiaries a matter of particular importance.

The International Law Commission of the United Nations at its First Session held in 1949 decided that the Law of Treaties was one of the topics which was suitable for codification. The subject has been considered by the Commission at its various

Sessions and it was able to draw up its final recommendations in the shape of Draft Articles during its Eighteenth Session held in 1966. It will be noticed from the *Commentaries* to the Draft Articles as given in the Reports of the International Law Commission that the recommendation of the Commission on many of the controversial subjects was the result of a compromise solution, having regard to the divergent views expressed by various members of the Commission.

Under clause (a) of Article 3 of the Statutes establishing the Asian-African Legal Consultative Committee, the Committee is required 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 Commission. The Committee 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 of this Committee as laid down under its Statutes, the Committee had established official relations with the International Law Commission of the United Nations. The Commission is therefore represented by one of its Members at the Sessions of this Committee and the Committee also sends a representative to attend the Sessions of the International Law Commission in the capacity of an Observer.

It may be useful to give a brief resume of the work done by the International Law Commission on the subject of the Law of Treaties during its various sessions. At its First Session held in 1949 the Commission appointed Mr. J. L. Brierly to act as Special Rapporteur on the subject. At its Second Session held in 1950, the Commission devoted its 49th and 53rd meetings to a preliminary discussion of Mr. J. L. Brierly's first report. At its Third Session in 1951, the Commission had before it two reports from Mr. Brierly. One was a continuation of the Commission's general work on the Law of Treaties and the other a special report on "Reservations to Multilateral Conventions." Mr. Brierly's reports were discussed

at the 84th to the 88th and the 98th to the 106th meeting of the Third Session in 1951.

At the Fourth Session held in 1952, the Commission had before it the third report on the Law of Treaties prepared by Mr. Brierly who, however, had meanwhile resigned his membership of the Commission. In the absence of its author, the Commission did not deem it proper to discuss that report. It elected Mr. (later Sir) Hersch Lauterpacht to succeed Mr. Brierly.

At its Fifth Session in 1953, the Commission received a report from Mr. Lauterpacht containing draft articles and commentaries on a number of topics but it did not take up the report at that session. At its Sixth Session held in 1954, the Commission received Mr. Lauterpacht's second report but it was again unable to take up the subject. Meanwhile Sir Hersch Lauterpacht had resigned from the Commission on his election to the International Court of Justice and at its Seventh Session in 1955, the Commission elected Sir Gerald Fitzmaurice as Special Rapporteur.

During the next five sessions of the Commission, from 1956 to 1960, Sir Gerald Fitzmaurice presented five separate reports on the Law of Treaties. Certain general questions of treaty law were discussed at the 368th to 370th meetings of the Commission during its 1956 session. At its Eleventh Session held in 1959 the Commission devoted twenty-six meetings to a discussion of Sir Gerald Fitzmaurice's first report. The Commission, however, was unable to complete its series of draft articles.

Sir Gerald Fitzmaurice resigned on his election to the International Court of Justice and, at its Thirteenth Session held in 1961, the Commission elected Sir Humphrey Waldock as Special Rapporteur who was requested to re-examine the work previously done in the field. The Commission suggested that, if possible, the Special Rapporteur should complete this work in two years. The object of the study was to prepare a set of draft

articles on the Law of Treaties which would serve as the basis for a convention.

At its Fourteenth Session held in 1962 Sir Humphrey Waldock submitted his report on the conclusion, entry into force and registration of treaties. This was considered by the Commission at its 636th-672nd meetings and the Commission adopted a provisional draft of articles on these topics. In accordance with Articles 16 and 21 of its Statute, the Commission decided to transmit its draft through the Secretary-General to the Governments for their observations.

At the Fifteenth Session held in 1963 Sir Humphrey Waldock submitted a report on the subject of the validity, duration and termination of treaties. The Commission considered the report of the Rapporteur at its 673rd-685th, 687th-711th, 714th, 716th-718th, and 720th meetings and adopted a provisional draft of articles on these topics. In adopting these articles the Commission decided, in accordance with Articles 16 and 21 of its Statute, to submit them, through the Secretary-General, to Governments for their observations.

At the Sixteenth Session of the International Law Commission, Sir Humphrey Waldock submitted a report on the application, effects, revision and interpretation of treaties. This report—Sir Humphrey Waldock's third report—was considered by the Commission at its 726th-755th, 759th-760th, 764th-767th and 770th meetings and it adopted a provisional draft of articles which constitute the third and final part of the Commission's draft on the Law of Treaties. In accordance with Articles 16 and 21 of its Statute, the Commission decided to transmit its draft concerning the effects, application, modification and interpretation of treaties, through the Secretary-General, to Governments for their observations.

At its Seventeenth Session held in 1965 the Commission had before it a document submitted by the United Nations Secretariat which set out in Volume I the written comments of Governments and in Volume II the comments of the delegates

in the Sixth Committee on Parts I and II of the Commission's drafts articles on the Law of Treaties. It also had before it four documents setting out the written comments of four other Governments which were received after the publication of the volumes mentioned earlier. The Commission also had before it: (1) a report on "Depositary Practice in Relation to Reservations," dated the 29th of January, 1964 and submitted by the Secretary-General to the General Assembly in accordance with resolution 1452B (XIV), and (2) certain further information and material concerning the practice of depositaries and of the Secretary-General as registering authority under Article 102 of the Charter supplied by the Secretariat in response to the request of certain members of the Commission.

Sir Humphrey Waldock submitted a report containing (1) a summary of the comments of Governments and delegations on the twenty-nine articles of Part I and the first three articles of Part II which had been provisionally adopted by the Commission during its Sessions held in 1962 and 1963 and (2) proposals for the revision of the articles in the light of those comments. The Commission considered that report at its 776th-803rd, 810th-816th, 819th and 820th meetings.

At the second part of its Seventeenth Session, the Commission had before it a portion of the fourth report of Sir Humphrey Waldock which had not been previously examined, the fifth report of the Special Rapporteur, Part II of the draft articles adopted by the Commission at its Fifteenth Session in 1963, and the comments of Governments on those Draft Articles.

At its Eighteenth Session the Commission had before it the sixth report of Sir Humphrey Waldock and also a memorandum entitled "Preparation of Multilingual Treaties." At its 845th-876th, 879th-880th and 883rd-894th meetings, the Commission re-examined the draft articles it had not considered at its Seventeenth Session when it had started revising the draft

articles in the light of the comments of Governments. It also revised certain earlier articles, decided upon the order of all the articles, dealt with some general questions of terminology, adopted commentaries on all articles and also considered the procedural and organisational problems involved in a possible conference on the Law of Treaties. The Commission adopted the final text of its draft articles and in accordance with Article 23, paragraph 1(d) of its Statute, submitted them to the General Assembly with the recommendation that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles on the Law of Treaties and to conclude a convention on the subject. It is in accordance with this recommendation that the United Nations Conference on the Law of Treaties has been convened.

The Asian-African Legal Consultative Committee has been following the work of the International Law Commission on this subject through its various stages particularly in view of the very great importance of this subject to the countries of the Asian-African region. A representative of this 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 the Law of Treaties was discussed. At the Thirteenth Session of the Commission, Mr. Hafez Sabek, the then Chief Justice of the 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 again attended by Mr. Hafez Sabek and the Seventeenth Session was attended 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 advantage of the presence of H. E. Dr. Mustafa Kamel Yasseen, the then President of the Commission, who stressed the need and the urgency on the part of 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. The Secretariat of the Committee placed before the Committee a set of 35 questions for its consideration in relation to the draft articles adopted by the International Law Commission. In addition, the delegations present at the Ninth Session brought forward certain other points for the consideration of the Committee. The Ninth Session of the Committee was also attended by H.E. Dr. Mustafa Kamel Yasseen on behalf of the International Law Commission who participated in the discussions. The Committee in the light of deliberations at its Ninth Session was able to draw up its *Interim recommendations* for the consideration of the participating Governments. It was also decided to circulate the Interim Recommendations of the Committee to all the Delegations of Asian and African countries participating in the United Nations Conference of Plenipotentiaries on the Law of Treaties.

II. INTERIM REPORT ADOPTED BY THE COMMITTEE AT ITS NINTH SESSION

The Draft Articles on the Law of Treaties as provisionally drawn up by the International Law Commission at its Fifteenth Session were placed before this Committee at its Sixth Session held in Cairo in 1964 under the provisions of Article 3(a) of the Committee's Statutes read with clause 5(a) of Rule 6 of the Statutory Rules. After a general discussion on the Draft Articles the Committee at that Session had decided that the Secretariat should prepare a Study on the Law of Treaties including the question of accession to general multilateral conventions taking into account the specific questions that were raised by the Delegates in the course of deliberations at that Session. The Committee further decided to request the Governments of the participating countries to communicate their views on the Draft Articles on the Law of Treaties drawn up by the International Law Commission to the Secretariat of the Committee. The Committee also decided that priority should be given to this subject and that the same should be placed on the agenda of its next Session.

2. In accordance with the aforesaid directive, the subject was placed on the agenda of the Seventh Session of the Committee held in Baghdad in 1965. At that Session the Committee appointed a Special Rapporteur to prepare a report for consideration of the Committee. It was decided that the subject be taken up at its next Session with a view to formulating proposals and suggestions from the Asian-African viewpoint for consideration of the International Law Commission. The Special Rapporteur of the Committee (Dr. Hassan Zakariya) was requested to prepare a report on the specific points arising out of the International Law Commission's Draft on the subject which required consideration from the Asian-African viewpoint. The Special Rapporteur of the Committee attended the Seven-

teenth Session of the International Law Commission where the Draft Articles on the Law of Treaties were finally drawn up.

3. The Report prepared by Dr. Hassan Zakariya, Special Rapporteur of the Committee, was placed before the Committee at its Eighth Session. The Committee was informed at that Session that the Commission had concluded its work on the Law of Treaties and that the United Nations was considering the question of convoking a Conference of Plenipotentiaries to meet in the year 1968 with a view to drawing up a multilateral convention on the subject of the Law of Treaties. The President of the International Law Commission, H. E. Dr. M.K. Yasseen, who attended the Eighth Session, stressed the need for the Committee to consider the subject urgently and formulate its views before the Conference of Plenipotentiaries met to consider the question. Taking note that the provisions of Article 3(a) of the Statutes of the Committee contemplated that the Committee should consider the reports of the Commission and make recommendations thereon to the Governments of the participating countries, it was decided that the Committee would take up this question as a priority item during its Ninth Session. It also appointed Dr. Sompong Sucharitkul (Thailand) as Special Rapporteur to prepare a report for consideration of the Committee.

4. The Report of the Special Rapporteur together with a Brief prepared by the Secretariat has been placed before the Committee for consideration at this Session. In the Brief prepared by the Secretariat, the relevant background material including the evolution of the Draft Articles from its earliest to the final stages in the International Law Commission has been set out. The views expressed by Asian-African Members of the Commission, during consideration of the Law of Treaties by the International Law Commission itself, and the opinions of the Delegates of Asian-African countries to the Sixth Committee of the General Assembly of the United Nations have also been made available to this Committee. The Secretariat in its Brief has in-

dicated as many as 35 points which require consideration of the Committee with regard to the Draft Articles drawn up by the International Law Commission. The Delegates present at this Session have also brought up certain other points for consideration of the Committee.

5. The Committee at this Session has given consideration to this subject and has decided to focus attention on certain questions with the object of assisting the Governments of the participating countries to formulate their views on the subject.

6. Due to lack of time at its disposal it has not been possible for the Committee to examine all the aspects of the various Draft Articles. Having regard to the urgency of the matter and its importance to the countries of the Asian-African region, however, the Committee has decided to draw up this Interim Report and to submit the same for consideration of the Governments confining itself to some of the more important issues.

7. It has generally been agreed that the Committee in drawing up its Report should indicate in a general manner the points which require consideration of the Conference of Plenipotentiaries and that it would refrain from suggesting any text by way of amendment to the Articles as that would be really a matter for the Drafting Committee appointed by the Conference of Plenipotentiaries.

8. The Committee's comments on the Draft Articles prepared by the International Law Commission are given in the *Annexure* to this Report.

9. The Committee had the advantage of the presence of H. E. Dr. M. K. Yasseen, Member of the International Law Commission, who rendered great assistance to the Committee in its discussion on the subject not only by explaining the object behind the particular articles which were under discussion in the Committee but also by expressing his personal views as an expert on the points which required clarification. The Committee

wishes to place on record its deep appreciation and thanks to H. E. Dr. M. K. Yasseen for his assistance in the deliberations of the Committee on this subject.

10. The Committee wishes to take this opportunity to express its deep appreciation of the monumental work done by the International Law Commission on this complex subject and to state that the few comments which the Committee has made are to express the views of the members of the Committee on some of the aspects.

C. K. DAPHTARY
President

Annexure

COMMENTS ON THE DRAFT ARTICLES PREPARED BY THE INTERNATIONAL LAW COMMISSION

PARTICIPATION IN GENERAL MULTILATERAL TREATIES

The majority in the Committee considers that the right of every State to participate in general multilateral treaties is of vital importance to the progressive development of International Law. General multilateral treaties concern the international community as a whole. If International Law is to be in keeping with the real interest of the international community and if universal acceptance of the progressive development of this legal order is desirable, then the participation of every member of the community is essential. The majority in the Committee, therefore, considers that the Articles on the Law of Treaties should contain a provision regarding participation in general multilateral treaties.

One delegate, however, holds that in view of the principle of freedom of contract and the existing practice of the international conferences held under the auspices of the United Nations and the possible complications that it may imply, it would be better that the Draft Articles be silent on this point.

Article 5

The Committee is of the opinion that paragraph 2 of this Article requires reformulation to include within its scope not only the units of a federation but all kinds of unions of States. It, therefore, suggests that paragraph 2 should incorporate the following principle :

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