

**Asian African Legal Consultative  
Committee**

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**SECOND SESSION**

**CAIRO**

**October 1st to 13th, 1958.**

ISSUED BY

**THE SECRETARIAT OF THE COMMITTEE AT NEW DELHI, INDIA.**

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## 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 day 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 exchange of views and information on matters of common concern between the participating countries. In response to a suggestion made by the Prime Minister of India, 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 April 1958, so as to include participation of 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.

The United Arab Republic upon its formation by merger of Egypt and Syria became an original participating country in the Committee in place of Syria. Sudan was admitted in the Committee with effect from the 1st day of October, 1958 and Pakistan from the 1st day of January, 1959.

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

- (a) Examination of 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 ;
- (b) Consideration of 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) Exchange of views and information on legal matters of common concern ; 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.

### Office Bearers of the Committee and its Secretariat :

The Committee during its First Session had elected the Member for Burma, Hon'ble Chief Justice U Myint Thein, and the Member for Indonesia, Hon'ble Chief Justice Dr. Wirjono Prodjodikoro, respectively as the President and the Vice-President of the Committee for the year 1957-58. During the Second Session the Committee elected the Member for the United Arab Republic, Mr. Abdel Aziz Mohamed, President of the Cour de Cassation, as the President and the Member for Ceylon, Hon'ble Chief Justice Mr. H. H. Basnayake, as the Vice-President of the Committee for the year 1958-59.

The Committee at its First Session decided to locate its Permanent Secretariat at New Delhi ( India ). The Committee also decided during its First and Second Sessions that Mr. B. Sen, Legal Adviser to the Ministry of External Affairs, Government of India, should perform the functions of the Secretary of the Committee.

### Cooperation with other Organisations :

The Committee maintains close contacts with and receives published documents from the United Nations, the Specialised Agencies, International Law Commission, the Council of Jurists within the Pan American Union and the Arab League. The Committee is empowered under the Statutory Rules to admit to its Sessions Observers from international and regional inter-governmental organisations.

### First Session of the Committee :

The Committee held its First Session at New Delhi from the 18th till the 27th April, 1957. The Session was inaugurated by the Prime Minister of India and was attended by Delegations from Burma, Ceylon, India, Indonesia, Iraq, Japan and Syria, the then participating countries in the Committee. At that Session the Committee had before it for consideration 10 questions which had been referred to it by the various participating countries in the Committee. These were :

- (i) Functions, privileges and immunities of diplomatic envoys or agents including questions regarding enactment of legislation to provide for diplomatic immunities. ( Referred by India and Japan )
- (ii) Principles for extradition of offenders taking refuge in the territory of another including questions

relating to desirability of conclusion of extradition treaties and simplification in the procedure for extradition. ( Referred by Burma and India )

- (iii) Law relating to the Regime of the High Seas including questions relating to the rights to sea-bed and subsoil in the open sea. ( Referred by Ceylon and India )
- (iv) Status of aliens including the questions of responsibility of States regarding treatment of foreign nationals. ( Referred by Japan )
- (v) Restrictions on immunity of States in respect of commercial transactions entered into by or on behalf of States and by State Trading Corporations. ( Referred by India )
- (vi) Law of the Territorial Sea. ( Referred by Ceylon )
- (vii) Questions relating to Dual Citizenship. ( Referred by Burma )
- (viii) Ionospheric Sovereignty. ( Referred by India )
- (ix) Questions relating to Divorce Laws. ( Referred by Ceylon )
- (x) Questions relating to Free Legal Aid. ( Referred by Ceylon )

During the session, however, the item relating to the status of aliens was withdrawn and items (iii) and (vi), viz., the law relating to the Regime of the High Seas and the Law of the Territorial Sea were not pressed for consideration. The remaining items were discussed in the Committee and preliminary reports were drawn up and submitted to the Governments of the participating countries on three of the subjects, viz., Diplomatic Immunities, Principles of Extradition and Immunity of States. All the subjects were carried forward for further consideration at the next session.

### Second Session of the Committee.

The Second Session of the Committee was held in Cairo from the 1st to the 13th of October, 1958. The session was inaugurated by the Minister of Justice in his capacity as the Personal Representative of the President of the United Arab Republic. The session was attended by Delegations from Burma, Ceylon, India, Indonesia, Iraq, Japan, Sudan and the

United Arab Republic. Observers representing the Governments of Cambodia, Philippines and Thailand as also the representatives of the Arab League—an inter-governmental organisation—were admitted to the meetings of the Session.

During this session the Committee had before it five main subjects for consideration viz. Diplomatic Immunities, Principles of Extradition, Immunity of States in respect of Commercial Transactions, Dual Citizenship and Status of Aliens. It also discussed briefly the questions relating to Free Legal Aid and Reciprocal Enforcement of Foreign Judgements in Matrimonial Matters. The Committee had also before it the reports of the 9th and 10th Sessions of the International Law Commission for consideration. The Law of the High Seas and Territorial Waters as also Ionospheric Sovereignty had not been included in the Agenda of the Session. These are likely to be taken up by the Committee at its Third Session.

The Committee finalised its report on Diplomatic Immunities and on Immunity of States in respect of Commercial Transactions. These reports have been submitted to the Governments of the participating countries. Final conclusions were not reached on the other subjects which were discussed and are likely to be taken up for further consideration at the Third Session.

#### Third Session of the Committee :

The Third Session of the Committee is scheduled to be held at Colombo from the 4th November, 1959.

### List of Delegates Attending the Second Session of the Committee

#### BURMA :

Member and Leader of the Delegation : Hon'ble U Myint Thein,  
Chief Justice of the Union of Burma.  
H. E. U Pe Kin,  
Ambassador of Burma in Cairo.  
(from 10-10-1958)

Alternate Member : U Nyunt Tin,  
Senior Advocate,  
Supreme Court, Rangoon.

Adviser : U Saw Burgess,  
First Secretary, Burmese Embassy,  
Cairo.

#### CEYLON :

Member and Leader of the Delegation : Hon'ble Mr. H. H. Basnayake,  
Queen's Counsel,  
Chief Justice of Ceylon.

Alternate Member : Dr. H. W. Tambiah,  
Queen's Counsel and Commissioner  
of Assizes, Ceylon.

Advisers : Mr. G. P. A. Silva,  
Assistant Secretary,  
Ministry of Justice.  
Mr. R. S. Wanasundara,  
Crown Counsel, Ceylon.

Adviser Secretary : Mr. E. Apathurai,  
Charge d' Affaires of Ceylon, Cairo.

#### INDIA :

Member and Leader of the Delegation : Hon'ble Mr. M. C. Setalvad,  
Attorney General & Chairman Law  
Commission of India.

Alternate Member : Mr. Sachin Chaudhuri,  
Senior Advocate,  
Supreme Court of India.

Adviser : Mr. V. S. Deshpande,  
Deputy Secretary, Ministry of Law,  
Government of India.

Adviser Secretary : Mr. I. P. Singh  
Secretary,  
Embassy of India, Cairo.

**INDONESIA :**

- Member and Leader of the Delegation : H. E. Dr. Achmad Subardjo  
Djoyoadisuryo  
Ambassador of Indonesia to Switzerland.
- Alternate Member : Dr. S. H. Tajibnapis,  
Minister Counsellor,  
Indonesian Embassy, New Delhi.
- Adviser : Mr. Sudio Gundarum,  
Counsellor,  
Indonesian Embassy, Cairo.

**IRAQ :**

- Member and Leader of the Delegation : Dr. Hasan Zakaria,  
Legal Adviser and Acting  
Under Secretary of State for  
Foreign Affairs.
- Alternate Member : Mr. Abdul-Amir El Ejaili,  
Deputy Public Prosecutor.

**JAPAN :**

- Member and Leader of the Delegation : Dr. Kenzo Takayanagi,  
President Seikei University,  
and Chairman, Cabinet Commission  
on Constitutional Reforms, Tokyo.
- Alternate Member : Mr. Zengo Ohira,  
Professor of Hitosubashi University,  
Faculty of Law.
- Advisers : Mr. Sakito Sato,  
Counsellor, Embassy of Japan, Cairo.  
  
Mr. Kenji Yasuda,  
Second Secretary,  
Embassy of Japan in Rome.  
  
Mr. Masanao Odaka,  
Third Secretary,  
Embassy of Japan, Cairo.

**SUDAN :**

- Member and Leader of the Delegation : Mr. Mohamed Merghani,  
Counsellor of the Sudan Embassy,  
Cairo.

**UNITED ARAB REPUBLIC :**

- Member and Leader of the Delegation : Mr. Abdel Aziz Mohamed,  
President of the Cour de Cassation.

- Alternate Member : Dr. Ezzel Dine Abdulla,  
Dean of the Faculty of Law,  
Ein Shams University.
- Advisers : Mr. Hafez Sabeq,  
Attorney General.  
  
Mr. Mahmud Mohamed Abdel Latif,  
Vice-President,  
Court of Appeal, Tantah.  
  
Mr. Adel Younis,  
Member of the Cour de Cassation.  
  
Mr. Aly Mohsen Mustafa,  
Counsellor, State Council.  
  
Dr. Gaber Gad Abdel Rahman,  
Professor,  
Faculty of Law, Cairo University.  
  
Mr. Omar El-Sherif,  
Assistant Counsellor,  
State Council.  
  
Mr. Mohamed Hafez Ghanem,  
Assistant Professor,  
Faculty of Law,  
Ein Shams University.  
  
Mr. Mustafa Mohamed El-Barad'ie,  
President of the Bar Association  
of the Southern Province.  
  
Dr. Nizar El Kayali,  
Secretary of the Bar Association  
of Aleppo.

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Secretary to the Committee : Mr. B. Sen,  
Hon. Legal Adviser,  
Ministry of External Affairs,  
Government of India.

Liaison Officer of the Government of the United Arab Republic : Dr. Adib Daoudy,  
First Counsellor,  
Embassy of the United Arab Republic,  
Karachi.

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*List of Observers*

- CAMBODIA :** Dr. Koun Wick,  
Counsellor,  
Embassy of Cambodia,  
New Delhi.
- PHILIPPINES :** Mr. E. Sta Romana,  
Second Secretary,  
Embassy of the Philippines,  
New Delhi.
- Mr. Herminio Gutierrez,  
Attache,  
Legation of the Philippines,  
Cairo.
- THAILAND :** H. E. Luang Dithakar Bhakdi,  
Ambassador of Thailand in the  
United Arab Republic.
- THE LEAGUE OF ARAB NATIONS :**
- Maitre Fawzi El Ghussein,  
Counsellor and Director of the  
Legal Department.
- Dr. Ezzeldin Foda,  
Third Secretary,  
Political Department.
- Sayed Salah Sabry,  
Second Attache,  
Political Department.
- Sayed Abdel Kerim Mudarris,  
First Attache,  
Legal Department.
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**AGENDA OF THE SECOND SESSION****I. Administrative & Organisational Matters.**

1. Election of the President and Vice-President.
2. Adoption of the Agenda.
3. Admission of new members in the Committee and observers to its Session.
4. Consideration of the Acting Secretary's Report.
5. Consideration of a Draft Convention on Immunities and Privileges of the Committee.
6. Consideration of the question of appointment of the Secretary to the Committee.
7. Planning of future work of the Committee including questions of priority to be given to the subjects taken up for consideration.
8. Appointment of Rapporteurs.
9. Date and Place of the Third Session.

**II. Matters relating to the work of the International Law Commission under Article 3 (a) of the Statutes of the Committee.**

1. Review of the work done by the International Law Commission at its 9th and 10th Sessions with particular reference to the interests of the Asian-African countries.

**III. Legal problems referred by the Governments of the participating countries under Article 3 (b) of the Statutes.****1. Diplomatic Immunities :**

Consideration of the Report prepared by the Member for Japan as Rapporteur, and finalisation of the Committee's recommendations on the subject, if possible.

**2. Principles of Extradition :**

Further discussion on the points enumerated in the Indian Memorandum presented at the First Session.

**3. Immunity of States in Respect of Commercial Transactions :**

Further discussion of the subject particularly with reference to the views of Iraq and the United Arab Republic.

**4. Dual Citizenship :**

Further consideration of the subject particularly with regard to the views of India, Ceylon, Iraq and the United Arab Republic.

**5. Status of Aliens.**

**IV. Legal matters of common concern referred under Article 3 (c) of the Statutes.**

**1. Recognition of Foreign Decrees in Matrimonial Matters :**

Consideration of the report presented by the Rapporteur.

**2. Free Legal Aid :**

Consideration of the report presented by the Rapporteur.

**FINAL REPORT OF THE COMMITTEE ON FUNCTIONS, PRIVILEGES & IMMUNITIES OF DIPLOMATIC ENVOYS OR AGENTS.**

1. The Committee at its second, third, fourth and fifth meetings held on Thursday, Friday and Saturday the 2nd, 3rd and 4th of October, 1958, considered item 1 of Part III of the Agenda - Functions, Privileges and Immunities of Diplomatic Envoys or Agents - which had been referred by the Governments of India and Japan.

2. The Committee had before it the two memoranda on the subject presented by the Governments of India and Japan during the First Session, as also the draft articles on Diplomatic Immunities adopted by the International Law Commission during its 9th and 10th sessions. The Harvard Draft Convention, the Havana Convention on Diplomatic Officers, and the Report prepared by the Rapporteur were also placed before the Committee.

3. The Committee had considered this subject during its First Session on the basis of the three questions formulated in the Indian memorandum which were in the following terms :-

- (i) Whether it is desirable to undertake legislation to provide for immunities to foreign diplomatic missions and officers so as to incorporate in the municipal law of a state the principles of international law in this regard;
- (ii) if it is considered desirable to have recourse to legislation in the matter of immunity, whether such legislation should merely be declaratory of the principles of international law or should it be a comprehensive piece of legislation;
- (iii) whether in cases where disputes arise regarding the extent of the immunity, the matter should be left to the decision of the courts of a country or whether it should be decided by the Foreign Office and its decision given by means of a certificate be regarded as conclusive.

4. The Committee drew up an interim report at that session in the light of discussions. The conclusions which could be drawn from the discussions held during the First Session were as follows :



- (i) There was agreement in principle among the delegations of Burma, Ceylon, India, Indonesia and Iraq on the need for domestic legislation on this subject but at the same time it was agreed that it would be difficult to undertake comprehensive legislation at present. The view of the delegation of Japan, however, was that domestic legislation on this subject was undesirable as it may lead to confusion. The delegation considered that the proper course to adopt was to have a convention or a multilateral treaty between states which would specify the agreed extent of diplomatic immunities and privileges.
- (ii) There was general agreement between the delegations of Burma, India, Indonesia and Japan that a communication from the Foreign Office as regards the privileges and immunities of diplomatic personnel ought in practice to be regarded as conclusive and binding on the courts and other authorities. The delegation of Ceylon whilst agreeing that such a communication ought to be conclusive in criminal matters felt that the position needed to be further examined with respect to enforcement of civil rights by private persons against diplomatic personnel.
- (iii) It was agreed between all delegations that before any legislation or international convention could be undertaken, it would be necessary to collect more data.

5. The Committee recommended a further study of the subject and appointed the Member for Japan as Rapporteur to collect information and materials and prepare a draft of a convention on diplomatic immunities and privileges.

6. The first question which the Committee considered during the present session was the necessity or otherwise of having a Convention between the participating countries in the Committee on the subject of diplomatic immunities. It was generally agreed between the various delegations that as long as the immunities and privileges were accorded to the diplomatic agents in the participating states it was not of much consequence as to the method by which such immunities and privileges were granted. It was unanimously decided that the Committee should formulate the principles dealing with the

nature and extent of diplomatic immunities and privileges in the form of a draft convention, but the question as to whether a country should adopt these principles by means of a convention or domestic legislation should be left to the Government of the participating country itself.

7. The draft of a convention containing the principles on the nature and extent of diplomatic immunities and privileges as approved by the Committee is set out in the annexure to this report.

8. The Committee decided to make no recommendation regarding the method to be adopted for settlement of disputes between states in the matter of diplomatic immunities. Article 45 of the Draft prepared by the International Law Commission was considered as being inappropriate for adoption at present since the Governments held divergent views on the matter and it was difficult to reach agreement and make an agreed recommendation on the question at present.

9. Three questions were specifically raised in the course of discussions. These were :-

- (a) Whether the concept of reciprocity should be adopted in regard to immunities and privileges of a diplomatic agent.
- (b) Whether a distinction should be made between a home-based national of the sending state and a locally recruited person who is also a national of the sending state employed as a member of the subordinate staff in a diplomatic mission.
- (c) Whether and to what extent a certificate of the Foreign Office should be treated as conclusive and binding in matters of diplomatic immunity.

10. As regards the first question, the delegation of India was of the view that the immunity of a diplomat was absolute under international law and as such the concept of reciprocity should not enter on the question of diplomatic immunity. The delegation was for discouraging the present trend in restricting immunity of diplomats on the basis of reciprocity. The delegation was, however, in favour of having reciprocity in the matter of privileges as it felt that privileges were not essential to performance of diplomatic functions and was a matter of comity. The delegation of Indonesia supported the views of the delegation of India. The other delegations were,

however, of the view that immunities and privileges both should be granted on the basis of reciprocity.

11. The delegations were of the view that no specific answer was required on the second question since articles 36 and 37 of the draft convention (Annex) sufficiently dealt with the principles relating to immunities and privileges of the subordinate staff of diplomatic missions.

12. As regards the third question, the delegations were of the view that a certificate of the Foreign Office in so far as questions of fact were concerned such as the status of the person or the extent of immunities or privileges admissible to the diplomatic agent concerned under the practice followed by the state should be conclusive and binding since these were matters within the particular knowledge of the Foreign Office. In so far as questions of law were concerned, the majority of the delegations were in favour of leaving the matter to the courts.

B. SEN

Secretary to the Committee

Done at Cairo  
the 13th day of October, 1958.

(Annex to the Report on Diplomatic Immunities and Privileges)  
**PROVISIONAL DRAFT OF A CONVENTION**  
Concerning Diplomatic Immunities and Privileges

**P r e a m b l e**

Recalling that the peoples of all nations have long had the practice and conviction of respecting the status of diplomatic envoys;

Considering that an international convention regarding the rights and duties of diplomatic agents would contribute greatly to the promotion of good neighbourly relations among the States;

Considering that the immediate purpose is to reach an agreement on general provisions embodying the well-defined trend in international relations, taking into account the special usages and practices of the various states;

The States participating in the Asian-African Legal Consultative Committee have agreed upon the following principles on the immunities and privileges of Diplomatic Agents :-

**D e f i n i t i o n s**

**Article 1**

For the purpose of the present draft convention, the following expressions shall have the meanings hereunder assigned to them :

- (a) The 'head of the mission' is the person charged by the sending State with the duty of acting in that capacity;
- (b) The 'members of the mission' are the head of the mission and the members of the staff of the mission;
- (c) The 'members of the staff of the mission' are the members of the diplomatic staff, of the administrative and technical and the services staff of the mission;
- (d) The 'diplomatic staff' consists of the members of the staff of the mission having diplomatic rank;
- (e) A 'diplomatic agent' is the head of the mission or a member of the diplomatic staff of the mission;
- (f) The 'Administrative and technical staff' consists of the members of the staff of the mission employed in

the administrative and technical service of the mission;

- (g) The 'service staff' consists of the members of the staff of the mission in the domestic service of the mission;
- (h) A 'private servant' is a person in the domestic service of the head or of a member of the mission.

#### Establishment of diplomatic relations and missions

##### Article 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

#### Functions of a diplomatic mission

##### Article 3

The functions of a diplomatic mission consist inter alia in :-

- (a) Representing the sending State in the receiving State;
- (b) Protecting the interests of the sending State and of its nationals in the receiving State;
- (c) Negotiating with the Government of the receiving State;
- (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- (e) Promoting friendly relations between the sending State and the receiving State.

#### Appointment of the head and staff of the mission

##### Article 4

The sending State must make certain that the agreement of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.

#### Appointment to more than one State

##### Article 5

Unless objection is offered by any of the receiving states concerned, a head of mission to one State may be accredited as head of mission to one or more other States.

##### Article 6

Subject to the provisions of Article 7, 8 and 10, the sending State may freely appoint the other members of the staff of the mission.

#### Appointment of nationals of the receiving State

##### Article 7

Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State, which may be withdrawn at any time.

#### Persons declared 'Persona non grata'

##### Article 8

1. The receiving State may at any time notify the sending State that the head of the mission, or any member of the staff of the mission, is 'persona non grata' or not acceptable. In such a case, the sending state, according to circumstances, shall not send such person, or shall recall him or shall terminate his functions with the mission.

2. If a sending State refuses or fails within a reasonable time to comply with its obligations under paragraph 1, the receiving State may refuse to recognise the person concerned as a member of the mission.

#### Notification of arrival and departure

##### Article 9

The arrival and departure of the members of the staff of the mission, and also of members of their families, and of their private servants, shall be notified to the Ministry of Foreign Affairs of the receiving State. A similar notification shall be given whenever members of the mission and private servants are locally engaged or discharged.

#### Limitation of Staff

##### Article 10

1. In the absence of any specific agreement as to the size of the mission, the receiving State may refuse to accept a size exceeding what is reasonable and customary, having regard to the circumstances and conditions in the receiving State, and to the needs of the particular mission.

2. The receiving State may also, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.

3. The receiving State may decline to accept any person as military, naval, or air attache, or any person performing such functions without previous agreement.

#### Offices away from the seat of the mission

##### Article 11

The sending State may not, without the consent of the receiving State, establish offices in towns other than those in which the mission itself is established.

#### Commencement of the functions of the head of the mission

##### Article 12

The head of the mission is considered as having taken up his functions in the receiving State either when he has notified his arrival and a true copy of his credentials has been presented to the Ministry of Foreign Affairs of the receiving State, or when he has presented his letters of credence, according to the practice prevailing in the receiving State, which shall be applied in a uniform manner.

#### Charge d' affaires ad interim

##### Article 13

1. If the post of the head of the mission is vacant, or if the head of the mission is unable to perform his functions, the affairs of the mission shall be handled by a charge d' affaires ad interim whose name shall be notified to the government of the receiving State.

2. In the absence of notification, the member of the mission placed immediately after the head of the mission on the mission's diplomatic list shall be presumed to be in charge.

#### Classes of heads of the mission

##### Article 14

1. Heads of mission are divided into three classes, namely:

- (a) That of ambassadors; or nuncios accredited to heads of State;
- (b) That of envoys, ministers, inter nuncios and other persons accredited to heads of State;

(c) That of charges d' affaires accredited to Ministers for Foreign Affairs.

2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

##### Article 15

States shall agree on the class to which the heads of their missions are to be assigned.

#### Precedence

##### Article 16

1. Heads of mission shall take precedence in their respective classes in the order of date either of the official notification of their arrival or of the presentation of their letters of credence, according to the rules of the protocol in the receiving State, which must be applied without discrimination.

2. Any change in the credentials of a head of mission shall not affect his precedence in his class.

3. The present regulations are without prejudice to any existing practice in the receiving State regarding the precedence of the representative of the Pope.

#### Mode of Reception

##### Article 17

A uniform mode shall be established in each State for the reception of heads of mission of each class.

#### Use of Flag and Emblem

##### Article 18

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, and on the residence and the means of transport of the head of the mission.

#### Accommodation

##### Article 19

The receiving State shall either permit the sending State to acquire on its territory the premises necessary for its mission, or ensure adequate accommodation in some other way.

**Inviolability of the mission premises****Article 20.**

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, save with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission and their furnishings shall be immune from any search, requisition, attachment or execution.

**Exemption of mission premises from taxes****Article 21**

The sending State and the head of the mission shall be exempt from all national, regional or municipal dues or taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

**Inviolability of the archives****Article 22**

The archives and documents of the mission shall be inviolable.

**Facilities****Article 23**

The receiving State shall accord full facilities for the performance of the mission's functions.

**Free movement****Article 24**

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

**Freedom of Communication****Article 25**

1. The receiving State shall permit and protect free communication on the part of the mission for all official

purposes. In communicating with the Government and the other missions and consulates of the sending state, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher.

2. The official correspondence of the mission shall be inviolable.

3. The diplomatic bag may not be opened or detained.

4. The diplomatic bag may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to arrest or detention, whether administrative or judicial. The diplomatic courier shall at all times have on his person a document testifying to his status.

**Exemption from taxation, fees and charges levied by a mission****Article 26**

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

**Personal Inviolability****Article 27**

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all reasonable steps to prevent any attack on his person, freedom or dignity.

**Inviolability of residence and property****Article 28**

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of article 29, his property, shall likewise enjoy inviolability.

**Immunity from jurisdiction****Article 29**

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy

immunity from its civil and administrative jurisdiction save in the case of :-

- (a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of his Government for the purposes of the mission;
- (b) An action relating to a succession in which the diplomatic agent is involved as executor, administrator, heir or legatee;
- (c) An action relating to a professional or commercial activity exercised by the diplomatic agent in the receiving State, and outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. Measures of execution may be taken in respect of a diplomatic agent only in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1. Such measures should, however, be taken without infringing upon the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

5. The provisions contained in clauses (1) to (4) of this article shall be subject to the provisions of Article 37.

#### Waiver of Immunity

##### Article 30

1. The immunity of its diplomatic agents from jurisdiction may be waived by the sending State.

2. In criminal proceedings, waiver must always be express.

3. In civil or administrative proceedings, waiver may be express or implied. A waiver is presumed to have occurred if a diplomatic agent appears as defendant without claiming any immunity. The initiation of proceedings by a diplomatic agent shall preclude him from invoking immunity of jurisdiction in respect of counter-claims directly connected with the principal claim.

4. Waiver of immunity of jurisdiction in respect of civil or administrative proceedings shall not be held to imply

waiver of immunity in respect of the execution of the judgement for which a separate waiver must be made.

#### Exemption from social security legislation

##### Article 31

The members of the mission and the members of their families who form part of their households, shall, if they are not nationals of the receiving State, be exempt from the social security legislation in force in that State except in respect of servants and employees if themselves subject to the social security legislation of the receiving State. This shall not exclude voluntary participation in social security schemes in so far as this is permitted by the legislation of the receiving State.

#### Exemption from Taxation

##### Article 32

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, save :-

- (a) Indirect taxes incorporated in the price of goods or services;
- (b) Dues and taxes on private immovable property, situated in the territory of the receiving State, unless he holds it on behalf of his Government for the purpose of the mission;
- (c) Estate, succession or inheritance duties levied by the receiving State, subject, however, to the provisions of Article 38 concerning estates left by members of the family of the diplomatic agent;
- (d) Dues and taxes on income having its source in the receiving State;
- (e) Charges levied for specific services rendered;
- (f) Subject to the provisions of article 21, registration, court or record fees, mortgage dues and stamp duty.

#### Exemption from personal services and contributions

##### Article 33

The diplomatic agent shall be exempt from all personal services or contributions.

### Exemption from customs duties and inspection

#### Article 34.

1. The receiving State shall, in accordance with the regulations established by its legislation, grant exemption from customs duties on :-

- (a) Articles for the use of a diplomatic mission;
- (b) Articles for the personal use of a diplomatic agent or members of his family belonging to his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are very serious grounds for presuming that it contains articles not covered by the exemption mentioned in paragraph 1, or articles the import or export of which is prohibited by the law of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or in the presence of his authorised representative.

### Acquisition of nationality

#### Article 35

Members of the mission, not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.

### Persons entitled to privileges and immunities

#### Article 36

1. Apart from diplomatic agents, the members of the family of a diplomatic agent forming part of his household, and likewise the administrative and technical staff of a mission, together with the members of their families forming part of their respective households, shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 27 to 35.

2. Members of the service staff of the mission who are not nationals of the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, and exemption from dues and taxes on the emoluments they receive by reason of their employment.

3. Private servants of the head or members of the mission shall, if they are not nationals of the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over such persons in such a manner as not to interfere unduly with the conduct of the business of the mission.

### Diplomatic agents who are nationals of the receiving State

#### Article 37

1. A diplomatic agent who is a national of the receiving State shall enjoy inviolability and also immunity from jurisdiction in respect of official acts performed in the exercise of his functions. He shall enjoy such other privileges and immunities as may be granted to him by the receiving State.

2. Other members of the staff of the mission and private servants who are nationals of the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State should exercise its jurisdiction over such persons in such a manner as not to interfere unduly with the conduct of the business of the mission.

### Duration of immunities and privileges

#### Article 38

1. Every person entitled to diplomatic privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In the event of the death of a member of the mission not a national of the receiving State, or of a

member of his family, the receiving state shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country, and the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall be levied only on immovable property, situated in the receiving State.

#### Duties of third States

##### Article 39

1. If a diplomatic agent passes through or is in the territory of a third State while proceeding to take up or to return to his post, or when returning to his own country the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in case of any members of his family enjoying diplomatic privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1, third States shall not hinder the passage of members of administrative, technical or service staff of a mission, and of members of their families through their territories.

3.\* Third States shall accord to official correspondence and other official communication in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers in transit the same inviolability and protection as the receiving State is bound to accord.

#### Conduct of the Mission and its Members towards the receiving State

##### Article 40

1. Without prejudice to their diplomatic privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. Unless otherwise agreed, all official business with the receiving State entrusted to a diplomatic mission by its Government, shall be conducted with or through the Ministry for Foreign Affairs of the Receiving State.

\*Note: The Indonesian Delegation reserved their position on this clause.

3. The premises of a diplomatic mission must not be used in any manner incompatible with the functions of the mission as laid down in the present convention, or by other rules of general international law, or by any special agreements in force between the sending and the receiving State.

#### End of the Function of a Diplomatic Agent - Modes of Termination

##### Article 41

The function of a diplomatic agent comes to an end, *inter alia* :

- (a) If it was for a limited period, then on the expiry of that period, provided there has been no extension of it;
- (b) On notification by the Government of the sending State to the Government of the receiving State that the Diplomatic agent's function has come to an end (recall);
- (c) On notification by the receiving State, given in accordance with Article 8, that it considers the diplomatic agent's functions to be terminated.

#### Facilitation of departure

##### Article 42

The receiving state must, even in case of armed conflict grant facilities in order to enable persons enjoying privileges and immunities to leave at the earliest possible moment, and must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

#### Protection of premises, archives and interests

##### Article 43

If the diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled :

- (a) The receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;
- (b) The sending State may entrust the custody of the premises of the mission, together with its property and archives, to the mission of a third State acceptable to the receiving State;



- (c) The sending State may entrust the protection of its interests to the mission of a third State acceptable to the receiving State.

**Reciprocity in respect of immunities and privileges**

**Article 44**

The immunities and privileges of a diplomatic agent as aforesaid shall be accorded on the basis of reciprocity.\*

**Non-Discrimination**

**Article 45**

1. In the application of the present rules, the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place :

- (a) Where the receiving State applies one of the present rules restrictively, because of a restrictive application of that rule to its mission in the sending state ;
- (b) Where the action of the receiving State consists in the grant, on the basis of reciprocity, of greater privileges and immunities than are required by the present rules.\*

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\*The delegations of India and Indonesia considered that the concept of reciprocity should not enter in the question of diplomatic immunities whilst they agreed reciprocity to be a proper basis on the question of privileges.

**FINAL REPORT OF THE COMMITTEE ON IMMUNITY OF STATES IN RESPECT OF COMMERCIAL AND OTHER TRANSACTIONS OF A PRIVATE CHARACTER.**

This subject was referred for the opinion of this Committee by the Government of India during its First Session. The question referred was whether a Foreign State or a State Trading Organization should be regarded as immune from jurisdiction of the Courts in respect of commercial and other transactions which do not strictly fall within the ambit of "Governmental Activities" as traditionally understood.

2. It is observed that many of the states today do not confine their activities to the traditional functions of a State. Some of them not only own and control means of production and distribution inside the state but also enter into trading contracts with merchants in foreign countries in the exercise of their state functions. Such contracts are usually entered into on behalf of the state or a government department or a state trading organization. It is being increasingly realised that the doctrine of sovereign immunity of foreign states was not meant to include these new and extended functions which are being assumed by the governments at present. The State Department of the U. S. A. declared in 1952 that they would advise that immunity of foreign states and sovereigns should not be granted in respect of activities of this nature. The majority judgment of the U. S. Supreme Court delivered by Justice Frankfurter in the Republic of China case in 1955 gave expression to this modern trend in restricting sovereign immunity. A similar view was expressed by Lord Justice Denning in *Rahimtullah versus the Nizam of Hyderabad*—an English House of Lords decision of 1957. Judge Lauterpacht in the 1955 edition of "Oppenheim's International Law" also lends support to this view. Professor A. G. Hanbury, writing in *Current Legal Problems* in 1955 was also of the view that the traditional doctrine of sovereign immunity is getting out of date. The views taken by courts in Egypt, France, Germany and Switzerland (as set out in the Memorandum presented by the Government of India) appear to go even further along this modern trend. In these circumstances it was thought to be opportune for the Asian African Nations to consider if they should also place restrictions on the immunity granted to foreign states in respect of such activities.

3. The question was generally considered by the delegations of the participating countries during the First Session. A brief summary of the views expressed by the several delegations was given in the interim report of the Committee. As the majority of the delegations were favourably inclined to consider a restriction on the immunity of foreign states in respect of commercial transactions, a detailed questionnaire on the various aspects of the subject was prepared by the Secretariat. During this session delegations have expressed their views in the form of answers to the various questions posed in the questionnaire. A Summary of the discussion on the basis of the questionnaire is annexed to this Report.

4. All the delegations except that of Indonesia were of the view that a distinction should be made between different types of state activity and immunity to foreign states should not be granted in respect of their activities which may be called commercial or of private nature. The Indonesian delegate, however, adhered to the view that immunity should continue to be granted to all the activities of the foreign state irrespective of their nature provided they were carried on by the government itself.

5. All the delegations were agreed that a state trading organization which is a part of the government and is not a separate juristic entity should be treated on the same footing as the government proper. All the delegations were also agreed that where a state trading organization has an entity of its own under the Municipal Laws of the state, immunity should not be available to it.

6. The majority of the delegations were agreed that the trade representative of a government would not be entitled to immunity for the same reason and on the basis that a foreign government would not be so entitled. The Indonesian delegation was, however, of a contrary view.

7. Regarding the method of claiming immunity by sovereign states the majority were of the view that the certificate of the Foreign Ministry should be given considerable weight. The minority took the view that a certificate of the Foreign Office, if given, should be conclusive and binding on the courts.

8. It was recognised by all delegations that a decree obtained against a foreign state could not be executed against its public property. The property of a state trading organi-

zation which has a separate juristic entity may, however, be available for execution.

9. The Committee having taken the view of all the delegations into consideration decides to recommend as follows :—

- (i) The State Trading Organizations which have a separate juristic entity under the Municipal Laws of the country where they are incorporated should not be entitled to the immunity of the state in respect of any of its activities in a foreign state. Such organizations and their representatives could be sued in the Municipal Courts of a foreign state in respect of their transactions or activities in that State.
- (ii) A state which enters into transactions of a commercial or private character, ought not to raise the plea of sovereign immunity if sued in the courts of a foreign state in respect of such transactions. If the plea of immunity is raised it should not be admissible to deprive the jurisdiction of the Domestic Courts.

10. The memorandum presented by the Government of India on the subject, the Interim Report of the Committee adopted during the First Session and a summary of Discussions on the subject during this Session as edited by the Secretariat shall form Annexes to this Report.

11. The recommendation contained in clause (i) of paragraph 9 was adopted unanimously. The Delegation of Indonesia dissented on the recommendation contained in clause (ii) which was agreed upon by all other Delegations.

B. SEN  
Secretary to the Committee

Done at Cairo  
The 13th day of October, 1958.

(Annexure "A" to the Report on Immunity of States in respect of Commercial Transactions)

**SUMMARY OF DISCUSSIONS ON STATE IMMUNITY  
ON THE BASIS OF A QUESTIONNAIRE  
PREPARED BY THE SECRETARIAT**

The question referred to the Committee for consideration was whether a foreign state should be regarded as immune from the jurisdiction of the courts of a country in respect of liabilities arising out of commercial or other transactions which do not strictly fall within the ambit of 'governmental activities' as traditionally understood. The matter was discussed at the First Session on the basis of a Memorandum prepared by the Government of India and an Interim Report was drawn up. The U. A. R. delegation submitted a Memorandum on the subject to the Second Session.

Opening the general discussion, the Iraqi delegate, who had been elected Rapporteur-General, stated that the discussions at the last Session revealed that the majority of the delegates were of the opinion that States should not be immune from jurisdiction in such matters. He said that Article 18 of the Civil Procedure Code of his country provided that Iraqi Courts should have general jurisdiction over all persons including judicial people in the Government. He was of the view that Iraq should not be immune from the jurisdiction of foreign courts with regard to activities of a purely commercial or private character.

The U.A.R. delegate said that until the beginning of the first World War, the principle of absolute immunity of States formed a rule of International Law and this principle was accepted in all countries. After the war, however, the situation began to change. Some States drew a distinction between activities which fell within the sphere of 'governmental activities' as traditionally understood and activities which fell within the sphere of commercial transactions. Such a distinction was readily accepted in France but in other countries, such as Britain, it was accepted with difficulty. In France, since the judgment of the Cour de Cassation in 1929, the principle of immunity became qualified; French Courts accepted the view that immunity should be qualified, not only in the sphere of commercial activities but even in the sphere of private acts. In Egypt there is no general rule but the Courts appear to have accepted the view that the

principle of immunity is qualified and foreign governments are not immune in respect of all their private acts.

The Indonesian delegate was of the opinion that it was extremely difficult to distinguish between different State activities and that the adoption of any such distinction would necessitate an examination of every activity of the State to determine whether it was private or public. This would mean that the Sovereign Immunity of the State itself would be limited.

The meeting then proceeded to deal with the questionnaires in the following order :

**I. Sovereign Immunity - General Aspects.**

**Question No. 1:** Do you consider the Doctrine of Sovereign Immunity to require granting of immunity from jurisdiction in respect of all forms of State activity, or are you in favour of the view that this doctrine is limited in its application to acts which are traditionally regarded as public acts of the State ?

Burma said that the doctrine of Sovereign Immunity was considered as absolute in Burma, but she hoped that it would be limited in its application. Ceylon was of the opinion that its application should be limited to public acts of the State only. India was in favour of distinction between public and private activities and thought that immunity should be restricted as far as commercial activities are concerned. Iraq thought that a State should be subject to jurisdiction with regard to certain activities such as commercial or private acts. Japan and the U. A. R. were of the opinion that the doctrine should be limited in its application to public acts of the State. Indonesia gave her answer in the general statement.

**Question No. 2:** If you are in favour of drawing a distinction between different types of State activity for the purposes of immunity from jurisdiction, what in your opinion should be the basis for this distinction ?

Burma, Ceylon, India and Indonesia thought that there should be a distinction. Iraq and Japan were of the opinion that the State's activities could be divided into two parts : (a) Public activities and (b) Private activities. The U. A. R. said that the basis of such a distinction should be the differentiation between the acts performed by the State in its

capacity as a sovereign power and other acts even if these are non-commercial transactions.

**Question No. 3 :** Do you agree with the view expressed by some that a State by entering into trade assumes the role of a private individual, and in respect of such transactions its waiver of immunity should be presumed ?

Japan and the U. A. R. answered the question in the affirmative. Iraq did not think that the State assumed the role of a private individual by entering into trade or other private activities ; the State remained a public authority regardless of what activity it entered into. Ceylon and India agreed with Iraq. Burma did not think that any presumption would arise.

**Question No. 4 :** Has your Government either in its practice or in any declaration of policy made its position known on this question i.e. whether it regards the Doctrine of Sovereign Immunity as absolute or subject to limitations ?

Iraq, Burma, Indonesia and Japan said that their Governments had not declared their policy on this matter. The U.A.R. said that though there was no official declaration, the trend of practice was to limit State Immunity.

**Question No. 5 :** Are there any decisions of the courts in your country on this issue ? Has any foreign State been sued in your country ?

Iraq, Burma, Ceylon, Indonesia and Japan answered in the negative. India said there was a decision in 1955. The U. A. R. said there were decisions of her Courts limiting State Immunity on the basis mentioned in her answer to question 2 ; some foreign State had also been sued on the same basis.

**Question No. 6 :** Do you consider the doctrine of qualified immunity suitable for adoption at present ?

Iraq, Burma, Ceylon, India, Japan and the U. A. R. answered the question in the affirmative, whilst Indonesia made no comment.

## II. Governmental Activities of a Quasi-Public Character.

**Question No. 1 :** Does your Government engage in the purchase of materials or equipment in foreign countries which are needed for public services, or public utilities or for the maintenance of food supplies within the country ?

All the delegations answered the question in the affirmative.

**Question No. 2 :** If so, how are such transactions conducted ? Are these transactions negotiated through Government officials and entered into the name of your Government or are they conducted by state trading organizations of your country ?

Iraq, Burma, Ceylon and India said that such transactions were conducted by Government officials. Indonesia said that they were organized by the Government through a commercial firm. The U. A. R. said that they were conducted by Government officials or companies controlled by the Economic Development Organization. Japan answered the question in the negative.

**Question No. 3 :** Do you consider any claim arising out of such transactions against a Government to be outside the jurisdiction of the local courts ? Would it, in your opinion, make any difference, if the transactions were entered into in the name of a State Trading Organization and not in the name of the Government ?

Iraq, Burma, Ceylon, India and Japan answered both questions in the negative. Indonesia answered the first question in the affirmative and second in the negative. The U. A. R. was of the opinion that claims arising out of transactions of this type (i.e. purchase of materials and equipment for public services etc.) directly carried on by the Government would fall outside the sphere of local jurisdiction but claims arising out of transactions performed by State Trading Organizations or similar organizations should not be granted immunity.

**Question No. 4 :** Have your Government ever had occasion to raise the plea of immunity in respect of any claim arising out of such transactions either before the foreign courts or in respect of arbitration proceedings ?

All the delegates answered the question in the negative.

**Question No. 5 :** Is there any policy statement of your Government or any pronouncement by your courts in regard to a plea of immunity by a Foreign State in your country in respect of any claim arising out of such a transaction ?

All the delegates answered the question in the negative.

### III. Government Activities of a purely 'Private' or 'Commercial' nature.

**Question No. 1:** Does your Government own ships which are run for commercial purposes or own news agencies which also function abroad? Does your Government undertake Banking or Insurance business in foreign countries?

Iraq said that her Government had recently established a Maritime Transport Corporation and that her Government carried on banking activities in some Arab countries. Burma said that her Government owned a few ships but did not have news agency or banking activities. India said that in her country corporations, substantially owned by the Government, ran ships for commercial purposes. Indonesia said that the Indonesian Shipping Company was a Government-owned Company; the Bank of Indonesia had branches in London and Singapore and the Insurance Company was backed by Government capital. Ceylon and Japan answered both questions in the negative. The U. A. R. answered the first part of the question in the affirmative and said that there were companies controlled by the Economic Development Organization conducting banking and insurance business in some of the Arab countries.

**Question No. 2:** If such activities are undertaken by your State, are they conducted directly by the Government or through State Trading Organizations?

India and Indonesia said that such activities were conducted by State Trading Organizations and Egypt said that they were conducted by the Economic Development Organization. Burma said that she ran her shipping through shipping bodies which were part of a State Organization. Iraq said that such activities were conducted by a Government Corporation. Ceylon and Japan said that the question did not arise in their countries.

**Question No. 3:** Do you consider the doctrine of Sovereign Immunity applicable even to transactions of this nature? Should there be any distinction in principle between such activities undertaken directly by a Government and those which are done through Trading Organizations?

Burma, Ceylon, India and Japan, answered both questions in the negative. Iraq answered the first question in the negative and said that the second question did not arise in

her country. Indonesia said that a distinction should be made between government activities and activities of a State Trading Organization. The U. A. R. said that such transactions were not granted immunity even if they were carried out by the State itself.

### IV. State Trading Organizations.

**Question No. 1:** Are there any State Trading Organizations in your country? If so, are they regarded as an integral part of your Government or are they separate juridical entities under your laws having their own capital, balance sheet, and profit and loss account?

Ceylon and Japan said that they had no State Trading Organizations. India and Indonesia said that they had several such State Organizations. Burma said that she had two big State Organizations, the Timber Organization and the Agricultural Marketing Body. Iraq said that though she did not have any State Organizations, she had public ones which conducted their activities on an independent basis. The U. A. R. said that she had companies owned by the Economic Development Organization which constituted separate juridical entities with their own capital, balance sheets, and profit and loss accounts.

**Question No. 2:** Would you regard State Trading Organizations which are not separate juridical entities, their funds and assets abroad to be immune from jurisdiction? Do you consider transactions entered into by such organizations to be on the same footing as transactions made directly by a Government in its own name?

Iraq and Burma said that there were no such State Organizations in their countries but if the question did arise they would be treated on the same footing as the Government. Ceylon and India answered the first part of the question in the affirmative and the second part in the negative. Indonesia answered both parts of the question in the affirmative. The U. A. R. said that the granting of State Immunity to State Trading Organizations, which were not separate juridical entities, depended on the nature of the purposes underlying their transactions.

**Question No. 3:** In cases where the State Trading Organization has an entity of its own under the municipal laws and is empowered to function at its own risk though under the supervision of the Government, would the doctrine

of sovereign immunity be applicable in respect of the organization, its funds, assets and claims arising out of transactions entered into by it in its name ?

All the delegates answered the question in the negative.

**Question No. 4 :** If a private trading corporation was taken over by the State, could the State claim immunity in respect of the transactions done by the Corporation before and/or after such nationalisation ?

Iraq, Burma, Ceylon, India, Indonesia and Japan said that no immunity should be granted. The U. A. R. said that immunity should be granted only in respect of transactions carried out after the nationalisation.

#### V. Position of Government Trade Representatives or Agents and Representatives of State Trading Organizations.

**Question No. 1 :** Do you consider the representatives of a Government whose sole functions are in the sphere of Trade such as Trade Delegations, Missions or Trade Commissioners entitled to (a) any personal immunity and (b) immunity in respect of trading transactions entered into by them on behalf of their Governments ?

Iraq said that regarding (a) reciprocally certain immunities could be granted but regarding (b) no immunity should be granted. The U. A. R. answered both parts of the question in the negative. Indonesia said that regarding (a) immunity was not granted but regarding (b) theoretically they could be immune. Burma, Ceylon, India and Japan expressed the same views as Iraq.

**Question No. 2 :** Do you consider a Diplomatic Officer entering into a commercial transaction on behalf of his Government to be entitled to diplomatic immunity in respect of such transactions ?

Burma, Ceylon and India answered the question in the negative. Indonesia and Japan answered the question in the affirmative. Iraq answered the question in the affirmative and said that it was necessary to grant diplomatic agents such immunity in order to safeguard their proper functioning. The U. A. R. said that a diplomatic officer was not entitled to immunity regarding such commercial transactions because he was not acting in this respect in his capacity as a diplomatic agent.

**Question No. 3 :** Are the representatives of State Trading Organizations not having separate juristic entity entitled in your opinion to immunity in respect of their official acts including entering into transactions on behalf of the organizations ?

Iraq, Burma, Ceylon, India, Indonesia and Japan answered the question in the negative. The U. A. R. said that the application of immunity to the representatives of State Trading Organizations, not having separate juridical entity, depended on the nature of the purposes of such transactions.

**Question No. 4 :** Do you consider the representatives of State Trading Organizations having a separate entity entitled to any immunity at all ?

All the delegates answered in the negative.

**Question No. 5 :** Do you consider a private individual employed by a State or a State Trading Organization for negotiating a particular transaction, entitled to plead his principal's immunity as a bar to local jurisdiction ?

Iraq, Burma, Ceylon and India were in doubt whether an immuned person could be sued. Indonesia said that such a person could be granted immunity. The U. A. R. said that the application of immunity depended on the nature of the transaction as aforesaid. Japan answered the question in the negative.

#### VI. Suits against Foreign States, State Trading Organizations and their Representatives.

**Question No. 1 :** In cases of suits against a foreign State, a State Trading Organization or their representatives where a plea of immunity is raised, how in your opinion should such a plea be decided...should it be left to the courts to come to a decision or should a certificate from the Foreign Office be treated as conclusive on the issue ?

Iraq, Burma, Ceylon, India, Indonesia and Japan were of the opinion that it should be left to the courts to come to a decision but a certificate from the Foreign Office should be obtained and the certificate should be given due weight. The delegations of India and Indonesia were of the view that the certificate might be treated as conclusive and binding on the Courts. The U. A. R. said that it should be left to the discretion of the Courts.

**Question No. 2 :** In case where a suit is held to lie against a foreign State or a State Trading Organization on whom should the service of summons be effected when the State concerned has only Diplomatic or Consular representatives in the country where the suit is filed ?

Iraq and Burma said that in the case of a State having a diplomatic representative there was no difficulty, but if there was no diplomatic representative it should be left to the Foreign Office to decide as to how the service was to be effected. Ceylon said that it should be based on the terms and the law of contract. India said that it should be done through an agent ; if this was not possible, it could be posted. Indonesia and Japan said that it should be done through diplomatic channels or through the head of the organization. The U.A.R. said it could be done through diplomatic channels.

**Question No. 3 :** In cases where a decree is passed how in your opinion should it be executed against the foreign State ? Can the public property of a foreign State situated within the jurisdiction of the court be attached or sold in execution of such a decree even though under general principles of International Law such properties are immune from seizure ?

Iraq answered the question in the negative. Burma did not answer. Ceylon, India, Indonesia and Japan said that it should be done through diplomatic channels. The U. A. R. said that when a decree is passed against a foreign government, it could be executed as regards its private property existing within the territory of that State. The question whether execution could be made on its private assets abroad, depended on the law of the foreign State or the law of the State making the decree.

**Question No. 4 :** What would be the position in cases of execution of decrees against State Trading Organizations ?

Iraq, Ceylon, India and Indonesia said that as there was no difference between the State and a State Trading Organization with regard to granting immunity, the position would be the same with regard to the execution of decrees. Burma and Japan said that if the State Trading Organization was a distinct entity, they would not hesitate to seize its property if it was situated within their country. The U. A. R. said that the execution of a foreign decree could be made against a State Trading Organization having a separate judicial entity. In the case of a State Trading Organization not having a separate

judicial entity, the rules applicable to a foreign State would be applicable.

## VII. Steps Towards Solution of the Problem.

**Question No. 1 :** In view of the fact that opinions vary on the question of application of the Doctrine of Sovereign Immunity in respect of commercial or quasi-commercial transactions of a State, would you be in favour of conferring jurisdiction on an international tribunal to decide suits arising out of such transactions rather than on the Municipal Courts ?

Iraq said that she would have no objection provided it was universally agreed to. Burma, Ceylon, India and Japan suggested the drawing up of a contract providing for arbitration. Indonesia said that in view of the fact that municipal courts were slow, she preferred an international tribunal as its decisions would be made much quicker. The U. A. R. suggested that municipal courts should remain competent regarding pleas of immunity but the parties could be allowed to resort to arbitration.

**Question No. 2 :** In view of the difficulty in the execution of judgments that may be pronounced against foreign States would you be in favour of a multilateral convention whereby States who are parties would agree (a) to waive immunity in respect of claims arising out of specific categories of transactions entered into by a State or a State Trading Organization, (b) to accept service of summons through the Diplomatic Representative, (c) to satisfy any decree that may be passed against it or a State Trading Organization, (d) to reciprocally enforce such decrees through its own courts and (e) to allow its property or the properties of the State trading agency, as the case may be, to be attached or sold in execution.

Iraq said that she agreed that such a convention was concluded. Burma, Ceylon, India, Indonesia and Japan said that it should be done by bilateral agreement. The U. A. R. said that the conclusion of such a multilateral convention was premature in the present state of international relations.

(Annexure A (2) to the Report on Immunity of States  
in respect of Commercial Transactions)

SUPPLEMENTARY STATEMENT  
CONCERNING IMMUNITY OF STATES  
IN RESPECT OF COMMERCIAL TRANSACTIONS

BY

The Member for Japan Dr. Kenzo Takayanagi.

1. If we take the phrase "State Trading Corporation" in a wide sense, there are such organizations as the "Salt and Tobacco Monopoly Corporation", "Railway Corporation", "Telephone and Telegraph Corporation", and others. They are juridical entities separate from the Government having their own capital, balance sheet, and profit and loss account.

But there is no Corporation solely engaged in foreign trade. When the above-mentioned State Trading Corporations conduct transactions, they do not conduct such transactions themselves. They use the intermediary of private mercantile concerns who become parties to such transactions. No occasion, therefore, arises for invoking State immunity on their part.

2. When our Government effect transactions, they do not conduct such transactions directly through their officials, but through the intermediary of private mercantile companies, who become parties to such transactions. Here also no occasion arises for invoking State immunity on the part of our Government.

3. It will be seen from the above, that the policy of the Japanese Government and of Japanese State Trading Corporations is to leave the conduct of trade transaction to private concerns, not conducting such transactions by Government officials or by the officers of such Corporations.

4. When Japanese private concerns conduct transactions with foreign State trading corporations or with foreign Governments, it would be extremely unfair to those concerns if the foreign State trade corporations or foreign Governments claim immunity. Therefore we support the contention that trading corporations ought not to claim immunity. However, we would go a step further and contend that any foreign Government which enters into mercantile transactions with Japanese private concerns ought not to, in fairness, invoke State immunity.

For these reasons, we are opposed to the criteria based upon a distinction between the acts of a State Trading Corporation with a separate entity and the acts of a Government.

5. In this connection, we may draw your attention to Article 18 paragraph 2 of the Treaty of Commerce and Navigation between Japan and the United States of America entered into on the 30th of October 1953, which provides as follows :

"No enterprise of either party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the other party, claim or enjoy, either itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein."

It will be seen that it is the view of both the American and Japanese Governments that State immunity should not be invoked whether the parties to such transactions are State Trading Corporations or the Government itself. We are of the opinion that the policy enunciated in this treaty is a correct and fair one.



(Annexure "B" to the Report on Immunity of States  
in respect of Commercial Transactions)

GOVERNMENT OF INDIA  
MINISTRY OF EXTERNAL AFFAIRS

Memorandum on State Immunity

1. The question referred for the views of the Asian-African Legal Consultative Committee is whether a foreign state should be regarded as immune from the jurisdiction of the courts of a country in respect of liabilities arising out of commercial and other transactions which do not strictly fall within the ambit of "governmental activities" as traditionally understood.

2. It is to be observed that many of the states to-day do not confine their activities to the normal functions of a state as hitherto understood. Some of them not only own and control all means of production and distribution inside the state, but also enter into trading contracts with merchants in foreign countries in the exercise of their state functions. Such contracts are usually entered into on behalf of the state or a Government department or a state trading organisation by an official of the Embassy of the state concerned, or by a Government official specially deputed for the purpose. Many such contracts have been entered into with merchants or companies in India and other participating countries by or on behalf of foreign states and the question for consideration is whether the doctrine of 'state immunity' should be applied in respect of claims against foreign states arising out of such transactions so as to exclude the jurisdiction of local courts. According to the traditional doctrine of sovereign immunity in international law, no sovereign state can be subjected to the jurisdiction of the courts of another state and this means that no foreign state or an official organ of that state can be sued in the courts of another state in respect of any of its liabilities without its express consent. The foreign state can, however, always bring in an action against the individual in respect of his liabilities arising out of the same contract or agreement. As an individual or a company has no status in international law, he cannot approach any international forum for redress of his grievance. The only step he can take is to approach his own Government to prefer a claim on the foreign Government on his behalf. International claims are very cumbrous in procedure

and results are often doubtful and again it is impracticable for a Government to make an international claim for every breach of contract. From time to time traders entering into contracts with foreign states have insisted on insertion of a clause in the contract to the effect that the foreign Government would agree to arbitration in the country of the trader. In law, however, even this clause is of no avail as no execution can be levied by the courts to enforce an arbitration award if the foreign state raises a plea of 'sovereign immunity' and this plea, it would appear, can be raised at any stage in spite of the clause in the contract. (See *Duff Development Corporation V Government of Kelantan*, 1924 A.C. 797). It may be mentioned that many states voluntarily submit themselves to arbitration or jurisdiction of the courts in respect of such claims. There is no dispute regarding the right of a state to claim immunity in respect of acts done in the performance of its governmental or public functions. There is also no question as to the immunity of the diplomatic representatives, but the question which seriously arises for consideration is whether a foreign state should enjoy complete immunity from the jurisdiction of the courts of a country in respect of acts which are not necessary for governmental functions.

3. The practice followed in some of the European countries and in the United States of America is set out hereunder for consideration of the Consultative Committee :—

In so far as Britain is concerned, the Government had, except in the early case of the *Parlement Belge* (5 P.D. 197), refrained from taking up any definite stand and have left the matter to the courts to decide. From the decided cases it is clear that in England although so far no sovereign state has been subjected to the jurisdiction of the courts of the country, the judges of the highest tribunal (The House of Lords) have often doubted the correctness of indiscriminate application of the doctrine of sovereign immunity in respect of trading activities of a state. There is no decision of the English courts which affirmatively lays down the principle that a state is immune from the jurisdiction in respect of its activities which fall outside the sphere of "acts of state". Two of the learned Law Lords in the *Christina* case 1938 A.C. 485, have observed that it is no part of the law of the land that an ordinary foreign trading vessel, owned by a foreign sovereign is immune from jurisdiction, and *Evershed M. R.* in the *Dollfus V The Bank of England* 1950, All England Reports 750,

referring to the judgment in the Christina case stated "sharing Lord Maugham's misgivings, I think the extent of the immunity should be jealously watched". As regards the U. S. A., no conclusive view has so far been taken by the courts on this question. In fact, two decisions of the U. S. Supreme Court, namely, the Pesaro case (271 U. S. 562) and the latter case of Mexico V Haffman (324 U. S. page 30) appear to be somewhat in conflict. The Mexico case, however, establishes one principle which is gaining ground in almost all the countries i.e., the courts will be guided by the attitude of the Executive Branch of the Government in matters of immunity. The views of the U. S. State Department appear to be in favour of restricting immunity in respect of commercial transactions of foreign states as set in a recent communication from the Legal Adviser of the State Department to the Attorney General of the United States. The views expressed there are consistent with the past attitude of the U. S. Government which is borne out by the following statement of the Secretary of State Kellogg to the Attorney General. "It has long been the view of the Department of State that agencies of foreign Governments engaged in ordinary commercial transactions in the United States enjoy no privileges or immunities not appertaining to other foreign corporations, agencies and individuals doing business here". (See Hackworth's Digest, Volume II Page 481). There is one principle which can be gathered from the decisions of the U. S. courts (although there is no authority of the Supreme Court of U. S. on this point) i.e., if the organisation claiming immunity has a separate juristic existence apart from the State, it will not be entitled to the immunity although it may represent a foreign Government in certain matters.

The views taken by the courts of France, Italy and Egypt, appear to be more decisive. The highest court of the French Republic (Cour de Cassation) in a decision given as early as 1929, rejected the claim to immunity put forward by the Russian Trade Delegation in a suit for breach of contract and damages. The U. S. S. R. had emphasised that the action against the Trade Delegation should be dismissed on the ground that the foreign trade in Russia was a State monopoly, exercised under the authority of Peoples Commissariat through governmental organisations, including trade delegations abroad. The court held that the widespread functions in all fields on the part of the Russian Trade Delegation could only be

regarded as ordinary trading transactions which had nothing in common with the principles of State Immunity (See USSR V Association France Export. Annual Digest 1929-30, case No. 7 and Chaliapine V USSR. Annual Digest 1935-37 No. 225). The Italian courts have drawn a distinction between the public acts of a State (*Jure Imperii*) and those falling within private acts such as trading activities. The court of Rome in *Storelli V the Government of French Republic* had held that there was an implied waiver of immunity in cases where the foreign State had instituted relationships giving rise to ordinary business intercourse through an agency established by its own representatives. In Egypt the Commercial Tribunal of Alexandria in a judgment delivered on the 29th March 1943 held that the immunity of foreign States from jurisdiction was limited to acts done in the exercise of their sovereign power. The court held that contracts made by Commissariat General, an organ of the Spanish Republic, for the purchase in Egypt of 2000 tons of rice was an ordinary commercial transaction and the fact that the Commissariat General was an organ of the State, did not deprive the transaction of its commercial character. The decision of the Egyptian mixed court of Cassation in the *Egyptian Government V Palestine State Railway* was also to the same effect.

There is no general agreement even among text writers on this question. Fenwick in his "Treaties in International Law" advocates complete immunity as in his view a State jurisprudentially is one and the acts of a State can have but one end in view, that is, the defence of public interest and, therefore, all the acts are public acts. The arguments advanced by the learned author in support of this theory are: (i) citations of foreign sovereign in the courts of another state are contrary to custom and equality of all states, (ii) distinction between public and non-public acts is becoming increasingly meaningless in modern society. On the other hand Fauchille, Hyde and De-la-Pradelle advocate the theory of qualified immunity and the arguments advanced by them are (i) grant of immunity is of an exceptional nature and should be confined to the rational underlying the subject of immunity, (ii) old cases of absolute immunity were formulated to meet the needs of Mediæval civilization and (iii) it is possible to make a differentiation between the acts done in pursuance of public interest and military purposes and those which are done for mere commercial purposes.

From a review of the position as prevalent in other countries, it is clear that it is neither the accepted principle of the law of nations, nor has it been affirmatively laid down by any country that a sovereign State is immune from jurisdiction of courts in respect of its commercial and other non-governmental activities. On the other hand there is considerable authority in the opposite direction. If it is decided to adopt a practice restricting the grant of immunity to foreign states in respect of their trading activities, no objection could legitimately be taken. Even on principle it appears that the time has now come when a distinction between the various forms of state activities for the purposes of immunity is desirable and indeed essential. The activities that are undertaken by modern states cannot be regarded as state activities in the sense it was understood and it would indeed be stretching the point too far if the principle of sovereign immunity was applied to all such activities undertaken by a state today. If a sovereign state chooses to trade, it should be in no better position than an individual or company engaged in foreign trade. To allow immunity in such cases will result in unduly putting a sovereign state in a better position than a trading individual or a company for which preferential treatment there is no warranty in international law or usage. It has already been observed that many states do not take shelter behind the cloak of sovereign immunity in respect of trading transactions and it may well be asserted that a state by taking upon itself the role of a trader must be deemed to have waived its claim of immunity in respect of such transactions.

*(Annexure "C" to the Report on Immunity of States in respect of Commercial Transactions)*

**INTERIM REPORT OF THE COMMITTEE**

ON

**Restrictions on Immunity of States in respect of Commercial Transactions entered into by States or State Trading Corporations.**

**(Adopted at the First Session of the Committee).**

1. The Committee at its seventh meeting held on Wednesday April 24, 1957, considered Item No. 5 of Part III of the Agenda, which was referred by the Government of India.

2. The Committee considered the Memorandum presented by the Government of India and specially considered the question formulated in such Memorandum. The question was:

(a) should a foreign state be regarded immune from the jurisdiction of the courts of a country in respect of liabilities arising out of commercial and other transactions which do not strictly come within the orbit of "governmental activities" as trade is generally understood.

3. The Committee took note of statements made by the Member of India and the views of the Delegations of Burma, Ceylon, Indonesia and Japan on the specific question raised in the Indian Memorandum. The Committee also noted that the Delegations of Iraq and Syria wished to give further consideration to the question.

4. A brief summary of the views expressed by the several Delegations is as follows:

(1) The Indian Member considered that in principle this was a question of immunity of states, but immunity from legal process should not be extended to commercial activities of states as in such ventures no question of dignity of sovereign states arises. If a state enters the area of trade activities, it should be prepared, if the occasion so arises, to suffer the same processes of law as a citizen would be subjected to. He also observed that there was no uniform or settled practice in different countries, but it could be stated that the weight of opinion is against extending immunity from suits on matters of

commerce and trading. He recalled that in England the courts have not expressed any clear opinion, but in the U. S. A. the executive government of that State decides whether in a particular case such immunity should be available and also the limits of immunity. He expressed as his view that with states participating more and more in commercial functions, it is desirable that the immunity should not operate on such non-governmental activities.

- (2) The Delegate of Burma in agreeing with the views expressed by the Delegate of India observed that if a state pursues activities other than governmental, the idea of sovereignty as relating to such activities should not exist.
- (3) The Delegate of Ceylon emphasised that the principle underlying immunity of states is not the dignity attaching to sovereignty but the provision of facility to transact governmental business, and immunity should not extend to cover non-governmental activities like trade and commerce, whether such states are monarchies or any other form of government. In these activities states and individuals should be treated alike.
- (4) The Delegate from Indonesia expressed himself in favour of the immunity of processes in courts of foreign countries being enjoyed by states. It was recognised that in the present situation of most countries, a state should not seek immunity from process in its own court, though historically at different times sovereigns had claimed immunities and in most countries today the states are subject to jurisdiction of courts in their own countries. It was argued that such waiver of immunity limited only to the courts established by the state itself is commendable, but withdrawal of immunity from states sought to be proceeded against in foreign courts would result in embarrassed international relations and also involve inconvenience to the defendant states as they would have to contend with difference in procedure, language and laws. It was, therefore, urged that immunity of states from process of foreign countries should be upheld.

- (5) The Delegate of Iraq noted the arguments put forward, but wished for time to consider the matter further.
- (6) The Delegate of Syria took up the same position as the Delegate of Iraq.
- (7) The Delegate of Japan supported India, Burma and Ceylon. His view was that when a state goes to market, it should subject itself to the laws of the market.

5. The conclusion is that majority of Delegations favour the view that no immunity should be granted though no final opinion is put forward by two of the Delegations. The position of the Delegate of Indonesia, however, is definitely in favour of retention of immunity of states from process in foreign courts.

6. The recommendation of the Committee is that the question be further considered and the decision be taken at its next session.

7. The Memorandum presented by the Government of India will form part of this report.

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## OTHER SUBJECTS

### EXTRADITION

This subject was referred to the Committee by the Governments of Burma and India for consideration at the First Session. The Governments of Burma, India and Japan also submitted memoranda on the subject. During the First Session the Committee generally discussed five main topics which had been set out in the Indian memorandum on this subject viz. (i) question of extradition of fugitive criminals in the absence of a treaty; (ii) extradition by a State of its own nationals and nationals of Third States; (iii) minimum procedure that has to be followed before a person is extradited; (iv) offences which may be considered extraditable; and (v) nature of crimes which may be regarded as political. The Committee at that session by a majority of five made an interim report on the subject dealing with points (iii), (iv) & (v). It expressed no opinion on questions (i) & (ii). The Committee decided to reconsider the whole subject during its Second Session

At the Second Session the Government of the United Arab Republic presented a memorandum on the subject and the discussion proceeded on the basis of a questionnaire prepared by the Secretariat of the Committee. There was a large measure of agreement between the various delegations on the points at issue and an interim report was drawn up by the Committee. An interesting question arose regarding the definition of "political offenders." It was urged by one of the delegations that for the purpose of extradition the term "political offender" should not mean to include a foreign national who organises or indulges in subversive activities within the territory of a State. It was urged that if such a person succeeded in escaping from the country where he had organised such activities he should be handed back by the government of the country where he had taken refuge if the extradition of such a person was requested by the aggrieved state. The Committee did not find time to discuss the subject in all its aspects in detail and it was therefore decided to postpone submission of the final report on extradition until the Third Session of the Committee.

### DUAL CITIZENSHIP

This subject was referred to the Committee by the Government of the Union of Burma. The Committee during

its First Session briefly touched upon one aspect of the problem i. e. possible elimination or reduction of dual nationality and postponed further consideration of the subject. At the Second Session the Government of the United Arab Republic presented a memorandum. The subject was discussed on the basis of a questionnaire prepared by the Secretariat of the Committee and the main topics which were considered were: (i) acquisition of Dual Nationality; (ii) position of a resident citizen who is at the same time a citizen of another State with particular reference to rights of such a citizen; (iii) position of a non-resident citizen possessing dual nationality; and (iv) position of an alien possessing dual nationality. The delegations were of the view that it would be desirable to reduce the number of cases of persons having dual nationality by means of enacting domestic legislation or concluding international conventions. It was also felt that unless there was uniformity in nationality laws it would be difficult to achieve the desired objective.

The Delegation of the United Arab Republic presented the draft of an agreement for elimination and reduction of dual nationality. The Committee decided that the Secretariat should prepare and present a report on this subject which together with the draft prepared by the United Arab Republic Delegation should be considered at the Third Session of the Committee.

### STATUS OF ALIENS

This subject was referred to the Committee for consideration by the Government of Japan. The topics which were discussed during the Second Session were: (i) admission of aliens including the question of so-called right of asylum; (ii) position of aliens after reception with particular reference to the alien's personal freedoms, right to property, taxation and compulsory service; (iii) protection by home State of the alien; (iv) restriction on departure of aliens; (v) expulsion or deportation of aliens and (vi) international responsibility of states concerning treatment of aliens with reference to acts of state organs and of private individuals. The applicability of the Calvo Doctrine was also considered. A memorandum on this subject was presented by the Government of the United Arab Republic. The Committee directed the Secretariat to prepare a report on this subject in the light of the discussions held for consideration at the next session.

**RECOGNITION OF FOREIGN DECREES IN  
MATRIMONIAL MATTERS**

This subject was referred by the Government of Ceylon for consideration as being a matter of common interest between the participating countries. A memorandum prepared by the Delegation of Ceylon acting as Rapporteur on the subject was presented before the Committee but as the delegations wished to have further time to study the report, the matter was postponed until the next session.

**FREE LEGAL AID**

The Delegation of Ceylon was requested to continue to work as Rapporteur on this subject and to present its report at the next session.

**REPORT OF THE INTERNATIONAL LAW COMMISSION,  
9th & 10th SESSIONS**

The International Law Commission had during their 9th and 10th Sessions considered the subjects of Diplomatic Immunities and Arbitral Procedure. These reports were placed before the Committee in accordance with Article 3 (a) of its Statutes. Since the question of Diplomatic Immunities had been considered separately by the Committee during its Second Session and it had taken note of the report of the International Law Commission on this subject, the Committee did not deem it necessary to make any comments on the reports of the 9th and 10th Sessions of the International Law Commission on Diplomatic Immunities. As regards the subject of Arbitral Procedure, the Committee directed its Secretariat to do the preparatory work for discussion at the next session.

Appendix "A"

**ASIAN - AFRICAN LEGAL CONSULTATIVE COMMITTEE  
STATUTES**

**Article 1 :**

The Asian - African Legal Consultative Committee shall consist of Seven original members nominated by the Governments of Burma, Ceylon, India, Indonesia, Iraq, Japan and the United Arab Republic. The Committee may from time to time admit to membership persons nominated by the Governments of other Asian African countries.

**Article 2 :**

The Government of each of the participating countries shall nominate a legal expert to serve on the Committee as Member. An alternate member may also be nominated if considered necessary.

**Article 3 :**

The Committee shall function for an initial period of five years and its purposes shall be as follows :

- (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 ;
- (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
- (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.

**Article 4 :**

The members of the Committee may exchange views by correspondence either directly or through the Secretariat on matters that are under consideration. The Committee shall normally meet once every year and such meetings shall be held in the participating countries by rotation.

**Article 5 :**

The Committee shall have a permanent Secretariat at such place as may be determined by the Committee for facilitating mutual consultations between the members and for achieving the purposes of the Committee generally. The Committee shall appoint a qualified person as its Secretary who may be authorized to act on its behalf on such matters as the Committee may determine; and until the Secretary is appointed by the Committee the Secretary to the International Legal Conference at New Delhi shall perform the functions of the Secretary to the Committee with a temporary Secretariat at New Delhi.

**Article 6 :**

The expenses incurred in connection with the meetings of the Committee other than the cost of travel of the members for the purpose of attending the meeting shall normally be met by the participating country in which the meeting is held; the expenditure incurred on the Secretariat shall be borne by the participating countries in such proportions as may be agreed and the amount shall be paid annually in advance in the account to be maintained in the name of the Committee.

**Article 7 :**

The Committee may enter into arrangements for consultations with such International Organizations, authorities and bodies as may be considered desirable.

**Article 8 :**

The Committee may from time to time frame such rules as may be considered necessary for carrying into effect the purposes of the Committee.

**Appendix "B"****ASIAN - AFRICAN LEGAL CONSULTATIVE COMMITTEE  
STATUTORY RULES****1. Short Title :**

These rules shall be called the Asian - African Legal Consultative Committee Statutory Rules.

**2. Interpretation :**

In these Rules unless the context otherwise requires :—

- (a) "Committee" means the Asian - African Legal Consultative Committee.
- (b) "Liaison Officer" means a person appointed by the Government of a participating country under the provisions of these rules.
- (c) "Member" means a person who is so nominated by the Government of a participating country under the provisions of Article 2 of the Statutes and includes an Alternate Member.
- (d) "Original Member" means a Member nominated by the Government of any of the countries enumerated in Article 1 of the Statutes.
- (e) "Participating country" means a country the Government of which has accepted the Statutes and whose nominee has been admitted to the Membership of the Committee.
- (f) "President" means the person who has been elected as such under the provisions of these rules and includes any other person temporarily performing the functions of the President.
- (g) "Secretariat" means collectively the staff appointed by the Committee.
- (h) "Secretary" means the person so appointed by the Committee and includes any person temporarily performing the functions of the Secretary.

**3. Election and functions of President :**

(1) The Committee shall at each Annual Session elect a member in his representative capacity as the President of the Committee and the person so elected shall hold office until the election of another President.

(2) The President shall perform such functions as are specified in these rules.

(3) The Committee shall also elect a member in his representative capacity to be the Vice-President of the Committee and the Vice-President shall perform all the functions of the President if the latter for any reason is unable to perform them.

#### 4. Admission of Members :

The Committee may by a decision supported by a two third majority inclusive of two third of the original members admit to membership a person nominated by the Government of an Asian or African country, if such a Government by a written communication addressed to the Secretary of the Committee intimates its desire to participate in the Committee and its acceptance of the Statutes and the Rules framed thereunder. Such decision may be taken either by circulation or by means of a resolution adopted in any of its Sessions.

#### 5. Nomination of Members :

(1) Each of the participating countries shall nominate a legal expert to serve on the Committee as a Member and may at its discretion also nominate an Alternate Member. Intimation of such nomination shall be given forthwith to the Secretary of the Committee.

(2) A person nominated as Member or Alternate Member shall hold office until his nomination is revoked by his Government and intimation to that effect is received by the Secretary of the Committee.

#### 6. Functions of the Committee :

(1) The Government of a participating country by communication addressed to the Secretary may refer for the opinion of the Committee any legal problem together with a Memorandum setting out the questions on which the views of the Committee are sought.

(2) The Legal problems so referred under clause (1) shall be placed by the Secretary on the provisional agenda of the next Session of the Committee and the Committee shall, subject to the question of priority to be attached to the subject, consider the problem and shall make such recommendations as the Committee may determine.

(3) Notwithstanding anything contained in clause (2) if a legal problem referred for consideration of the Committee under clause (1) in the opinion of the Government referring the problem is of an urgent nature the Secretary shall at the request of the Government concerned after informing the President obtain by correspondence the individual opinions of the members on the problem so referred. He shall then transmit the views so obtained to the President, the Government concerned, and the Governments of all the participating countries.

(4) The Committee may at the request of the Government of any of the participating countries or on the motion of any of the members take up for consideration any legal matter of common concern and may express such views or make such recommendations as may be thought fit.

(5) (a) At each Annual Session of the Committee the Secretary shall place before it a Report containing the work done by the International Law Commission of the United Nations at its session immediately preceding the Session of the Committee together with any Memoranda that may be received by the Secretary on this subject from the Governments of the participating countries.

(b) The Secretary may at each Annual Session of the Committee submit reports on the work done in the year immediately preceding the session of the Committee by other institutions and international organisations with whom consultative arrangements have been concluded.

(6) The Committee shall consider the Report submitted to it and may make such recommendations or send their views to the Governments of the participating countries as the Committee may determine.

(7) The Committee may at any of its Sessions finally dispose of a subject placed on the Agenda or may reserve it for further consideration, or may postpone its consideration.

(8) The Committee may in respect of a subject reserved for further consideration adopt an interim Report setting forth its provisional views or interim recommendation on the subject, and may appoint a Member as Rapporteur on the subject. The Rapporteur so appointed shall at the subsequent meeting of the Committee place before it his provisional or final Report on the subject. The Rapporteur may seek the views of



the other members of the Committee and consult them in the preparation of his report.

(9) The members of the Committee may by correspondence consult one another on any matter that is under consideration of the Committee.

#### 7. Sessions of the Committee :

(1) The Committee shall normally meet once annually in the participating countries by rotation.

(2) The date and place of such Sessions shall either be determined by the Committee at its previous Session or be left to the Secretary after consulting the Governments of the participating countries.

(3) At each Session of the Committee the Government of a participating country may at its discretion in addition to its member and alternate member send such number of advisers as it thinks fit.

(4) The Committee may at its discretion admit to its Sessions observers from non-participating countries and from such inter-Governmental or non-Governmental organisations with whom consultative arrangements have been made by the Committee under Article 7. Such observers shall not address the meeting or take part in the discussions unless invited to do so by the Committee. The Committee may however declare any of its meetings during a Session to be a closed meeting to which observers shall not be admitted.

(5) The Committee may also at its discretion invite a recognised expert to attend any of its meetings and assist in its deliberations. The expert so invited shall act in his individual capacity.

(6) The Committee may, if it thinks fit, appoint sub-committees for detailed consideration of the subjects.

(7) All the meetings of the Committee shall be presided over by the President and in his absence by the Vice-President.

(8) All decisions or recommendations of the Committee shall be by a simple majority except in cases specified under the rules. The dissenting views expressed by any member or members shall also be recorded. An alternate member shall not vote on the resolutions if the member is present.

(9) The proceedings of all the meetings of the Committee together with resolutions and dissenting opinions shall be furnished forthwith to the Governments of the participating countries.

#### 8. Secretariat :

(1) The Committee shall have a permanent Secretariat at such place as may from time to time be determined by the Committee.

(2) The Committee shall as soon as may be appoint as its Secretary a national of any of the participating countries who is a legal expert with administrative experience.

(3) The Committee may, if for financial or any other reason considers it expedient so to do, keep the post of the Secretary in abeyance, and appoint a person qualified to be the Secretary under the preceding clause to perform the functions of the office. A person so appointed shall be known as the Acting Secretary.

(4) The Secretary or the Acting Secretary shall receive such salaries, travelling and other allowances and such other emoluments as may be determined by the Committee.

(5) The Committee may authorise the Secretary to appoint such technical and other staff as may be necessary on such remuneration as may be determined from time to time by the Committee.

(6) The Secretary shall be responsible to the Committee in respect of the work of the Secretariat.

(7) The Secretary shall have the right to address the meetings of the Committee on all administrative and organisational matters and he may make statements and furnish information during deliberations of the Committee or of a Sub-committee if called upon to do so. The Secretary may be represented by a member of the Secretariat for this purpose.

(8) The Secretary shall be authorised to act on behalf of the Committee in all correspondence, to take decisions on all administrative matters and to perform such other functions as are specified in these rules.

(9) The Secretary shall however in the performance of his duties act in consultation with the Liaison Officers appointed under Rule 9 except in routine and administrative matters.

The Secretary shall report to the Liaison Officers at their meetings any action taken by him in this regard.

#### 9. Liaison Officers :

(1) Each of the participating countries shall appoint an officer to act as Liaison Officer.

(2) The Liaison Officers shall act as the channel of communication between the Secretariat of the Committee and the Governments of the participating countries.

(3) The Liaison Officers shall meet as often as necessary and all decisions of Liaison Officers shall be taken at meetings by a simple majority of the total number of Liaison Officers.

#### 10. Finance and Expenditure :

(1) The participating country in which the Session of the Committee is held shall be responsible for all expenses in connection with the organisation of the Session including the cost of board and lodging of the members and alternate members during the Session of the Committee.

(2) The cost of travel of the Member, Alternate Member and Advisers shall be the concern of each participating country.

(3) The expenditure incurred on the Secretariat shall be met by the participating countries in such proportions as may be agreed on the recommendation of the Committee subject to a minimum contribution of Rs. 5000/- per year Indian Rupees or equivalent thereof. Such contributions shall be paid in advance annually.

(4) The cost of travel and other expenses incurred by the Secretary or the staff of the Secretariat shall be met out of the funds placed at the disposal of the Committee for the purposes of the Secretariat under clause (3).

(5) The Committee shall maintain an account in a Recognised Bank in its name at the place where the Secretariat is situated and the contributions of each of the participating countries under clause (3) shall be deposited in this Account. The Account so maintained shall be operated by the Secretary or such other person as may be authorised by him in consultation with the Liaison Officers.

(6) The Secretary shall be authorised to incur such expenditure on the Secretariat and for other purposes of the

Committee as may be necessary provided that any item of expenditure over one thousand Indian Rupees or equivalent thereof shall require to be sanctioned at a meeting of the Liaison Officers.

(7) The Account of the Committee shall be audited once annually by an Auditor appointed by the Liaison Officers and the accounts so audited shall require to be passed at a meeting of the Liaison Officers.

#### 11. Consultations with other Organisations :

(1) The Committee may from time to time direct the Secretary to communicate with such international, regional, inter-Governmental or non-Governmental Organisations or committees engaged in legal work with a view to enter into suitable arrangements for consultations.

(2) (a) The Committee may nominate as observer any of its members or the Secretary or a member of the Secretariat as the case may be to attend the meetings of such organisations or committees with whom arrangements for consultations may have been entered into.

(b) When the Committee is not in session such nomination may be made by the Liaison Officers.

(c) The Committee or the Liaison Officers may in the event of non-availability of a person specified in sub-clause (a) nominate a member of the mission of any of the participating countries to attend such meetings.

**SECOND SESSION**  
**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**  
**CAIRO**

**RESOLUTION NO. 11(1)**

**CONSIDERING** that under the provisions of clause (1) of the Statutory Rules the Committee is required *to elect at* each Annual Session a Member in his representative capacity as the President of the Committee;

**AND CONSIDERING** that the Delegation of Indonesia has moved for the election of the Member and the Leader of the Delegation of the United Arab Republic in his representative capacity as the President of the Committee, which motion has been duly seconded by the Delegation of India;

**THE COMMITTEE UNANIMOUSLY DECIDES** *to* elect the Member and the Leader of the Delegation of the United Arab Republic to be the President of the Committee.

**(Passed on 1.10.1958)**

**SECOND SESSION**

**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**

**CAIRO**

**RESOLUTION NO. 11(2)**

**CONSIDERING** that under the provisions of clause (3) of Rule 3 of the Statutory Rules the Committee is required to elect at each Annual Session a Member in his representative capacity as the Vice-President of the Committee;

**AND CONSIDERING** that the Delegation of Iraq has moved for the election of the Member and the Leader of the Delegation of Ceylon in his representative capacity as the Vice-President of the Committee, which motion has been duly seconded by the Delegation of Burma;

**THE COMMITTEE UNANIMOUSLY DECIDES** to elect the Member and Leader of the Delegation of Ceylon to be the Vice-President of the Committee.

**(Passed on 1.10.1958)**

**SECOND SESSION**  
**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**

**CAIRO**

**RESOLUTION NO. 11(3)**

**CONSIDERING** that under Article 1 of the Statutes the Committee is empowered to admit to membership persons nominated by the governments of Asian-African Countries;

**AND CONSIDERING** that the Government of Sudan in accordance with Rule 4 of the Statutory Rules has by a written communication addressed to the Secretary of the Committee intimated its desires to participate in the Committee and has agreed to accept the Statutes and the Rules framed there under;

**THE COMMITTEE DECIDES** to admit Sudan as a participating country in the Committee and its representative as member under Article 2 of the Statutes.

**(Passed on 1.10.1958)**

**SECOND SESSION**

**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**

**CAIRO**

**"RESOLUTION NO. 11(4)**

**CONSIDERING** that under the provisions of clause (4) of Rule 7 of the Statutory Rules the Committee is empowered to admit to its Sessions observers from non-participating countries and inter-governmental organizations with whom consultative arrangements have been entered into;

**AND CONSIDERING** that the Governments of Cambodia, Philippines, and Thailand as also the League of Arab States, an inter-governmental organization, falling within the provisions of clause (4) of Rule 7, have by written communications addressed to the Secretary expressed their desire to be represented by observers at this Session of the Committee;

**THE COMMITTEE DECIDES** to admit the observers representing the Governments and the inter-governmental organization as aforesaid.

**(Passed on 1.10.1958)**

**SECOND SESSION**  
**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**  
**CAIRO**

**RESOLUTION NO. II (5)**

**CONSIDERING** that the present Secretary of the Committee, Mr. B.Sen, Legal Adviser in the Ministry' of External Affairs, Government of India, has been associated with the formation of this Committee;

**CONSIDERING** that in pursuance of a request contained in Resolution No. 1(5) adopted unanimously during the First Session of the Committee the Government of India agreed to make available the services of Mr. Sen to perform the functions of the Secretary of the Committee in an honorary capacity for a period of two years;

**CONSIDERING** that Mr. Sen has rendered most valuable services during his tenure of office as Secretary and in the interest of the efficient functioning and development of the Committee Mr. Sen' s services are needed for at least a further period of two years;

**THE COMMITTEE** resolves to request the Government of India to continue to render assistance to this Committee by making available the services of Mr. Sen for a further period of two years from April 1959;

**THE COMMITTEE** further resolves that the President of the Committee communicate the contents of this Resolution to the Government of India through the Indian Ambassador in Cairo.

**(Unanimously adopted on 1.10.1958)**

**SECOND SESSION**  
**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**  
**CAIRO**

**RESOLUTION NO. 11(6)**

**CONSIDERING** that under Article 8 of the Statutes the Committee is empowered to frame Rules for carrying into effect the purposes of the Committee;

**AND CONSIDERING** that at the First, Session of the Committee the Statutory Rules were framed under the said Article of the Statutes;

**AND CONSIDERING** the necessity to amend the said Rules to be in conformity with the amendment made to the Statutes;

**THE COMMITTEE DECIDES** to amend the said Rules by substitution of the words "Asian-African" in place of the word "Asian" in Rules 1,2 and the addition of the words "or African" after the word "Asian" in Rule 4.

**(Passed on 1.10.1958)**



**SECOND SESSION**  
**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**  
**CAIRO**

**RESOLUTION NO. II (7)**

**CONSIDERING** that in accordance with the unanimous decision of the Governments of the original participating countries in the Asian Legal Consultative Committee to the participation of countries in the African Continent in the Committee, Article I of the Statutes of the Committee had been amended by substitution of the word “Asian” by the words “Asian-African” wherever it occurs, and the name of the Committee thereupon was altered to that of Asian-African Legal Consultative Committee;

**THE COMMITTEE RESOLVES** that the existing current account in the name of the Asian Legal Consultative Committee with the State Bank of India, New Delhi, be closed;

**THAT** a new Account in the name of the Asian-African Legal Consultative Committee be opened with the State Bank of India, New Delhi;

**THAT** the balance of moneys as it stands in the account of the Asian Legal Consultative Committee as on the closing day of the account be transferred to the; new account to be opened in the name of the Asian-African Legal Consultative Committee with the State Bank of India, New Delhi;

**THAT** all cheques on the banking Account be signed and all bills, notes, and other negotiable instruments be drawn, accepted and made on behalf of the Committee by the Acting Secretary or a person authorized by him in writing;

**THAT** cheques, bills, notes and other negotiable instruments payable to the Asian-African Legal Consultative Committee may be endorsed for the Asian-African Legal Consultative Committee by the Acting Secretary of the Committee or a person authorized by him in writing;

**THAT** copy of these resolutions signed by the President and the Acting Secretary be handed to the Bank together with specimens of the necessary signatures.

**PASSED ON**

**PRESIDENT**

**ACTING SECRETARY**

**SECOND SESSION**  
**OF THE ASIAN-AFICAN LEGAL CONSULTATIVE COMMITTEE**

**CAIRO**

**RESOLUTION NO. II (8)**

**CONSIDERING** that in the practice of States Inter-governmental organizations, representatives of the Governments attending conferences of such organizations as also the senior officials of the Secretariat are accorded certain immunities and privileges in the member states;

**CONSIDERING** that the United Nations, the specialized agencies and inter-governmental organizations of a regional character enjoy such immunities and privileges in member states;

**AND CONSIDERING** that certain immunities and privileges are desirable for effective functioning of this Committee;

**THE COMMITTEE DECIDES** to communicate the draft Articles on the Immunities and Privileges of the Committee as drawn up by the Secretariat approved by the Committee at this session for consideration by the Governments of the participating countries.

**(Passed on 9.10.1958)**

## **SECOND SESSION**

### **OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**

#### **CAIRO**

#### **RESOLUTION NO. 11(9)**

**CONSIDERING** that the questions relating to Dual Nationality were referred to this Committee by the Government of the Union of Burma during the First Session of the Committee;

**CONSIDERING** that during the First Session the Delegations did not have enough material before them to discuss the subject;

**CONSIDERING** that the statements made during this Session by the various Delegations relating to the laws and practice in their respective countries would require to be studied and considered by the Delegation before the Committee would be in a position to make its Report on the subject to the Governments of the participating countries;

**AND CONSIDERING** that the draft of an Agreement for elimination and reduction of Dual Nationality has been presented by the Delegation of the D.A.H. which requires examination;

**THE COMMITTEE DECIDES** that the Secretariat should prepare a report on the subject on the basis of the discussions held during this Session and that report along with the draft agreement presented by the Delegation of the U.A.R. be taken up for consideration during the Third Session.

**(Passed on 9.10.1958)**

## **SECOND SESSION**

### **OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**

#### **CAIRO**

#### **RESOLUTION NO. 11(10)**

**CONSIDERING** that the Government of India and Japan had requested the Committee to consider the question of Diplomatic Immunities and Privileges and presented memoranda on the subject;

**CONSIDERING** that the Committee considered the subject at its First Session on the basis of the Indian memorandum and had appointed a Rapporteur to examine the matter in the light of recent developments;

**CONSIDERING** that the Committee had before this Session the reports of the International Law Commission on the subject as also the Harvard Draft Convention, the Havana Convention on Diplomatic Officers and the report prepared by the Rapporteur;

**AND CONSIDERING** that the matter was fully discussed at this Session and a Sub-Committee of Rapporteurs was appointed to draw up a report on the basis of such discussions;

**THE COMMITTEE DECIDES** to adopt the report as presented by the Sub-Committee of Rapporteurs and to present the same to the Governments of the participating countries for their comments.

**(Passed on 13.10.1958)**

## **SECOND SESSION**

### **OF' THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**

#### **CAIRO**

#### **RESOLUTION NO. II (11)**

**CONSIDERING** that the Government of India had referred to this Committee for its consideration questions relating to the Immunity of State in respect of commercial Transactions

**CONSIDERING** that the matter was discussed during its First Session and an interim report was drawn up in the light of discussions during that Session;

**CONSIDERING** that the subject was further considered at this Session on the basis of a questionnaire prepared by the Secretariat and that there was a large measure of agreement between the delegations of countries participating in the Committee;

**AND CONSIDERING** that a Sub-Committee of Rapportours has prepared and presented a report on the subject;

**THE COMMITTEE DECIDES** to adopt the report and communicate the same to the Governments of the participating countries for their consideration and comments.

**(Passed on 13.10.1958.)**

**SECOND SESSION**  
**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**

**CAIRO**

**RESOLUTION NO. II (11)**

**CONSIDERING** that questions relating to Extradition were referred for the opinion of this Committee by the Governments of Burma and India;

**CONSIDERING** that the subject had been discussed at the First Session as also during the present Session on the basis of a questionnaire prepared by the Secretariat;

**AND CONSIDERING** that the delegations desired the matter to be further considered at the next Session before making the final recommendations of the Committee;

**THE COMMITTEE DECIDES** to postpone submission of its final report on the subject until the next Session.

**(Passed on 13.10.1958)**

**SECOND SESSION**  
**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**

**CAIRO**

**RESOLUTION NO. 11(13)**

**CONSIDERING** that the Government of Japan had referred for the opinion of this Committee the questions relating to Status of Aliens;

**CONSIDERING** that the subject was discussed at this Session on the basis of a questionnaire;

**AND CONSIDERING** that the subject needs further study and consideration;

**THE COMMITTEE DECIDES** to direct the Secretariat to prepare a report on the subject in the light of the discussions held during this Session for consideration at the Third Session of the Committee;

**THE COMMITTEE BE FURTHER DECIDES** to appoint the 'Delegation of the United Arab Republic to act as Rapporteurs on this subject.

**(Passed on 13.10.1958)**



**SECOND SESSION**  
**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**

**CAIRO**

**RESOLUTION NO. 11(14)**

**CONSIDERING** that under Article 3(a) of the Statutes the reports of the work done by the International Law Commission at its ninth and tenth Sessions were placed before the Committee;

**CONSIDERING** that the work of the International Law Commission in regard to Diplomatic Immunities has been taken note of in discussion of the subject;

**AND CONSIDERING** that the draft report containing the Commission's recommendations on Arbitral Procedure would need to be carefully considered having regard to the importance of the subject;

**THE COMMITTEE DECIDES** to take up the question at its next Session and direct the Secretariat to prepare a questionnaire and a list of topic for discussion on the subject at its Third Session.

**(Passed on 13.10.1958)**

**SECOND SESSION**

**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**

**CAIRO**

**RESOLUTION NO. 11(15)**

**CONSIDERING** that the questions relating to Recognition of Foreign Decrees in Matrimonial Matters were referred by the Government of Ceylon for the opinion of this Committee;

**AND CONSIDERING** that the Rapporteur appointed on the subject has presented a report which requires consideration of the delegations before the Committee is in a position to draw up its final report;

**THE COMMITTEE DECIDES** to postpone consideration of the Rapportours report until the next Session;

**THE COMMITTEE REQUESTED** the delegations to forward their comments to the Secretariat on this subject.

**(Passed on 13.10.1958)**

**SECOND SESSION**  
**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**  
**CAIRO**

**RESOLUTION NO. 11(16)**

**CONSIDERING** that the question relating to Free Legal Aid were referred to this Committee by the Government of Ceylon;

**AND CONSIDERING** that a Rapporteur was appointed to prepare and present a report on this subject at this Session;

**AND CONSIDERING** that the Rapporteur did not have sufficient materials available for preparation of his report;

**THE COMMITTEE DECIDES** that the Delegation of Ceylon would continue to act as Rapporteur on the subject and requests all other delegations to furnish the Rapporteur with statements of the laws and practice prevalent in their respective countries on the subject.

**(Passed on 13.10.1958)**

**SECOND SESSION**  
**OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE**  
**CAIRO**

**RESOLUTION NO. 11(17)**

**CONSIDERING** that the Secretary has put forward certain suggestions regarding the amendments to the staff regulations and the scales of salaries payable to the staff of the Secretariat;

**AND CONSIDERING** that a Sub-Committee was appointed to examine the suggestions of the Secretary and has presented its report;

**THE COMMITTEE DECIDES** to approve and adopt the report of the Sub-Committee and to direct that the amendments shall come into force with effect from the 1st January 1959.

**(Passed on 1.10.1958)**

**SECOND SESSION**  
**OF THE ASIAN-AFFRICAN LEGAL CONSULTATIVE COMMITTEE**  
**CAIRO**  
**RESOLUTION NO. 11(18)**

**CONSIDERING** that under the Statutes of the Committee its Sessions have to be held normally once a year by rotation in the participating countries;

**AND CONSIDERING** that the Delegation of Ceylon has offered to hold the next Session in Colombo during the month of November, 1959;

**THE COMMITTEE DECIDES** to accept the offer of the Government of Ceylon to act as hosts and to hold a meeting in Colombo in November, 1959.

**(Passed on 13.10.1958)**