

ASIAN AFRICAN  
LEGAL CONSULTATIVE  
COMMITTEE

FIFTH SESSION  
RANGOON

1962

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New Delhi, India.

**ASIAN AFRICAN  
LEGAL CONSULTATIVE  
COMMITTEE**

**REPORT  
of the  
FIFTH SESSION  
held at  
RANGOON**

January 17th to 30th, 1962.

The Secretariat of the Asian African Legal Consultative Committee,  
New Delhi.



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## INTRODUCTORY NOTE

### 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 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 the 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. Membership of the Committee is open to the countries in the Asian and African continents in accordance with the provisions of its Statutes.

The United Arab Republic upon its formation by the merger of Egypt and Syria became an original participating country in the Committee in the place of Syria. Sudan was admitted to the Committee with effect from the 1st October 1958, Pakistan from the 1st January 1959, Morocco from the 24th February 1961, and Thailand from the 6th December 1961.

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 Committee to be placed before the said Commission; to consider the reports of the Commission and to make recommendations thereon to the governments of the participating countries;
- (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.

The Committee normally meets once annually by rotation in the countries participating in the Committee. Its first Session was held in New Delhi, the second in Cairo, the third in Colombo, the fourth in Tokyo, and the fifth in Rangoon. The Committee maintains a permanent Secretariat in New Delhi for the conduct of its day-to-day work. A section of the Secretariat is charged with the collection of material and preparation of background papers for assisting the Committee in its deliberations during the sessions. The Committee acts in all matters through its Secretary who is advised by a body of Liaison Officers appointed by each of the participating countries. The Liaison Officers normally meet once a month or as often as necessary.

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

The Committee during its First Session elected the Member for Burma, Hon'ble Chief Justice UMYINT THEIN, and the Member for Indonesia, Hon'ble Chief Justice DR. WIRJONO PRODJODIKORO respectively as President and Vice-President of the Committee for the year 1957-58. During the Second Session, the Committee elected the Member for the United Arab Republic, H.E. MR. ABDEL AZIZ MOHAMED, President of the Cour de Cassation, as President and the Member for Ceylon, Hon'ble Chief Justice MR. H. H. BASNAYAKE as Vice-President of the Committee for the year 1958-59. At its Third Session, the Member for Ceylon, Hon'ble Chief Justice MR. H. H. BASNAYAKE was elected as President and CHAUDHURI NAZIR AHMED KHAN, Attorney-General of Pakistan was elected as Vice-President of the Committee. At its Fourth Session, the Member for Japan, DR. KENZO TAKAYANAGI, President, Cabinet Commission on Constitutional Reforms, was

elected as President and Hon'ble DR. R. WIRJONO PRODJODIKORO, Chief Justice of the Republic of Indonesia, as Vice-President of the Committee. At its Fifth Session, the Member for India, Hon'ble MR. M. C. SETALVAD, Attorney-General of India, was elected as President and Hon'ble MR. A. T. M. MUSTAFA, Minister for Law of the Government of East Pakistan, was elected as Vice-President of the Committee.

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

#### **Co-operation with other Organizations**

The Committee maintains close contacts with and receives published documents from the United Nations, the Specialised Agencies, the International Law Commission 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. The International Law Commission was represented at the Committee's Fourth and Fifth Sessions respectively by DR. F. V. GARCIA AMADOR and DR. RADHABINOD PAL, Members of the Commission. The Secretary-General of the United Nations was represented at the Committee's Fifth Session by MR. OSCAR SCHACHTER of the U. N. Secretariat. The Arab League also sent representatives at the Committee's Second and Fifth Sessions. The Committee also sends Observers to the U.N. Conferences on legal matters and to the sessions of the International Law Commission.

#### **Work done by the Committee**

The governments of the participating countries in the Committee originally referred ten problems for the consideration of the Committee. These were:

- (i) Functions, Privileges and Immunities of Diplomatic Envoys or Agents including questions regarding enactment of legislation to provide Diplomatic Immunities. (Referred by India and Japan).



- (ii) Principles for extradition of offenders taking refuge in the territory of another State including questions relating to desirability of conclusion of extradition treaties and simplification of 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 Japan).
- (iv) Status of Aliens including 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 Reciprocal Enforcement of Foreign Judgments in Matrimonial Matters. (Referred by Ceylon).
- (x) Questions relating to Free Legal Aid. (Referred by Ceylon).

During the First Session held in New Delhi, the Committee discussed and drew up reports for submission to the governments of the participating countries on three of subjects, viz., Diplomatic Immunities, Principles of Extradition and Immunity of States. The subjects were, however, carried forward for further consideration at the next session.

During the Second Session held in Cairo, 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 Nationality and Status of Aliens. It also discussed briefly the questions relating to Free Legal Aid and Reciprocal Enforcement of Foreign Judgments in

Matrimonial Matters. The Committee also generally considered the Reports of the 9th and 10th Sessions of the International Law Commission.

The Committee finalised its Reports on Diplomatic Immunities and on Immunity of States in respect of Commercial Transactions. These Reports were submitted to the governments of the participating countries. Final conclusions were not reached on the other subjects which were discussed at this session.

The Committee at its Third Session held in Colombo considered the comments of the governments on its Reports on Functions, Privileges and Immunities of Diplomatic Envoys, and Immunity of States in respect of Commercial Transactions, which the Committee had finalised during its Second Session in Cairo. The Committee affirmed the view it had taken in its Report with regard to restrictions of Immunity of States in respect of Commercial Transactions. It, however, made certain changes in its Report on Diplomatic Immunities in the light of the comments received from the governments of the participating countries. This Report was later placed before the U.N. Conference of Plenipotentiaries on Diplomatic Relations.

The Committee gave detailed consideration to the subjects of Status of Aliens and Extradition on which it was able to draw up provisionally the principles governing the subjects in the form of Draft Articles. The Committee discussed the subject of Status of Aliens, which had been referred to it by the Government of Japan, on the basis of a memorandum, presented to it by the Committee's Secretariat and information supplied by the governments of the participating countries regarding their laws and State practice with regard to entry, treatment and deportation of foreigners. The discussions on Extradition were based on the draft of a Multilateral Convention presented by the Government of the United Arab Republic and a memorandum submitted by the Committee's Secretariat. The Provisional Recommendations of the Committee on these two subjects were submitted to the governments of the participating countries for their comments.

The Committee also generally considered questions relating to Dual Nationality and the recommendations of the International



Law Commission on Arbitral Procedure. The Committee decided to take up at its next session the question of Legality of Nuclear Tests and the legal aspects of certain economic matters namely, Conflict of Laws in respect of International Sales, and Relief against Double Taxation.

The Fourth Session of the Committee was held in Tokyo from 15th to 28th February 1961. The Committee at its Fourth Session held in Tokyo discussed in detail the subjects of Extradition and Status of Aliens on the basis of the Draft Articles as provisionally drawn up by the Committee at its Third Session. The Committee revised the existing drafts on the subjects in the light of the comments made by the Delegations present at the session and adopted its Final Reports for submission to the governments of the participating countries.

The subject relating to Diplomatic Protection of Citizens Abroad and State Responsibility for Maltreatment of Aliens was also generally considered by the Committee. It took note of the statement made at this session by MR. F. V. GARCIA AMADOR, Special Rapporteur of the International Law Commission on State Responsibility and decided to take up the subject for discussion at its next session.

The Committee also gave special attention to the question of Legality of Nuclear Tests. It considered the subject on the basis of the Report prepared by the Secretariat, and the Delegates of the participating countries of the Committee made statements on the question of Legality of Nuclear Tests indicating the scope of the subject under consideration of this Committee and the basic principles on which further material needed to be collected. After a general discussion on the subject, the Committee unanimously decided that the consideration of this subject was a matter of utmost urgency and should, therefore, be placed as the first item on the agenda of the Fifth Session.

The Committee also considered the Report of the Secretariat on the work done by the International Law Commission at its Twelfth Session and took note of the statement made by the Observer on behalf of the International Law Commission.

The Committee considered the subjects relating to Free Legal Aid and Recognition of Foreign Decrees in Matrimonial Matters

and decided to publish the Reports of the Rapporteur on both these subjects to be presented to the governments of the participating countries.

The Committee also generally discussed other subjects on the agenda, viz., Arbitral Procedure, Conflict of Laws with regard to International Sales and Purchases, Laws relating to Avoidance of Double Taxation and Dual Nationality. The Committee decided to include all these subjects in the agenda of its Fifth Session.

#### Fifth Session of the Committee

The Fifth Session of the Committee was held in Rangoon from 17th to 30th January 1962.

The Committee at this session discussed in detail the subjects of Dual Nationality and Legality of Nuclear Tests. The subject of Dual Nationality was considered on the basis of a Draft Agreement presented by the Delegation of the United Arab Republic. The Committee drew up a set of Draft Articles embodying the principles relating to elimination or reduction of dual or multiple nationality. It was decided that the Draft Articles should be submitted to the governments of the participating countries for comments and that the subject should be placed before the next session of the Committee for fuller consideration in the light of the comments received from the governments.

The Committee discussed the subject of Legality of Nuclear Tests on the basis of material on the scientific and legal aspects of nuclear tests collected by the Secretariat of the Committee. The Committee heard the viewpoint and expressions of opinion on the various topics on this subject from the Delegations of Burma, Ceylon, India, Indonesia, Japan, Pakistan, Thailand and the United Arab Republic. The governments of Japan and the United Arab Republic also submitted written memoranda on the subject. On the basis of these discussions, the Secretary of the Committee prepared and presented a Draft Report on the subject for consideration of the Committee. After a general discussion, the Committee decided that the Secretariat should submit the Draft Report on Legality of Nuclear Tests to the governments of the participating countries for their comments and that the subject should be placed before the next session of the Committee as a priority item on the agenda.



The Committee also considered the subject of Arbitral Procedure and the Report of the Secretariat on the work done by the International Law Commission at its Thirteenth Session. The subject of Arbitral Procedure was discussed on the basis of a report prepared by the Secretariat. The Committee decided that a report should be drawn up incorporating the views expressed by the various Delegations. The Committee took note of the work done by the International Law Commission at its Thirteenth Session and expressed its appreciation of the very valuable services rendered by the distinguished Member for the United Arab Republic in representing the Committee as an Observer at that Session. The Committee generally discussed the subject of Consular Inter-course and Immunities and decided to request the governments of the participating countries to transmit their comments on the Draft Articles, prepared by the Commission, to the Secretariat of the Committee. It was further decided that the Secretariat should prepare a report on the basis of these comments which should be considered as a priority item at the next session of the Committee.

The Committee at this session also considered certain proposals regarding revision of the Statutes of this Committee. A sub-committee consisting of one representative from each Delegation went into the matter in some detail and the recommendations of this sub-committee were accepted by the Committee. It was recommended that Articles 1, 3(a) and 3(c) should be amended and that a new Article, 2(a), should be introduced to provide for Associate Membership of the Committee under certain conditions. It was also recommended that certain consequential changes would be necessary in the Statutory Rules of the Committee. The Committee's Statutes can, however, be altered only by a decision of the participating countries and the proposed amendments, therefore, await the formal concurrence of the governments of the participating countries.

The subjects which the Committee has been able to finalise so far relate to Diplomatic Immunities, Immunity of States with respect to Trading Activities of States, Extradition, Status of Aliens, Dual Nationality, Legal Aid, Reciprocal Enforcement of Judgments in Matrimonial Matters and Arbitral Procedure. The Committee has also made considerable progress on the question of Legality of Nuclear Tests, Diplomatic Protection of Nationals and

State Responsibility, Double Taxation and Law relating to International Sales and Purchases. The Committee has now before it for consideration the question of Consular Immunities and Privileges, Law of the Sea, Reciprocal Enforcement of Judgments and Law relating to Industry and Commerce. It is also undertaking a publication of the Constitutions of the Asian and African countries as also a digest of important decisions of the municipal courts of these countries with regard to international legal questions. Recently some more topics have been suggested for consideration of this Committee and these include the United Nations Charter from the point of view of the Asian and African countries and the Rights of the Refugees.



## Delegates of the Participating Countries and Observers at the Fifth Session

### BURMA

- Member and Leader  
of the Delegation : HON. U MYINT THEIN,  
Chief Justice of the Union of Burma.
- Alternate Member : HON. U AUNG THA GYAW,  
Judge,  
Supreme Court of the Union of Burma.
- Adviser : U SOE TIN,  
Secretary to the Government of Burma,  
Ministry of Foreign Affairs.
- Adviser : U KYAW THAUNG,  
Assistant Attorney-General.
- Adviser : U NYUNT TIN,  
Legal Adviser,  
Corporation of Rangoon.
- Adviser : U MYINT SOE,  
Lecturer,  
Faculty of Law,  
University of Rangoon.

### CEYLON

- Member and Leader  
of the Delegation : HON. MR. JUSTICE H. N. G. FERNANDO,  
Judge,  
Supreme Court of Ceylon.
- Alternate Member : HON. MR. JUSTICE G. P. A. SILVA,  
Judge,  
Supreme Court of Ceylon.
- Adviser : MR. R. S. WANASUNDERA,  
Crown Counsel.

### INDIA

- Member and Leader  
of the Delegation : HON. MR. M. C. SETALVAD,  
Attorney-General of India.
- Alternate Member : MR. B. N. LOKUR,  
Secretary to the Government of India,  
Ministry of Law.
- Adviser : DR. K. KRISHNA RAO,  
Director,  
Legal and Treaty Division,  
Ministry of External Affairs.
- Adviser/Secretary : MR. S. SHAHABUDDIN,  
Second Secretary,  
Indian Embassy,  
Rangoon.

### INDONESIA

- Member and Leader  
of the Delegation : MR. CH. ANWAR SANI,  
Minister-Counsellor,  
Indonesian Embassy,  
New Delhi.
- Adviser : MR. AKOSAH,  
Second Secretary,  
Indonesian Embassy,  
Rangoon.

### JAPAN

- Member and Leader  
of the Delegation : DR. KENZO TAKAYANAGI,  
President of the Cabinet  
Commission on Constitutional Reform.
- Alternate Member : DR. KUMAO NISHIMURA,  
Member of Atomic Energy Commission,  
Government of Japan.
- Adviser : MR. HISAJI HATTORI,  
Minister,  
Japanese Embassy,  
New Delhi.



Adviser/Secretary : MR. MISAO YAMASAKI,  
Third Secretary,  
Japanese Embassy,  
Rangoon.

#### PAKISTAN

Member and Leader  
of the Delegation : HON. MR. A. T. M. MUSTAFA,  
Minister of Law,  
Government of East Pakistan.

Adviser : MR. G. RABBANI,  
Third Secretary,  
Embassy of Pakistan,  
Rangoon.

#### THAILAND

Member and Leader  
of the Delegation : DR. SOMPONG SUCHARITKUL,  
Treaty and Legal Department,  
Ministry of Foreign Affairs.

Alternate Member : DR. SOMMAI VISUDDHIDHAM,  
Treaty and Legal Department,  
Ministry of Foreign Affairs.

#### UNITED ARAB REPUBLIC

Member and Leader  
of the Delegation : HON. MR. HAFEZ SABEK,  
Chief Justice of the U.A.R.

Alternate Member : DR. EZZ EL-DIN ABDULLA,  
Dean, Faculty of Law,  
Einshams University.

Adviser : DR. GABR GAD ABDEL RAHMAN,  
Professor, Faculty of Law,  
Cairo University.

Adviser : DR. MOHAMED HAFEZ GHANEM,  
Professor, Faculty of Law,  
Einshams University.

\* \* \*

#### Secretary to the Committee

: MR. B. SEN,  
Senior Advocate of the Supreme Court  
of India,  
& Hony. Legal Adviser to the  
Ministry of External Affairs,  
Government of India.

\* \* \*

#### OBSERVERS

Ghana : MR. E. ABDALLAH,  
Acting High Commissioner of Ghana  
in Ceylon.

Laos : MR. T. LYFOUNG,  
Director of the Judicial Department.  
MR. KHAMPOON,  
President of the Court of Appeal.

Philippines : DR. ADEUDATO J. AGBAYANI,  
Charge d'Affaires ad interim,  
Embassy of the Philippines,  
Rangoon.

#### International Law Commission

: DR. RADHABINOD PAL,  
Member,  
International Law Commission.

United Nations : MR. OSCAR SCHACHTER,  
Director of the General Legal Division  
of the Office of Legal Affairs,  
U.N. Secretariat,  
and Personal Representative of the  
Secretary-General.

#### League of Arab States

: DR. CLOVIS MAKSOUD,  
Personal Representative of the  
Secretary-General.

\* \* \*



## CONFERENCE SECRETARIAT

- Head of Organisation  
of the Fifth Session : U SOE TIN,  
Secretary of the Government of Burma,  
Ministry of Foreign Affairs.
- Conference Officer : U KYAW,  
Officer on Special Duty,  
Ministry of Foreign Affairs,  
Burma.
- Assistant Conference  
Officer (Reception) : U LU MAW,  
Third Secretary,  
Ministry of Foreign Affairs,  
Burma.
- Assistant Conference  
Officer (Documents) : U PE THEIN TIN,  
Third Secretary,  
Ministry of Foreign Affairs,  
Burma.
- Assistant Conference  
Officer (Transport) : U AUNG THAN,  
Assistant Chief of Division,  
Ministry of Foreign Affairs,  
Burma.
- Assistant Conference  
Officer (General) : U ZAW WYNN,  
Third Secretary,  
Ministry of Foreign Affairs,  
Burma.
- 

LIAISON OFFICERS OF THE PARTICIPATING  
COUNTRIES IN THE COMMITTEE\*

- Burma** : U BA MAUNG,  
First Secretary,  
Embassy of Burma,  
New Delhi.
- Ceylon** : MR. N. BALASUBRAMANIAM,  
First Secretary,  
Ceylon High Commission,  
New Delhi.
- India** : MR. B. C. MISHRA,  
Deputy Secretary (UN),  
Ministry of External Affairs,  
Government of India,  
New Delhi.
- Indonesia** : MR. CH. Anwar Sani,  
Minister Counsellor,  
Embassy of Indonesia,  
New Delhi.
- Iraq** : MR. SAEED K. HINDAWI,  
First Secretary,  
Embassy of Iraq,  
New Delhi.
- Japan** : MR. HISAJI HATTORI,  
Minister,  
Embassy of Japan,  
New Delhi.
- Pakistan** : MR. M. RAHMAN,  
Deputy High Commissioner,  
Pakistan High Commission,  
New Delhi.

\* As on 1st January 1963.



**Thailand** : MR. S. BAMRUNGPHONG,  
First Secretary,  
Embassy of Thailand,  
New Delhi.

**United Arab Republic** : MR MAHMOUD EL-ERIAN,  
First Secretary,  
Embassy of the U.A.R.,  
New Delhi.

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## AGENDA OF THE FIFTH SESSION

### I. ADMINISTRATIVE AND ORGANISATIONAL MATTERS

1. Adoption of the Agenda.
2. Election of the President and Vice-President of the Session.
3. Admission of new members in the Committee.
4. Admission of Observers to the Session.
5. Consideration of the Secretary's Report.
6. Further consideration of the Draft Articles on Immunities and Privileges of the Committee.
7. Consideration of the Committee's Programme of Work for 1962-63.
8. Consideration of the question of printing and publication of the proceedings of the Fifth Session of the Committee and other publications.
9. Revision of Statutes and Statutory Rules.
10. Consideration of the question of the Committee's staff structure for the term 1962-64.
11. Report on the U.N. Conference of Plenipotentiaries on Diplomatic Relations held in Vienna in March-April, 1961.
12. Co-operation with other Organisations.
13. Report of H.E. Mr. Hafez Sabek on co-operation with the International Law Commission.
14. Date and place of the Sixth Session.

### II. MATTERS ARISING OUT OF THE WORK DONE BY THE INTERNATIONAL LAW COMMISSION UNDER ARTICLE 3(a) OF THE STATUTES

1. Consideration of the Report of the Thirteenth Session of the International Law Commission.



2. Arbitral Procedure: Consideration of the subject on the basis of the Comments received from the Governments of the Participating Countries on the questionnaire prepared by the Secretariat and the Provisional Report of the Committee together with the working paper prepared by the Secretariat.

### III. MATTERS REFERRED TO THE COMMITTEE BY THE GOVERNMENTS OF THE PARTICIPATING COUNTRIES UNDER ARTICLE 3(b) OF THE STATUTES

1. Status of Aliens (Referred by the Government of Japan)—Consideration of the questions of Diplomatic Protection of Aliens by their Home States, and Responsibility of States arising out of Maltreatment of Aliens.
2. Dual Nationality (Referred by the Government of Burma)—Consideration of the Comments received from the Governments of the Participating Countries on the working paper prepared on the subject and the revised Draft Convention prepared by the U.A.R. Delegation.

### V. MATTERS OF COMMON CONCERN TAKEN UP BY THE COMMITTEE UNDER ARTICLE 3(c) OF THE STATUTES

1. Legality of Nuclear Tests (Adopted by the Committee at the suggestion of the Government of India).

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## DUAL NATIONALITY

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## INTRODUCTORY NOTE

The subject of Dual Nationality was referred to the Committee by the Government of the Union of Burma under the provisions of Article 3 (b) of the Statutes of the Committee. The Governments of Burma, Japan and the United Arab Republic submitted memoranda on the subject and the United Arab Republic also presented a Draft Agreement for consideration of the Committee.

During the First Session held in New Delhi, the Delegations of Burma, Indonesia and Japan made brief statements on the problem of dual nationality but the Committee decided to postpone further consideration of the subject as the Delegations of India, Ceylon, Iraq and Syria had reserved their position on this subject.

During the Second Session held in Cairo, the views of the Delegations were ascertained on the basis of a questionnaire prepared by the Secretariat. The main topics which were discussed during the Second Session were: (1) the acquisition of dual nationality; (2) the position of a resident citizen who is simultaneously a citizen of another State and the rights of such a citizen; (3) the position of a non-resident citizen possessing dual nationality; and (4) the position of an alien possessing dual nationality. The Delegations were of the opinion that it would be desirable to reduce the number of cases of persons possessing dual nationality by means of enacting suitable national legislation or concluding international conventions. It was, however, felt that unless there was uniformity in nationality laws and unanimity on the fundamental principles of nationality, it would be very difficult to achieve the desired objective by means of a multilateral convention. The Committee decided that the Secretariat should prepare a report on the subject on the basis of the discussions held during the session and that this report together with the draft agreement submitted by the United Arab Republic should be taken up for consideration during the Third Session.

At the Third Session held in Colombo, the Committee had a general discussion on the subject and the unanimous view of the Delegations was that some preparatory work should be done by the governments of the participating countries on the basis of the report of the Secretariat before the Committee could finally make its recommendations on the subject. The Committee therefore decided



to request the governments of the participating countries to study the report of the Secretariat and the Draft Agreement submitted by the Delegation of the United Arab Republic and to communicate their views to the Secretariat in the form of memoranda indicating the particular problems which have arisen in this regard and suggesting specific points which they desire the Committee to take up for particular study and consideration.

At the Fourth Session held in Tokyo, the Committee gave further consideration to the subject and decided to request the Delegation of the United Arab Republic to prepare a revised draft of the Convention in the light of the comments received from the governments of the participating countries for consideration at the Fifth Session of the Committee. The Committee also directed its Secretariat to request the governments which have not given their comments to do so as early as possible and thereafter to forward the comments to the Delegation of the United Arab Republic.

At the Fifth Session held in Rangoon in January 1962, the subject was fully considered by the Committee on the basis of a draft of an Agreement submitted by the Delegation of the United Arab Republic. The Committee also had before it written memoranda on the subject submitted by the Governments of Burma, Ceylon, Indonesia, Iraq and Japan. After a detailed discussion on the various aspects of the subject, the Committee drew up a set of Draft Articles embodying the principles relating to elimination or reduction of dual or multiple nationality. It was decided that the Draft Articles should be submitted to the governments of the participating countries for comments and that the subject should be placed before the next session of the Committee for fuller consideration in the light of the comments received from the governments.

## DRAFT ARTICLES EMBODYING THE PRINCIPLES RELATING TO ELIMINATION OR REDUCTION OF DUAL OR MULTIPLE NATIONALITY\*

*(Adopted by the Committee at its Fifth Session)*

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\*As regards Dual Nationality, the Delegation of Pakistan stated that the Government of Pakistan recognises no second nationality in a citizen except that in the United Kingdom a citizen of Pakistan has all the rights of a citizen of the United Kingdom including the right to vote. The Delegate of Pakistan reserved his position on all the Draft Articles.



## GENERAL PROVISIONS

## Article 1

It is for each State to determine under its own law who are its nationals. This law itself shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.

*Note:* The Delegate of Thailand stated that with the exception of the principle of compulsory recognition he accepted the other principles incorporated in this Article.

## Article 2

Questions as to whether a person possesses the nationality of a particular State, shall be determined in accordance with the law of that State.

## Article 3

*Alternative (A)*

For the purpose of these Model Articles the age of majority of a person shall be determined according to the law of the State the nationality of which is to be acquired, retained, or renounced.

*Alternative (B)*

The age of majority shall be determined according to the laws of the State, the nationality of which is relevant for the matter under consideration, provided that for the purposes of Article 5 and of Article 7, the majority age (in the event of any conflict of State laws) shall be the majority age under the law of the State which prescribes a higher age.

*Note:* The Delegates of Burma, Thailand and the United Arab Republic accepted Alternative (A) of Article 3. The Delegates of Ceylon and India accepted Alternative (B) of Article 3. The Delegate of Thailand saw no objection to Alternative (B). The Delegates of Japan and Indonesia reserved their position on this Article.

## NATIONALITY OF MARRIED WOMEN

## Article 4

(1) If a woman who is a national of one State marries a national of another State, or if a husband acquires a nationality other than that he had on the date of marriage, the nationality of the wife shall not be affected.

(2) Nevertheless if she, in either of such cases voluntarily acquires the nationality of her husband, she loses *ipso facto* the other nationality.

*Note:* The Delegate of Thailand whilst accepting Clause (1) of this Article wished it to be understood that this principle would also apply in the case of a husband acquiring an additional nationality. The Delegate of India wished that the words "unless she has already renounced her original nationality" to be added at the end of Clause (2) of this Article.

## NATIONALITY OF CHILDREN

## Article 5

(1) A minor follows ordinarily his father's nationality. If the minor is born out of wedlock, or if the nationality of his father is unknown or if his father has no nationality, he follows his mother's nationality.

(2) Nevertheless, if a minor born to a national of one State in another State is deemed in accordance with the laws of each of the two States to be its national, he should opt for one of these two nationalities within one year from the date of attaining his majority age in accordance with the provisions of Article 7.

*Note:* The Delegates of Ceylon and India accepted only the first sentence of Clause (1) of this Article. The Delegate of Ceylon could not accept the second sentence of Clause (1) of this Article in view of the inclusion in it of reference to the case of a minor whose father is stateless. The Delegate of India preferred the omission of the second sentence but expressed the view that the principle of nationality of the State of birth instead of the principle of mother's nationality should be adopted. The Delegates of Burma and Thailand accepted the provisions of Clause (2) of this Article. The Delegates of Ceylon, India and the United Arab Republic were in agreement that Clause (2) of this Article was not necessary. The Delegate of Indonesia reserved his position on Clause (2) of this Article. The Delegate of Japan reserved his position on the whole of Article 5 of the draft.



## ADOPTION

## Article 6

In case of valid adoption, the adopted minor shall follow his adopter's nationality.

*Note:* The Delegates of Burma, Indonesia and the United Arab Republic accepted this Article. The Delegates of Indonesia and the United Arab Republic took the view that the minor should have an option after he attains majority to choose between his original nationality and the nationality of his adopter. The Delegate of Thailand stated that the words "be entitled to" should be inserted between the word "shall" and the word "follow". This Article was not accepted by the Delegates of Ceylon, India and Japan.

## OPTION

## Article 7

A person who knows that he possesses two nationalities, acquired without any voluntary act on his part, should renounce one of them in accordance with the law of the State whose nationality he desires to renounce, within twelve months of his knowing that fact or within twelve months of attaining his majority age, whichever time is the later.

*Note:* The Delegates of Burma, Ceylon, India, Thailand and the United Arab Republic accepted this Article. The Delegate of Indonesia reserved, his position on this Article although he expressed the view that the option available to the individual must be of obligatory character and that States should by means of agreement provide for dealing with cases where the individual does not exercise the option. The Delegate of Japan was not in favour of imposing any obligation on an individual to exercise the option.

## ACTIVE NATIONALITY

## Article 8

A person having more than one nationality, shall be treated as having only one nationality, in a third State. A third State should, however, recognise exclusively, the nationality of the State in which he is habitually and principally resident or the nationality of the State with which in the circumstances he appears to be in fact most closely connected.

## Article 9

A person possessing two or more nationalities of the contracting States, who has his habitual and principal residence within the territory of one of these States with which he is in fact most closely connected, shall be exempt from all military obligations in the other State or States.

## Article 10

Without prejudice to the provisions of Article 9, if a person possesses the nationality of two or more States, and under the law of any one of such States has the right, on attaining his majority age, to renounce or decline the nationality of that State, he shall be exempt from military service in such State during his minority.

*Note:* Except the Delegate of Indonesia the other Delegates accepted this Article.



**BACKGROUND PAPER ON  
DUAL NATIONALITY**

(Prepared by the Secretariat of the Committee)

*General Note On Some Problems Arising Out of Dual  
or Multiple Nationality of Individuals*

CHAPTER I

INTRODUCTION

**How dual nationality arises**

Dual or multiple nationality is encountered among citizens of almost all countries as the unavoidable consequence of the conflicting nationality and citizenship laws of various countries. Generally speaking, the phenomenon of plural nationality or citizenship arises from the concurrent application of the principles of *jus soli* and *jus sanguinis* at birth or from the concurrent operation of different nationality and citizenship laws, and the absence of uniformity in such laws concerning more particularly, naturalization and expatriation. Schwarzenberger observes: "If a genuine connection between a sovereign State and an individual exists, a State may claim a natural-born individual as its national. The practice of States recognises the systems of both *jus soli* and *jus sanguinis*, as well as combinations of them, as giving expression to such a genuine connection. In a highly integrated international society the systems of *jus soli* and *jus sanguinis* easily overlap and produce the phenomenon of dual nationality. If nationality may be acquired not only by birth, but also by naturalization, this leads to additional possibilities of dual nationality. Dual or multiple nationality can be avoided as little as any other conflict of municipal laws. It is the inevitable consequence of the wide discretion granted by international law to sovereign States to determine the criteria of a genuine connection between themselves and the inhabitants of their territories."<sup>1</sup> As far as an individual is concerned, he may happen to be in possession of more than one nationality knowingly or unknowingly and with or without his intention.

**Birth and dual nationality**

Broadly speaking, plural nationality may be occasioned by every mode of acquisition of nationality, for instance, *jure soli*,

1. Schwarzenberger, G. : International Law, Vol. I, 3rd ed., 1958, pp. 362-363.

Moore, J. B. : A Digest of International Law, Vol. III, 1906, pp. 518-519.



by the birth in the United Kingdom of an alien father whose State adopts the *jure sanguinis* and attaches its nationality to the children of its nationals born within the territory of other States.<sup>2</sup> A child, by reason of his parents being at the time of his birth in a foreign State, is born a national of the two countries— a national of the country of his birth *jure soli*, and a national of his parents' country *jure sanguinis*. Thus, every child born in the United Kingdom of German parents acquires both British and German nationalities, for such a child is British according to British, and German according to German municipal nationality laws. Dual nationality may also be produced by the case of an infant whose parents emigrate and acquire by naturalization the nationality of the new State i.e., State of immigration.

During the 19th and 20th centuries numerous immigrants from European and other countries became citizens of the United States of America by naturalization while their countries of origin were reluctant to release such immigrants automatically from their duties of allegiance based on their bond of nationality. Hence, such individuals were considered as citizens of both the States until they could obtain release from their ties of original nationality. Under the principle of *jus sanguinis* even the children of such immigrants were regarded by the States of emigration as the nationals of their parents' home States despite the fact that they had been born in the United States. The unwillingness on the part of the governments of those countries to give up their claims of allegiance and to treat such *de cujus* i.e., the immigrants and their children as foreign nationals, was due to the fact that the male descendents were badly needed for military service.

In the *Canevaro Case* (1912) between Italy and Peru, both parties claimed *Rafael Canevaro* as their national. Canevaro was born in Peru of an Italian father. The Permanent Court of Arbitration held that he was of Peruvian nationality *jure soli*, and also of Italian nationality *jure sanguinis*. However, applying the test of active nationality the Court adjudged him as a Peruvian national.

#### Legitimation and dual nationality

Legitimation of illegitimate children can bring about the same effect. For instance, the illegitimate child of a German

2. McNair, Sir A. D. : *The Legal Effects of War*, 3rd ed., 1948, pp. 24-26.

father born in the United Kingdom of an English mother becomes a subject of the United Kingdom according to the laws of both the States; but if after the birth of the child the father marries the mother and takes up permanent residence in the United Kingdom, the child thereby becomes a legitimate child according to German law, and it acquires German nationality without losing its British nationality.<sup>3</sup>

#### Marriage and dual nationality

The status of dual nationality has often been occurring also as a result of marriages. A very frequent instance in the history of various states is the case of a woman who after marrying a foreign national is permitted to retain her original nationality according to the law of the State of which she is a national, and who is also permitted to acquire her husband's nationality according to the law of the State of which her husband is a national. Thus, as a result of the marriage of an alien woman to a citizen of the United States, or of an American woman to a foreigner, under the laws of the two countries involved, such women may acquire a new nationality without losing their former citizenship. A woman British subject not already a Southern Rhodesian citizen who has been married to such a citizen has, an unmistakable right to become a citizen of Southern Rhodesia subject only to taking the oath of allegiance. Owing to the almost exact identity of the citizenship laws of the United Kingdom and New Zealand, as between these two countries the possibility of overlap of citizenship is said to be very great. For instance, a woman citizen of the one country marrying a citizen of the other has normally the indefeasible right to acquire the citizenship of the other without forfeiting her original citizenship.<sup>4</sup>

#### Naturalization and dual nationality

Moreover, not infrequently naturalization, in the narrower sense of the term, gives rise to the problem of plural nationality. Nationals of a State, for instance, may apply for and receive naturalization in a foreign State, while retaining their original nationality at the same time.

3. Oppenheim, L. : *International Law*, Vol. I, 8th ed., p. 665.

4. Moore : *Digest*, Vol. III, pp. 518-551.

Parry, C. : *Nationality and Citizenship Laws of the Commonwealth and of the Republic of Ireland*, 1957, pp. 103-110.



In the case of *George S. Hein v. Hildesheimer Bank* decided by the British-German Mixed Arbitral Tribunal in 1922, the problems of naturalization and dual nationality came up for consideration. In this case, the claimant Hein was born in Germany. Though by naturalization he became a British subject, he continued to be a German national at the same time under the German law.<sup>5</sup> Again, in the case of the *United States (William Mackenzie) v. Germany* decided by the United States-German Mixed Claims Commission in 1925, a similar problem was at issue. The claimant's father was born of British parents in the United States. Under the United States law, he was a United States citizen by birth and at the same time in accordance with the English law, he was considered a British subject by parentage.<sup>6</sup> *Grigoriou v. Bulgarian State* decided by the Greco-Bulgarian Mixed Arbitral Tribunal in 1923 is yet another case dealing with dual nationality and naturalization. In this case the claimant, a Greek born subject became a naturalized Bulgarian in 1917 and so Bulgaria claimed him as a Bulgarian subject. But according to the Greek Law of December 31, 1913, he continued to be a Greek citizen even after his naturalization in Bulgaria.<sup>7</sup>

Persons possessing dual nationality, bear in the language of diplomatists, the name *sujets mixtes*, i.e., they are known as mixed subjects. As the two States concerned may in fact claim the dual national as a national of each country, he becomes the object of conflicting claims of allegiance, and such a situation gives rise not infrequently to problems of conflict of nationality laws. The fact that a person possesses, under two municipal legal systems more than one nationality, raises the question as to which nationality is to be ascribed to such a person, and as to what law is to be applied to him. The freedom of the State to decide upon its nationality laws, and the scarcity of positive rules of international law in the matter of nationality, have been largely responsible for such conflicts of nationality laws.<sup>8</sup>

5. Schwarzenberger : *International Law*, Vol. I, pp. 365-366. *Annual Digest*, 1919-22, p. 216.

6. Schwarzenberger : *International Law*, Vol. I, p. 366. *Annual Digest*, 1925-26, pp. 273-294.

7. *Annual Digest*, 1923-24, pp. 243-248.

8. Weis, P. : *Nationality and Statelessness in International Law*, 1956, p. 172.

## CHAPTER II

### POSITION OF PERSONS WITH DUAL NATIONALITY

Possession of dual or multiple nationality by a person often gives rise to problems not only in the countries of which he is a national but also in third States. The main controversies which appeared to have arisen in the past were those concerning the questions of dual national's liability to military service in the States which claimed him as its national, and the right of States to extend diplomatic protection to such persons. These problems will be discussed in detail in this note.

#### Dual national's liability to military service

In time of war, serious conflicts of duties, based on the conflicting claims of allegiance may arise in the case of persons possessing dual or multiple nationality.<sup>1</sup> It may be stated that each State claiming the individual as its national is, under international law, competent to do this although it cannot claim him as against the other State since each of them can justifiably maintain that he is its citizen. During the middle of the 19th century, the United States tried to prevent the imposition of obligations of military service and other obligations of similar character on persons having dual nationality by entering into bilateral agreements with the countries concerned. Most of the agreements concluded with the European and the Latin-American countries included the principle that immigrants from the contracting parties were entitled voluntarily to expatriate themselves upon their naturalization in the United States of America. Further, these treaties provided for the right of a naturalized citizen of the United States to return to his country of origin without being subjected to punishment for failure, prior to naturalization, to respond to calls for military service.<sup>2</sup> Although a State cannot enforce its laws within the territory of another State, it is enabled however, by virtue of the allegiance which a national owes to his State, to prosecute its nationals while they are abroad and to execute judgments against them upon their property within the State, or upon them personally when they return, or the State may prosecute

1. McNair : *The Legal Effects of War*, p. 26.

2. Hackworth, G. H. : *Digest of International Law*, Vol. III, pp. 377-417.



its nationals after they return for the acts done abroad. While the exercise of such jurisdiction is perhaps the exception rather than the rule in countries whose legal systems have been based on the English Common Law, an examination of the legislation adopted in various countries reveals that practically all States exercise some penal jurisdiction on the basis of nationality.<sup>3</sup> In the event of armed conflict between the two States, a very serious difficulty may arise for the mixed subject as he could be deemed to have committed high treason against one of the States involved.

Thus one who has a dual nationality may be subject to claims from both the countries, claims which at times may be competing or conflicting. Orfield has succinctly stated the legal nature of such claims in the following terms: "A person with dual nationality may be subjected to taxes by both States of which he is a national. He is not entitled to protection by one of the two States of which he is national while in the territorial jurisdiction of the other. Either State not at war with the other may insist on military service when the person is present within its territory. In time of war if he supports neither belligerent, both may be aggrieved. If he supports one belligerent, the other may be aggrieved. One State may be suspicious of his loyalty to it and subject him to the disabilities of an enemy alien, including sequestration of his property, while the other holds his conduct treasonable."<sup>4</sup>

In the case of *Tomoya Kawakita v. United States* (1951), the United States Court of Appeals, 9th Circuit, convicted of treason and sentenced to death an American national of Japanese parentage. The accused was considered to be in possession of both American and Japanese nationalities. The treasonable activities consisted in committing many brutalities on American and Allied prisoners of war employed in a nickel mining establishment in Japan during the Second World War in order to increase the output of ore. It was apparent from the judgment that the nature of the treasonable

3. 29, American Journal of International Law, 1935, Supplement, Part II, pp. 519-539.  
Briggs, H.W. : The Law of Nations, 2nd ed., 1952, p. 523.
4. Orfield, L.B. and Re, E.D. : Cases and Materials on International Law, 1955, pp. 336-337.  
Orfield, L.B. : The Legal Effects of Dual Nationality, Vol. 17, George Washington Law Review, pp. 427-429.

activity was a decisive factor in the situation. It was mainly for that reason that the Supreme Court affirmed the conviction in 1952. In this case the difficult nature of the obligations of American citizenship for one who possessed dual citizenship was vividly described by Mr. Justice Douglas in the course of delivering the opinion of the Supreme Court. He said: "For one who has a dual status, the obligations of American citizenship may at times be difficult to discharge. An American who has a dual nationality may find himself in a foreign country when it wages war on us. The very fact that he must make a livelihood there may indirectly help the enemy nation. In these days of total war manpower becomes critical and everyone who can be placed in a productive position increases the strength of the enemy to wage war. Of course, a person caught in that predicament can resolve the conflict of duty by openly electing one nationality or the other and becoming either an alien enemy of the country where he resides or a national of it alone. Yet, so far as the existing law of this country is concerned, he need not make that choice but can continue his dual citizenship. It has been stated in an administrative ruling of the State Department that a person with a dual citizenship who lives abroad in the other country claiming him as a national owes an allegiance to it which is paramount to the allegiance he owes the United States. That is a far cry from a ruling that a citizen in that position owes no allegiance to the United States. Of course, an American citizen who is also a Japanese national living in Japan has obligations to Japan necessitated by his residence there. There might conceivably be cases where the mere nonperformance of the acts complained of would be a breach of Japanese law. He may have employment which requires him to perform certain acts. The compulsion may come from the fact that he is drafted for the job or that his conduct is demanded by the laws of Japan. He may be coerced by his employer or supervisor or by the force of circumstances to do things which he has no desire or heart to do...Such acts—if done voluntarily and willfully—might be treasonable. But if done under the compulsion of the job or the law or some other influence, those acts would not rise to the gravity of that offense...but (if he) so acted only because performance of the duties of his employment required him to do so or because of other coercion or compulsion.' In short, petitioner was held accountable by the