

**ASIAN LEGAL CONSULTATIVE
COMMITTEE**

FIRST SESSION

NEW DELHI: INDIA

April 18 to 27, 1957.

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I INTRODUCTORY

Establishment and Functions of the Committee

The Asian Legal Consultative Committee 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. The functions of the Committee 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.

2. The Statutes of the Committee contemplate participation of other Asian countries, and steps are being taken to include African countries by suitable amendments to the Statutes.

First Session

3. The Committee held its first session at New Delhi from the 18th till the 27th April, 1957, during which it held ten meetings. The session was inaugurated by the Prime Minister of India and was attended by Delegations from all the seven sponsoring countries.

Election of Officers

4. The Committee 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 Vice President of the Committee for the year 1957-58.

Rules of the Committee

5. The Committee considered and adopted with certain modifications the Rules prepared by the Liaison Officers of the participating countries under Article 8 of its Statutes.

Secretariat

6. The Committee decided to locate its permanent Secretariat at New Delhi, INDIA. The Committee also decided 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.

Consultation with other Organizations

7. The Committee decided to establish consultative relations with the United Nations, the Specialised Agencies, the International Law Commission, the Council of Jurists within the Pan American Union and the Legal Committee of the Arab League. The Committee also decided to correspond with the International Law Association, The Hague Academy of International Law, Harvard Law School, Royal Institute of International Affairs and the American Institute of International Law.

Agenda

8. The agenda for the session which had been prepared by the Liaison Officers of the participating countries included ten items which had been referred to the Committee for its views under Articles 3(b) and 3(c) of the Statutes. These are:—

- (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 3 and 6, 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.

II DIPLOMATIC IMMUNITIES AND PRIVILEGES

The Committee considered two memoranda presented by the Governments of India and Japan on the functions, privileges and immunities of diplomatic envoys or agents. During the discussions the Committee gave particular attention to the question of desirability of municipal legislations to provide for immunities of diplomatic personnel, and the question of conclusiveness of Foreign Office Certificate in matters relating to diplomatic immunity.

2. The Committee took note of the statements and views put forward by the various Delegations represented at the session and came to the conclusion that though there was a large measure of agreement amongst the members on essential questions, it would be necessary for the Committee to make a further study of the subject before it would be in a position to make its final recommendations to the Governments concerned. The Committee accordingly decided to submit an interim report on the subject and to appoint the Member for Japan (Dr. Kenzo Takayangi) as rapporteur to make a further study and collect materials on the different aspects of the problem. The Committee further decided to request the Rapporteur to prepare a draft of a convention on the basis of the one adopted at Havana in 1928 for consideration at the second session of the Committee.

III EXTRADITION

The Committee considered three memoranda presented by the Governments of Burma, India and Japan on the 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. The specific questions discussed in the Committee were :

- (i) Whether and on what principle should a state voluntarily extradite fugitive criminals even in the absence of an extradition treaty;
- (ii) Whether a state should extradite its own nationals and the nationals of states other than the requesting state;
- (iii) What should be the procedure to be followed in the matter of extradition;
- (iv) What offences should properly be regarded as extraditable and whether attempts to commit such offences should also make a person liable to be extradited;
- (v) What principles ought to be followed in determining the question as to whether a crime is of a political nature.

2. The majority in the Committee agreed in principle that the conclusion of extradition treaties between various states was desirable so that the fugitive criminals could be surrendered to the State in whose territory the crime had been committed. There was however divergence of views on the question of voluntary surrender of fugitive criminals in the absence of a treaty, and the surrender by a state of its own nationals. The majority were also agreed that a *prima facie* case of guilt in respect of an extraditable offence ought to be established before a fugitive offender could be handed over to the requesting state. They were agreed that the nature of extraditable offences should be determined by the states themselves by means of extradition treaties, but on the question as to whether attempts to commit extraditable offences should themselves be extraditable, no agreement could be reached. The Committee was of

the view that no formula could be devolved to determine the question of a "political crime."

3. The Committee presented its report on the three questions on which agreement was reached between the majority and decided to continue its study of the subject on the remaining questions.

IV STATE IMMUNITY

The question considered by the Committee on this subject 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 and other transactions which do not strictly come within the orbit of "governmental activities" as the term is generally understood.

2. The majority in the Committee appeared to favour the view that no immunity should be admissible in respect of such transactions but it was decided to postpone submission of its final report until the Committee had an opportunity to study the subject further.

V DUAL NATIONALITY

The Committee considered two memoranda presented on this subject by the Governments of Burma and Japan and decided to postpone further consideration of the subject till the next session in view of the fact that four Delegations had reserved their position on this subject.

VI APPOINTMENT OF RAPORTEURS

The Committee appointed the Member for Ceylon (Dr. H. W. Tambiah) as Rapporteur on the question of Recognition of Foreign Decrees in Matrimonial matters, the Alternate Member for Ceylon (Mr. Valentine S. Perera) as Rapporteur on the subject of Free Legal Aid; and the Alternate Member for India (Mr. S. Chaudhuri) as Rapporteur on Ionospheric Sovereignty.

ASIAN LEGAL CONSULTATIVE COMMITTEE STATUTES*

Article 1 :

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

Article 4 :

The members of the Committee may exchange views by correspondence either directly or through the Secretariat

* N. B. Amendment to article 1 is contemplated to enlarge the scope of the Committee by admission of African countries.

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.

ASIAN LEGAL CONSULTATIVE COMMITTEE STATUTORY RULES

1. Short Title :

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

2. Interpretation :

In these rules unless the context otherwise requires:—

- (a) "Committee" means the Asian 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 I 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 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 a 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.

(5) (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 the equivalent thereof shall require to be sanctioned at a meeting of the Liaison Officers.

(7) The Accounts 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.

List of Delegates from the participating countries to the First Session of the Asian Legal Consultative Committee held at Vigyan Bhavan, New Delhi from the 18th to the 27th April, 1957.

BURMA

Member and Leader of the Delegation. Hon'ble Justice U Myint Thein, Chief Justice of the Supreme Court of Burma.

Alternate Member : U Nyunt Tin, Adviser of the High Court of Judicature at Rangoon.

Adviser : U Maung Maung Soe, First Secretary, Embassy of Burma, New Delhi.

CEYLON

Member and Leader of the Delegation. Dr. H.W. Tambiah, Queen's Counsel and Commissioner of Assizes, Ceylon.

Alternate Member : Mr. Valentine S. Perera.

Advisers : Mr. M.L.S. Jayasekera.
Mr. S. Ambalavanar.
Mr. Sirimevan Amarasinghe.
Mr. M.S. Alif.
Mr. H.V. Ram Iswera.
Mr. W.M. Senanayake.
Mr. E.R. Appathurai.

INDIA

Member and Leader of the Delegation. Shri M.C. Setalvad, Attorney General & Chairman Law Commission of India.

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

Advisers : Shri H.R. Krishnan, Joint Secretary, Ministry of Law.

Shri P.K. Banerjee, Deputy Secretary, Ministry of External Affairs.

Shri M.L. Sastri, Deputy Chief Engineer, All India Radio.

Shri Om Prakash, Under Secretary, Ministry of External Affairs.

INDONESIA

Member and Leader of the Delegation. Mr. Wirjono Prodjodikoro, Chief Justice of the Supreme Court of Indonesia.

Alternate Member and Deputy Leader Mr. Sutan Kali Malikul Adil, Judge of the Supreme Court of Indonesia.

Advisers : Dr. F.W.M. Tiwon, Chief of the Bureau of Consular Affairs, Ministry of Foreign Affairs.

Dr. S.H. Tajibnapis,
Minister Counsellor, Embassy
of Indonesia, New Delhi.

Mr. A.A.G. Oke Djelantik,
Acting Deputy Chief of the
Legal Division, Ministry of
Foreign Affairs.

IRAQ

Member and Leader
of the Delegation.

H. E. Mr. M. S. Al-Radi,
Ambasador of Iraq in India.

Alternate Member :

Mr. A. Raouf,
Secretary, Embassy of Iraq.
New Delhi.

JAPAN

Member and Leader
of the Delegation.

Dr. Kenzo Takayangi,
Judge Permanent Court of
Arbitration and President Seikei
University, Tokyo.

Alternate Member :

Mr. Hideo Tanaka,
Assistant Professor, Faculty of
Law, Tokyo University, Tokyo

Advisers :

Mr. Akira Shigemitsu,
Counsellor, Embassy of Japan,
New Delhi.

Mr. Masami Ota,
First Secretary, Embassy of
Japan, New Delhi.

SYRIA

Member and Leader
of the Delegation.

H.E. Mr. Abou-Richeh,
Ambassador of Syria in India.

Alternate Member :

Dr. Adib Daoudy,
Counsellor, Embassy of Syria,
New Delhi.