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**Report on eighth session of the Asian-African Legal Consultative Committee by
Mustafa Kamil Yasseen, Observer for the Commission**

Topic:
Cooperation with other bodies

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CO-OPERATION WITH OTHER BODIES

[Agenda item 5]

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Report on the eighth session of the Asian-African Legal Consultative Committee (Bangkok, 8-17 August 1966)
by Mr. Mustafa Kamil Yasseen, Observer for the Commission

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[7 August 1967]

1. In accordance with the decision taken by the International Law Commission at its eighteenth session, I had the pleasure of attending, as an observer, the eighth session of the Asian-African Legal Consultative Committee, which was held at Bangkok from 8 to 17 August 1966.

2. The session was attended by delegations from Ceylon, Ghana, India, Indonesia, Iraq, Japan and Pakistan; observers for the Congo (Kinshasa), Iran, Malaysia, the Philippines, the League of Arab States, the International Law Commission, the Office of the United Nations High Commissioner for Refugees and the International Law Association of the USSR were also present.

3. The Prime Minister of Thailand addressed the Committee at the opening meeting. He stressed the role which the countries of Asia and Africa were called upon to play in the formulation of international law and wished the Committee and all those taking part in the session "success in their united efforts in pursuit of a worthy cause, namely, to defend and uphold the rule of law as opposed to the rule of force".

4. The head of the delegation of Thailand (Mr. Sanya Dharmasakti) and the head of the delegation of Indonesia (Mr. F. Latumeten) were elected President and Vice-President respectively.

The secretariat for the session was directed by Mr. Ben San, Secretary of the Committee.

5. At its first meeting, the Committee adopted the following agenda:

I. ADMINISTRATIVE AND ORGANIZATIONAL MATTERS

1. Adoption of the agenda
2. Election of the President and Vice-President
3. Admission of observers to the session
4. Consideration of the Secretary's report
5. Consideration of the Committee's programme of work for 1967

6. Immunities and privileges of the Committee
7. Date and place of the ninth 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 on the work done by the International Law Commission at its seventeenth session
2. Law of treaties

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

1. The rights of refugees (referred by the Government of the United Arab Republic)
2. Codification of the principles of peaceful co-existence (referred by the Government of India)
3. Status of aliens (referred by the Government of Japan)
 - (a) Diplomatic protection of aliens by their home States; and
 - (b) Responsibility of States arising out of maltreatment of aliens
4. Law of outer space (referred by the Government of India)

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

1. Relief against double taxation (referred by the Government of India)
2. Participation in general multilateral treaties concluded under the auspices of the League of Nations (taken up by the Committee at the sixth session)

V. Any other matter that may be permitted by the President.

6. The Committee decided that items 4, 5 and 6 of part I of the agenda would be referred to an Administrative Sub-Committee consisting of one member of each delegation for consideration and report.

It was also decided to refer item 2 of part III to a Sub-Committee, after a general discussion.

With regard to item 1 of part IV (Relief against double taxation), the Committee noted that the Sub-Committee appointed at the seventh session had not submitted any recommendation and decided to refer the item to a Sub-Committee of the present session.

The Committee also decided to defer consideration of item 3 (b) of part III (Responsibility of States arising out of maltreatment of aliens).

It was decided that the items on the agenda would be considered in the following order:

(1) General discussion of item 2 of part III (Codification of the principles of peaceful co-existence);

(2) Consideration of item 1 of part III (The rights of refugees);

(3) Consideration of the report of the Sub-Committee on item 1 of part IV;

(4) General discussion on matters arising out of the work done by the International Law Commission: items 1 and 2 of part II (Report of the Commission and Law of treaties) and item 2 of part IV (Participation in general multilateral treaties concluded under the auspices of the League of Nations);

(5) Item 3 (a) of part III (Diplomatic protection of aliens by their home States).

7. Later, at the fourth meeting, the representative of Ghana proposed "that the Committee should consider under article 3 (c) of its Statutes the effect of the recent judgement of the International Court of Justice on South-West Africa". He said that "if the Committee was pleased to take up the suggestion there could be a general discussion at this session and thereafter [the question could] be referred to the Secretariat for preparation of a brief for fuller consideration at the next session of the Committee".

That proposal was adopted.

The main items considered by the Committee will now be briefly reviewed.

8. *Codification of the principles of peaceful co-existence*

This item was referred to the Committee by the Government of India. It was first taken up at the seventh session, held at Baghdad, when the Committee decided to request the Secretariat to collect material on the subject and to draw up a report for submission to the Committee at its eighth session.

At this session, the Committee continued its discussion of the item and several members made general statements; it was decided to entrust the detailed consideration of the item to a Sub-Committee.

In view of the lack of time, and because the same subject has been studied by a Special Committee whose report is to be discussed at the twenty-first session of the General Assembly of the United Nations, the Sub-Committee concluded, after considering the item, that

it would be advisable to wait until the subject had been further discussed by the United Nations and to undertake more studies on the development of State practice in the matter. It recommended that the subject should be considered again at the ninth session.

The Committee endorsed the Sub-Committee's views; it decided to request the secretariat to continue its study of the subject and, in the light of the discussion that had taken place in the Committee, to revise the draft it had prepared and submit the revised text to the Committee at its ninth session.

9. *The rights of refugees*

This item was referred to the Committee by the Government of the United Arab Republic; it was examined at the sixth and seventh sessions, and the Committee also devoted most of this session to it.

The Committee first heard the representative of the United Nations High Commissioner for Refugees and, after a general discussion, examined the articles provisionally adopted at the seventh session. It adopted nine articles, dealing with the definition of the term "refugee", loss of status as a refugee, asylum to a refugee, the right of return, the right to compensation, the minimum standard of treatment, obligations, and expulsion and deportation. These articles are reproduced in annex B.

It was stressed during the discussion that the aim was not to draw up a regional convention, but to recommend certain general principles which the Committee considered "appropriate with regard to the rights relating to treatment of refugees; it was up to each government to decide whether it would accept the recommendation of the Committee and, if so, in what manner the recommendation would be given effect".

10. *Questions arising out of the recent judgement of the International Court of Justice on South-West Africa*

This item was briefly discussed and some members made general statements on it. The representative of Ghana spoke of a more equitable geographical distribution of seats on the International Court of Justice and of the need to terminate the mandate and entrust the administration of South-West Africa to the United Nations. The Committee decided "to direct that the subject be placed on the agenda of the next session as a priority item and that the Secretariat be requested to study the questions raised in the course of discussion in the Committee at this session and to prepare a detailed brief on the subject for consideration by the Committee at its ninth session".

11. *Matters arising out of the work done by the International Law Commission*

The discussion dealt mainly with the law of treaties and more particularly with the fate of the International Law Commission's draft on that topic.

At the request of the President of the Committee, I made a statement on behalf of the International Law Commission, in which I stressed the importance of the co-operation between the two bodies in the progressive development and codification of international law and asked the Committee to make a thorough study of the

draft on the Law of Treaties, so that its member States could clearly define their positions on it. My statement is reproduced in annex C.

All the members expressed their desire that the co-operation between the Committee and the International Law Commission should be continued and strengthened in the interests of a better understanding of the contemporary world.

The Committee's interest in the work of the International Law Commission is not adventitious, for it is called upon by article 3 (a) of its own Statutes "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; to consider the reports of the Commission and to make recommendations thereon to the governments of the participating countries".

With regard to this item of its agenda, the Committee decided

to take up at its next session, for consideration, the draft Articles on the subject adopted by the Commission, with a view to formulating proposals and suggestions from the Asian-African viewpoint for consideration by the Governments of the participating countries;

. . . to appoint Mr. Sompong Sucharitkul as Special Rapporteur, with the request that he prepare a report on the specific points arising out of the International Law Commission's draft on the

subject which require consideration from the Asian-African viewpoint;

. . . to request the Governments of the participating countries to send their comments on the draft articles to the Rapporteur through the Secretariat of the Committee, before the end of December 1966;

[to request] the Rapporteur to complete his report by the end of March 1967 and to transmit the same to the Secretariat of the Committee;

[to direct] the Secretariat to send the report of the Rapporteur to the Governments of the participating countries for their views and to place the same before the Committee at its next session, together with the comments and observations that may be received from the Governments of the participating countries;

. . . to give priority to this subject at its ninth session.

12. In conclusion, I must express my admiration for all the preparatory studies made by the Secretary and his staff, for the very high standard of the discussions which took place and for the valuable work produced during the session in the form of reports and resolutions.

Lastly, I have particular pleasure in expressing to the President and members of the Committee and its secretariat my deep gratitude for the warm welcome they gave me, and to His Excellency Mr. T. Khoman, the Minister for Foreign Affairs of Thailand and a former member of the International Law Commission, my sincere thanks for his kindness and civility to me and to the International Law Commission.

ANNEXES

ANNEX A

List of heads of delegations and observers at the eighth session of the Asian-African Legal Consultative Committee

[not reproduced]

ANNEX B

Principles concerning treatment of refugees as adopted by the Asian-African Legal Consultative Committee at its eighth session

Article I—Definition of the term "refugee"

A refugee is a person who, owing to persecution or well-founded fear of persecution for reasons of race, colour, religion, political belief or membership of a particular social group:

(a) leaves the State of which he is a national, or the country of his nationality, or, if he has no nationality, the State or country of which he is a habitual resident; or,

(b) being outside such State or country, is unable or unwilling to return to it or to avail himself of its protection.

Exceptions:

(1) A person having more than one nationality shall not be a refugee if he is in a position to avail himself of the protection of any State or country of which he is a national.

(2) A person who, prior to his admission into the country of refuge, has committed a crime against peace, a war crime, or a crime against humanity or a serious non-political crime or has

committed acts contrary to the purposes and principles of the United Nations shall not be a refugee.

Explanation: The dependants of a refugee shall be deemed to be refugees.

Explanation: The expression "leaves" includes voluntary as well as involuntary leaving.

NOTES:

(i) The delegation of Ghana reserved its position on this article.

(ii) The delegations of Iraq, Pakistan and the United Arab Republic expressed the view that, in their opinion, the definition of the term "refugee" includes a person who is obliged to leave the State of which he is a national under the pressure of an illegal act or as a result of invasion of such State, wholly or partially, by an alien with a view to occupying the State.

(iii) The delegations of Ceylon and Japan expressed the view that in their opinion the expression "persecution" means something more than discrimination or unfair treatment but includes such conduct as shocks the conscience of civilized nations.

(iv) The delegations of Japan and Thailand expressed the view that the word "and" should be substituted for the word "or" in the last line of paragraph (a).

(v) In exception (2) the words "prior to his admission into the country of refuge" were inserted by way of amendment to the original text of the draft article on the proposal of the delegation of Ceylon and accepted by the delegations of India,

Indonesia, Japan and Pakistan. The delegations of Iraq and Thailand did not accept the amendment.

(vi) The delegation of Japan proposed insertion of the following additional paragraph in the article in relation to the proposal under note (iv)

“A person who was outside of the State of which he is a national or the country of his nationality, or if he has no nationality, the State or the country of which he is a habitual resident, at the time of the events which caused him to have a well-founded fear of above-mentioned persecution and is unable or unwilling to return to it or to avail himself of its protection shall be considered refugee.”

The delegations of Ceylon, India, Indonesia, Iraq and Pakistan were of the view that this additional paragraph was unnecessary. The delegation of Thailand reserved its position on this paragraph.

Article II—Loss of status as refugee

1. A refugee shall lose his status as refugee if—
 - (i) he voluntarily returns permanently to the State of which he was a national or the country of his nationality, to the State or the country of which he was a habitual resident; or
 - (ii) he has voluntarily re-availed himself of the protection of the State or country of his nationality; or
 - (iii) he voluntarily acquires the nationality of another State or country and is entitled to the protection of that State or country.
2. A refugee shall lose his status as a refugee if he does not return to the State of which he is a national, or to the country of his nationality, or, if he has no nationality, to the State or country of which he was a habitual resident, or if he fails to avail himself of the protection of such State or country after the circumstances in which he became a refugee have ceased to exist.

Explanation: It would be for the State of asylum of the refugee to decide whether the circumstances in which he became a refugee have ceased to exist.

NOTES:

(i) The delegations of Iraq and the United Arab Republic reserved their position on paragraph 1 (iii).

(ii) The delegation of Thailand wished it to be recorded that the loss of status as a refugee under paragraph 1 (ii) will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality because the right of protection was that of his country and not that of the individual.

Article III—Asylum to a refugee

1. A State has the sovereign right to grant or refuse asylum in its territory to a refugee.
2. The exercise of the right to grant such asylum to a refugee shall be respected by all other States and shall not be regarded as an unfriendly act.
3. No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.
4. In cases where a State decides to apply any of the above-mentioned measures to a person seeking asylum, it should grant provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country.

Article IV—Right of return

A refugee shall have the right to return if he so chooses to the State of which he is a national or to the country of his nationality and in this event it shall be the duty of such State or country to receive him.

Article V—Right to compensation

1. A refugee shall have the right to receive compensation from the State or the country which he left or to which he was unable to return.
2. The compensation referred to in paragraph 1 shall be for such loss as bodily injury, deprivation of personal liberty in denial of human rights, death of dependants of the refugee or of the person whose dependant the refugee was, and destruction of or damage to property and assets, caused by the authorities of the State or country, public officials or mob violence.

NOTES:

(i) The delegations of Pakistan and the United Arab Republic were of the view that the word “also” should be inserted before the words “such loss” in paragraph 2.

(ii) The delegations of India and Japan expressed the view that the words “deprivation of personal liberty in denial of human rights”, should be omitted.

(iii) The delegations of Ceylon, Japan and Thailand suggested that the words “in the circumstances in which the State would incur state responsibility for such treatment to aliens under international law” should be added at the end of paragraph 2.

(iv) The delegations of Ceylon, Japan, Pakistan and Thailand expressed the view that compensation should be payable also in respect of the denial of the refugee’s right to return to the State of which he is a national.

(v) The delegation of Ceylon was opposed to the inclusion of the words “or country” in this Article.

(vi) The delegations of Ceylon, Ghana, India and Indonesia were of the view that in order to clarify the position the words “arising out of events which gave rise to the refugee leaving such State or country” should be added to paragraph 2 of this Article after the words “mob violence”.

Article VI—Minimum standard of treatment

1. A State shall accord to refugees treatment in no way less favourable than that generally accorded to aliens in similar circumstances.
2. The standard of treatment referred to in the preceding clause shall include the rights relating to aliens contained in the Final Report of the Committee on the Status of Aliens, annexed to these Principles, to the extent that they are applicable to refugees.
3. A refugee shall not be denied any rights on the ground that he does not fulfil requirements which by their nature a refugee is incapable of fulfilling.
4. A refugee shall not be denied any rights on the ground that there is no reciprocity in regard to the grant of such rights between the receiving State and the State or country of nationality of the refugee or, if he is stateless, the State or country of his former habitual residence.

NOTES:

(i) The delegations of Iraq and Pakistan were of the view that a refugee should generally be granted the standard of treatment applicable to the nationals of the country of asylum.

(ii) The delegation of Indonesia reserved its position on paragraph 3 of the article.

(iii) The delegations of Indonesia and Thailand reserved their position on paragraph 4 of the article.

Article VII—Obligations

A refugee shall not engage in subversive activities endangering the national security of the country of refuge, or in activities inconsistent with or against the principles and purposes of the United Nations.

NOTES:

(i) The delegations of India, Japan and Thailand were of the view that the words "or any other country" should be added after the words "the country of refuge" in this article. The other delegations were of the view that such addition was not necessary.

(ii) The delegation of Iraq was of the view that the inclusion of the words "or in activities inconsistent with or against the principles and purposes of the United Nations" was inappropriate as in this article what was being dealt with was the right and obligation of the refugee and not that of the State.

Article VIII—Expulsion and deportation

1. Save in the national or public interest or on the ground of violation of the conditions of asylum, the State shall not expel a refugee.

2. Before expelling a refugee, the State shall allow him a reasonable period within which to seek admission into another State. The State shall, however, have the right to apply during the period such internal measures as it may deem necessary.

3. A refugee shall not be deported or returned to a State or country where his life or liberty would be threatened for reasons of race, colour, religion, political belief or membership of a particular social group.

NOTES:

(i) The delegations of Ceylon, Ghana and Japan did not accept the text of paragraph 1. In the views of these delegations the text of this paragraph should read as follows:

"A State shall not expel or deport a refugee save on ground of national security or public order, or a violation of any of the vital or fundamental conditions of asylum".

(ii) The delegations of Ceylon and Ghana were of the view that in paragraph 2 the words "as generally applicable to aliens under such circumstances" should be added at the end of the paragraph after the word "necessary".

Article IX

Nothing in these articles shall be deemed to impair any higher rights and benefits granted or which may hereafter be granted by a State to refugees.

ANNEX C

Statement by Mr. Mustafa Kamil Yasseen, Chairman of the International Law Commission, Observer, 16 August 1966

Mr. Chairman:

First of all, I should like to thank you and the other members of the Asian-African Legal Consultative Committee, both on behalf of the International Law Commission and on my own behalf, for the warm welcome I have received. I take it as a tribute to the importance which is attached, both by your Committee and by the International Law Commission, to the regular contacts which have been established between the two bodies.

These contacts and the co-operation which they aim to develop can do much toward promoting the codification and progressive development of international law, which is the purpose of the

International Law Commission, and they also serve the interests of the Governments participating in the Asian-African Committee. One of the functions of the Committee, as stated in article 3 of its Statute, is 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". To this provision the Committee at its Fifth Session at Rangoon in 1962 added the following function: "to consider the reports of the Commission and to make recommendations thereon to the Governments of the participating countries." The work of codification and progressive development in the framework of the United Nations must take full account of the interests and positions of States in all parts of the world, and those of the States in Asia and Africa, which constitute more than half the membership of the United Nations, have particular weight in this connexion. The study of the Commission's drafts by the Asian-African Committee will promote wider knowledge and understanding of them, and will enable Governments of Asia and Africa to take their positions in the light of that knowledge and understanding. The Committee, which is composed of experts in international law, can thus assist Governments in order to enable them to point out any gaps which may exist in the Commission's drafts, and also any portions of them which may be inconsistent with the interests and positions of those Governments.

This role of the Asian-African Committee in this regard takes on added importance in view of the results of the eighteenth session of the International Law Commission, which took place in Geneva from 4 May to 19 July 1966. At that session the Commission finally adopted a set of seventy-five draft articles on the law of treaties,^a and will submit them to the United Nations General Assembly at its next session. The law of treaties is a topic on which the Commission has been working since its first session in 1949, and to which it has devoted about twice as many meetings as to any other topic. The law of treaties is not only the most difficult topic which the Commission has ever dealt with, but also the most important, in view of the increasing tendency for more and more areas of international relations to be governed by treaty law rather than by customary law.

Furthermore, the Commission has unanimously recommended that the General Assembly should convoke an international conference of plenipotentiaries to study the Commission's draft articles on the law of treaties and to conclude a convention on the subject.^b The Commission has explained in its reports the reasons that led it to recommend the conclusion of a convention rather than the drawing up of an expository code. These reasons were as follows:

"First, an expository code, however well formulated, cannot in the nature of things be so effective as a convention for consolidating the law; and consolidation of the law of treaties is of particular importance at the present time when so many new States have recently become members of the international community. Secondly, the codification of the law of treaties through a multilateral convention would give all the new States the opportunity to participate directly in the formulation of the law if they so wished; and their participation in the work of codification appears to the Commission to be extremely desirable in order that the law of treaties may be placed upon the widest and most secure foundations."^c

The effort to codify and progressively develop the law of treaties presents an important challenge and opportunity to Governments, particularly to those of newly independent States—which are

^a *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, part II, pp. 177-187.

^b *Ibid.*, p. 177, para. 36.

^c *Yearbook of the International Law Commission, 1962*, vol. II, p. 160, para. 17.

numerous in Asia and Africa—who can thereby participate in the clarification and partial reshaping of a major branch of international law. If this effort succeeds, international treaty law will be placed upon a new and firmer footing. On the other hand, should it fail, not only will States be left subject to an ancient and obscure customary law which many of them had no part in creating, but also the whole effort at codification and progressive development of international law, with all its opportunities for adapting the law to the needs of the modern world, will have suffered a severe reverse.

I wish therefore to make an appeal to the Asian-African Legal Consultative Committee to carry out as soon as possible a thorough study of the Commission's draft articles on the law of treaties with the aim of giving Governments the benefit of its views, and thereby assisting them to formulate their positions in the General Assembly and in any conference which it may decide to convoke. By doing so the Committee will be rendering an important service to its participating Governments, to the cause of the codification and progressive development of international law, and to the International Law Commission.