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**Report on the Sixth Session of the Asian-African Legal Consultative Committee, by Mr.
Eduardo Jiménez de Aréchaga, Observer for the Commission**

Topic:
Cooperation with other bodies

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CO-OPERATION WITH OTHER BODIES

[Agenda item 8]

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**Report on the sixth session of the Asian-African Legal Consultative Committee (Cairo, February-March 1964)
by Eduardo Jiménez de Aréchaga, Observer for the Commission**

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[11 May 1964]

Observer's Report

In accordance with the decision taken by the Commission during the fifteenth session at its 715th meeting,¹ I had the privilege to attend the sixth session of the Asian-African Legal Consultative Committee held at Cairo from 23 February to 6 March 1964, in the capacity of observer on behalf of the International Law Commission.

The session was attended by delegates from Ceylon, Ghana, India, Indonesia, Iraq, Japan, Thailand and the United Arab Republic. The Governments of Burma and Pakistan, which are participating countries in the Committee, were unable to be represented at the sixth session.

Besides these delegates there were observers from Lebanon, Liberia, Mali, Nigeria, Phillipines, the International Law Commission, the Organization of American States and the League of Arab States. There were also observers on behalf of the Secretary-General of the United Nations and of the United Nations Office of the High Commissioner for Refugees.

M. Hafez Sabek, the leader of the United Arab Republic delegation was unanimously elected President of the session and Mr. J. K. Abensetts, the leader of the delegation from Ghana, was unanimously elected Vice-President of the session. Mr. B. Sen was re-appointed as Secretary of the Committee for a further term of two years.

The main subjects that were taken up for consideration by the Committee during the session were :

- (1) The question of legality of nuclear tests.
- (2) The United Nations Charter from the point of view of the Asian-African countries.
- (3) Dual nationality.

I. THE LEGALITY OF NUCLEAR TESTS

On this subject the Committee approved unanimously on 4 March 1964 the following resolution :

¹ Summary record of the 715th meeting in *Yearbook of the International Law Commission, 1963, vol. I.*

"Considering that the Committee at its Third Session had decided to take up for consideration questions relating to the Legality of Nuclear Tests on a reference made by the Government of India as being a legal matter of common concern between the participating countries,

"Considering that the subject was discussed by the Committee at its Fourth and Fifth Sessions on the basis of a Memorandum prepared by the Secretariat setting forth the scientific evidence regarding the effects of nuclear explosions and the relevant legal aspects,

"Considering that the Secretariat of the Committee had prepared and presented the draft of a Report on the subject for consideration of the Committee at its Fifth Session, which Report had been circulated to the Governments of the participating countries,

"Considering that the subject has further been discussed at the Sixth Session of the Committee in the light of the comments made by the Governments of the participating countries,

"And considering that the Committee has fully discussed the subject and has reached unanimity in its conclusions,

"Noting with satisfaction the conclusion of the Treaty signed by the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics on the 5 August 1963 prohibiting nuclear weapon test explosions, to which Treaty the member States of this Committee have acceded,

"The Committee decides to adopt the Report annexed hereto and to submit the same to the Government of India and the Governments of other participating countries ;

"And the Committee expresses the hope that Governments of all countries will accede to the Treaty Prohibiting Nuclear Tests concluded on the 5 August 1963."

In the annexed report the Committee formulated the following conclusions, stating that they apply equally to test explosions of nuclear weapons carried out by anyone for whose action the State is responsible in international law.

“Conclusions

“1. As sufficient evidence regarding the harmful effects of the underground test explosions of nuclear weapons is not at present available to the Committee, the Committee is unable at this stage to express any opinion on the legality or otherwise of such test explosions. The conclusions hereinafter set out are therefore referable to all test explosions of nuclear weapons other than underground test explosions.

“2. Scientific evidence examined by the Committee shows that every test explosion of nuclear weapons results in widespread damage, immediate or delayed, or is capable of resulting in such damage; the present state of scientific knowledge does not indicate that the harmful effects of such test explosions can reasonably be eliminated. Such test explosions not only cause direct damage, but pollute the atmosphere and cause fall-out of radioactive material and also increase atomic radiation, which are detrimental to the well-being of man and also affect future generations.

“3. Having regard to its harmful effects, as shown by scientific data, a test explosion of nuclear weapons constitutes an international wrong. Even if such tests are carried out within the territory of the testing State, they are liable to be regarded as an abuse of rights (*abus de droit*).

“4. The principle of absolute liability for harbouring dangerous substances or carrying on dangerous activities is recognized in international law. A State carrying out test explosions of nuclear weapons is therefore absolutely liable for the damage caused by such test explosions.

“5. Test explosions of nuclear weapons are also contrary to the principles contained in the United Nations Charter and the Declaration of Human Rights.

“6. Test explosions of nuclear weapons carried out in the high seas and in the airspace thereabove also violate the principle of the freedom of the seas and the freedom of flying above the high seas, as such test explosions interfere with the freedom of navigation and of flying above the high seas and result in pollution of the water and destruction of the living and other resources of the sea.

“7. Test explosions of nuclear weapons carried out in trust territories and non-self-governing territories also violate Articles 73 and 74 of the United Nations Charter.”

II. THE UNITED NATIONS CHARTER FROM THE POINT OF VIEW OF THE ASIAN-AFRICAN COUNTRIES

On this subject the Committee approved unanimously on 4 March 1964, the following resolution:

“*Considering* that the Government of the United Arab Republic by a reference made under article 3 (b) of the Statutes has requested the Committee to examine the provisions of the Charter of the United Nations from the legal point of view taking into account in particular the changed composition of

the United Nations by the admission of newly independent Asian-African States,

“*And considering* that the Governments of the United Arab Republic and India have presented memoranda on the subject, and that the delegations present at the sixth session of the Committee have made statements expressing their views on the various questions relating to this subject,

“*Noting* with satisfaction the adoption of the resolutions by the General Assembly of the United Nations on 17 December 1963 on the question of equitable representation on the Security Council and the Economic and Social Council (resolution 1991 A and B (XVIII)),

“*The committee decides* to direct its Secretariat to continue its study of the subject and to present a Report at the next session of the Committee;

“*The committee recommends* to the Governments of the participating countries to ratify the amendments set out in aforesaid resolutions adopted by the General Assembly on 17 December 1963 according to their respective constitutional processes as soon as possible, and at any rate before 1 September 1965;

“*The committee appeals* to all Member States of the United Nations to ratify before 1 September 1965 the said amendments as called upon by the General Assembly;

“*And the committee directs* the Secretariat to send copies of this resolution to the Secretary-General of the United Nations with the request that they may be transmitted to all Member States of the United Nations.”

III. DUAL NATIONALITY

On the subject of dual nationality the following articles were adopted as a set of model rules incorporating certain principles and provisions independent of each other.

“Article 1

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

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 of 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.

"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.

"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.

"Adoption.

Article 6

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

"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 latter.

"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, recognize 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."

IV. OTHER SUBJECTS

(1) The Committee considered the question relating to the rights of refugees referred to it by the Government of the United Arab Republic, and received a memorandum presented by the United Nations High Commissioner for Refugees. The Committee directed its Secretariat "to collect the laws, constitutional provisions and state practices on the various topics listed in the United Arab Republic memorandum and particularly on the question of the right of repatriation, the right of asylum and the right of the refugee to claim compensation". The Committee also requested the Secretariat to prepare a report and present the same at its next session.

(2) The Committee adopted the draft articles on immunities and privileges of the Committee which are appended as annex 2 to the present report, and recommended to the Governments of the participating countries to implement them by appropriate measures.

(3) The Committee also requested the Governments of the participating countries to give their comments on a questionnaire submitted by the Government of India on the Vienna Conventions on Diplomatic Relations, Consular Relations and Civil Liability for Nuclear Damage; to ask the Secretariat to prepare a report on the basis of these comments and, finally, decided that the subject should be placed on the agenda for discussion at the seventh session of this Committee if so requested by the Government of any of the participating countries. The questionnaire is appended as annex 3.

(4) On the subject of relief against double taxation, a sub-committee was appointed and held a preliminary exchange of views. The sub-committee recommended that a detailed discussion should be postponed until the next session, requesting the Secretariat to complete the compilation of information on the rules, regulations and practices of all member countries and all agreements made by the participating countries.

(5) On the question of the recognition and enforcement of foreign judgements, the service of process and the recording of evidence in civil and criminal cases a sub-committee was appointed and it placed before the Committee two draft agreements: one on the recognition and enforcement of judgements in civil proceedings, and the other on the subject of service of process and the recording of evidence. The Committee decided that the report of the sub-committee should be placed on the agenda for discussion at its next session.

V. RELATIONS WITH THE INTERNATIONAL LAW COMMISSION

On the basis of the report of its administrative sub-committee, the Committee expressed its satisfaction that the Secretary-General of the United Nations, the International Law Commission, the League of Arab States, the United Nations High Commissioner for Refugees and the Organization of American States were able to send their representatives as observers to the Sixth Session of the Committee.

On behalf of this Commission I stated, as recorded in the minutes "that the International Law Commission attaches great importance to the work of this Committee, principally for two reasons, namely: the high level of political and judicial opinion that is reflected in this Committee and also because the Committee represents the legal thought of the vast area covered by the Asian-African continents. He called for closer and continued co-operation between the International Law Commission and this Committee and said that it would be of considerable assistance to the International Law Commission if the Committee would give its views on the subjects of law of treaties, State succession and State responsibility. He drew attention to the fact that in the work of the International Law Commission, the viewpoints of Asian-African countries were being increasingly represented, as part of progressive development of international law".

The leader of the delegation from Ceylon, Mr. H. W. Tambiah, presented his report on the work done at the fifteenth session of the International Law Commission which he had attended in the capacity of observer on behalf of the Committee. He particularly referred to the Commission's work on the law of treaties, State responsibility and State succession and suggested that the Committee should study these subjects carefully and send its observations to the International Law Commission.

It was unanimously decided that Mr. Hafez Sabek, President of the Committee, should be requested to attend the sixteenth session of the International Law Commission as observer on behalf of the Committee.

The Committee by resolution No. VI (9) decided to extend a standing invitation to the International Law Commission, the Legal Counsel of the United Nations, the Pan American Union, the Organization of African Unity and the League of Arab States to be represented at the future sessions of the Committee.

A general and very interesting discussion was held on the subject of the law of treaties, as codified by the Commission, and it was decided that the Secretariat should study the matter fully, particularly the specific questions raised by the delegates in the course of discussions at the sixth session of the Committee. It was further decided to request the Governments of the participating countries to communicate their viewpoints on the draft articles on the law of treaties drawn up by the International Law Commission also to the Secretariat of the Committee. The Secretariat was directed to prepare a report on the basis of all available material and present the same at the next session of the Com-

mittee to be held at Baghdad in February 1965. It was further decided to give priority to this item in the agenda of the next session of the Committee. The Secretariat was also requested to prepare a study on the subject of State succession.

At the last working meeting of the Committee I had the opportunity to express my heartfelt gratitude to the Committee, to its President and Secretary, and to the authorities of the United Arab Republic for the kind reception and wonderful hospitality received at their hands. I also had occasion to state how much I was impressed with the high level of deliberations, the importance of the resolutions adopted and the expeditious manner in which the discussions were conducted, on the basis of excellent preparatory work carried out by the Secretary-General and his staff, who on many subjects acted really as Special Rapporteur. I requested and it was agreed that not only the minutes of the session but also several sets of the four mimeographed volumes of background material prepared by the Secretariat would be sent to Geneva and placed at the disposal of the members of the International Law Commission.

ANNEX 1

List of delegates and observers at the sixth session of the Asian-African Legal Consultative Committee

[not reproduced]

ANNEX 2

Draft articles on the immunities and privileges of the Asian-African Legal Consultative Committee

AS ADOPTED BY THE COMMITTEE AT ITS SIXTH SESSION

Article I

Privileges and immunities are accorded under this instrument, not to benefit individuals but to ensure the efficient performance of the functions of the Committee. Consequently, the Committee and the participating Governments have not only the right but also a duty to waive the immunity in any case where in their opinion the immunity would impede the course of justice and where it can be waived without prejudice to the purpose for which the immunity is accorded.

Article II.—Juridical personality

The Committee shall possess juridical personality and shall have the capacity to contract, to acquire and dispose of immovable and movable property and to institute legal proceedings in its name.

Article III.—Property, funds and assets

(a) The Committee, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except in so far as in any particular case the Committee has expressly waived its immunity. It is, however, understood, that no waiver of immunity shall extend to any measure of execution.

(b) The Committee, its property and assets as also its archives shall be inviolable and shall be immune from search, requisition, confiscation, expropriation and any other form of interference whether by executive, administrative, juridical or

legislative action in any of the participating countries. The premises occupied by the Committee for its Secretariat shall be likewise inviolable and immune from search provided the said premises are solely used for the purposes of the Committee.

(c) The Committee shall be immune from the regulations relating to exchange control in the matter of holding or transfer of its funds from one participating country to another. In exercising this right, the Committee shall pay due regard to any representations made by the Government of any participating country, in so far as it is considered that effect can be given to such representations without detriment to the interests of the Committee. However, the Committee shall not take out of any participating country more than what the Committee has brought in.

(d) The Committee, its assets, income and other property whether owned or occupied by it, shall be exempt from all direct taxes; it is understood, however, that the Committee will not claim exemption from taxes which are in fact no more than charges for public utility services.

(e) The Committee shall be exempt from payment of Customs duty as also prohibitions and restrictions on imports and exports in respect of articles or publications imported or exported by it for its official use. It is understood that articles imported under such exemption will not be sold in the country to which they are imported except under such conditions as have been agreed upon with the Government of that country, which in any case shall not exceed those extended to similar inter-governmental organizations.

Article IV. — Facilities in respect of communications

(a) The Committee and its Secretariat shall enjoy in each of the participating countries freedom of communication and no censorship shall be applied to the official correspondence of the Committee certified as such and bearing the official seal of the Committee.

(b) Nothing in this article shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between the participating Governments and the Committee.

Article V. — Representatives of the participating countries, observers, and the Secretary of the Committee

Representatives of the participating countries designated as members, alternate members and advisers as also observers, and the Secretary or the Acting Secretary of the Committee shall during their stay in the country in which the Session of the Committee is held and also during their journey to and from that country, enjoy the following:—

(a) Immunity from personal arrest or detention and from seizure of their personal baggage and immunity from legal procedure in respect of words spoken or written and all acts done by them in their official capacity;

(b) Inviolability of all papers and documents;

(c) The right to receive papers or correspondence in sealed covers;

(d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the country in which the session of the Committee is held and in the participating countries through which they are in transit for the purpose of attending the session of the Committee;

(e) The same facilities in respect of currency or exchange restrictions as are accorded to temporary diplomatic missions;

(f) The same immunities and privileges in respect of their personal baggage as are accorded to diplomatic agents. The words "personal baggage" in this section shall not be interpreted to include an automobile and other means of transportation. Personal baggage shall not, however, be sold

in the country in which the session of the Committee is held without an express authorization from the Government of that country;

(g) Such other privileges and immunities and facilities not inconsistent with the foregoing as the diplomatic agents enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales-taxes.

Provided always that the immunities specified in the foregoing clauses can be waived in any individual case in regard to a member of the delegation, by the Government of the participating country which the individual represents.

(h) The provisions of article V are not applicable as between a representative and the authorities of the country of which he is a national or of which he is or has been the representative.

(i) Where the incidence of any form of taxation depends upon residence, the periods during which the representatives of participating countries to the Committee and to conferences convened by the Committee are present in a participating country for the discharge of their duties, shall not be considered as periods of their residence.

Article VI. — Officials of the Secretariat

1. Officials of the Committee shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(b) Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the Committee and on the same conditions as are enjoyed by officials of the United Nations;

(c) Be immune, together with their spouses and relatives dependent on them from immigration restrictions and aliens registration;

(d) Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;

(e) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;

(f) Have the right to import free of duty furniture and effects within one year of the time when they first take up their posts in the country in question; the term "effects" in this section shall not be interpreted to include an automobile or other means of transportation;

(g) Be exempt from national service obligations.

2. The immunities and privileges except those specified in clause 1 (a) above shall not be applicable to the nationals of the country in question unless expressly extended by the participating country.

3. The Secretary of the Committee, with the approval of the Committee, shall communicate, to the Governments of participating countries the categories of the officials to whom the provisions of this article shall apply.

4. The immunities specified in the foregoing clauses can be waived in any individual case, in regard to an official of the Secretariat by the Secretary of the Committee, and in case of the Secretary, by the Committee itself.

5. The Committee shall co-operate at all times with the appropriate authorities of participating countries to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connexion with the privileges, immunities and facilities mentioned in this article.

Article VII.—Settlement of differences

If any participating country considers that there has been an abuse of any privilege or immunity conferred by this instrument, consultations shall be held between that country and the Committee to determine whether any such abuse has occurred and if so to attempt to ensure that no repetition occurs.

ANNEX 3

Points on which the government of India requests information and views of other delegations in relation to the Vienna Convention on Diplomatic Relations, 1961, the Vienna Convention on Consular Relations, 1963, and the Vienna Convention on Nuclear Damage, 1963.

1. To what extent are the provisions of these three Conventions acceptable to the Government of your country?
2. Are there any provisions in these three Conventions which the Government of your country does not approve? If so, what are the reasons?
3. Does the Government of your country propose any revision or modification of any of the provisions of these three Conventions? If so, what are the reasons?
4. Does the Government of your country suggest any additional provisions to these three Conventions? If so, what are the reasons?
5. Does the Government of your country propose to ratify or accede to all or any of these Conventions? If so, when?
6. Are there any bilateral or multilateral treaties between the Government of your country and the Governments of any other countries on the subject matter of these three Conventions? If so, what would be the position of these treaties if the Government of your country ratifies or accedes to these Conventions?