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Report on the ninth session of the Asian-African Legal Consultative Committee, by Mr. Mustafa Kamil Yasseem, 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 of the ninth session of the Asian-African Legal Consultative Committee by Mr. Mutsafa Kamil Yasseen, Observer for the Commission

[Original text: English/French]

[1 August 1968]

1. In accordance with the wish expressed by Sir Humphrey Waldock, Chairman of the nineteenth session of the International Law Commission and with the decision taken in that connexion by the Commission at that session,[1] I had the pleasure of attending, as an observer, the ninth session of the Asian-African Legal Consultative Committee, which was held at New Delhi from 18 to 29 December 1967. The session was attended by delegations from Ceylon, Ghana, India, Indonesia, Iraq, Japan, Pakistan and the United Arab Republic; observers for Algeria, Iran, Jordan, Malaysia, Mongolia, the Philippines, Sierra Leone, Singapore, the International Law Commission, the League of Arab States and the International Law Association of the USSR were also present.

2. Mrs. Indira Gandhi, the Prime Minister of India, addressed the opening meeting, and like her father, the late Mr. Jawaharlal Nehru, when inaugurating the first session of the Committee, she expressed the hope that the emergence of African and Asian countries as independent nations would make an impact on the scope and content of international law and would make it a law of universal application, a law which would protect the legitimate interests of all members of the international community.

3. The Head of the delegation of India (Mr. C. K. Daphtary) and the Head of the delegation of Ghana (Mr. R. J. Hayfron-Benjamin) were elected President and Vice-President, respectively. The secretariat for the session was directed by Mr. Ben Sen, Secretary of the Committee, whose term of office was renewed "in an honorary capacity" for two years.

4. 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. Election of the Secretary for the term April 1968-March 1970
   4. Admission of observers to the session
   5. Consideration of the Secretary's report and the Committee's programme of work
   6. Date and place of the tenth 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 Committee's observer (Mr. J. H. Rizvi) on the work done by the International Law Commission at its nineteenth session
   2. Law of treaties (Consideration of the draft articles adopted by the International Law Commission)

III. *Matters referred to the Committee by the Governments of the participating countries under article 3 (b) of the Statutes*
   Law of international rivers (referred by the Governments of Iraq and Pakistan) *for preliminary statements only*

[1] See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 370, para. 53.

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)—Consideration of the reports of the Sub-Committees appointed at the seventh and eighth sessions
2. Judgment of the International Court in the South West Africa cases (referred by the Government of Ghana)

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

Questions arising out of the judgment of the International Court of Justice in the South West Africa cases [2]

6. This item was referred to the Committee at its eighth session by the representative of Ghana. On that occasion the Committee discussed it briefly and decided to place it on the agenda of the ninth session as a priority item. On the basis of a report submitted by the secretariat, and following a statement by Mr. Hidayatuccah, Judge of the Supreme Court of India, who had been invited for that purpose in his capacity as an expert, the Committee held a general debate on various aspects of the International Court's judgment.

7. The members of the Committee criticized the judgment from both the legal and political points of view; they acknowledged that the United Nations was competent to solve the problem of South West Africa and endorsed the resolutions on that subject already adopted by the General Assembly. Some members pointed out in that connexion that the main forms of civilization and the principal legal systems of the world should be more equitably represented in the membership of the International Court of Justice.

8. In conclusion, the Committe considered that it was not necessary to make recommendations at the present stage, "considering that action is being taken in regard to South West Africa by the United Nations". However, the Committee "decided that the subject be placed on the agenda of its next session and the secretariat be directed to collect any further material that may be relevant for consideration of this question, and to place the same before the Committee at the next session".

Law of international rivers

9. This item was referred to the Committee by the Government of Iraq and the Government of Pakistan, whose representatives stressed the importance of the subject for the countries of Africa and Asia, particularly with regard to agriculture. The representative of Pakistan even said that the formulation of rules, which could help solve the problems relating to international rivers, was of great importance to the Asian and African countries in the task of solving the problems of hunger and famine. The Committee decided to invite the secretariat to collect material on the subject and to prepare a brief for consideration by the Committee.

[2] *South West Africa, Second Phase, Judgment, I.C.J. Reports 1966*, p. 6.

Relief against double taxation

10. This item was referred to the Committee by the Government of India. It was first taken up at the fourth session, held at Tokyo, since when successive Sub-Committees have continued to examine it. At its ninth session the Committee had before it two reports of the Sub-Committees established at the seventh and eighth sessions respectively.

11. After a general discussion, the Committee expressed the view that the principles formulated by the two Sub-Committees were generally acceptable. It was stressed that "the conflicting interests of the countries, the varied pattern of their taxing laws, different tax structures and the absence of a universally acceptable system of tax distribution among various countries would make the task of proposing any model agreement on this subject extremely difficult".

12. Furthermore, "having regard to the fact that the Committee's functions under its statutes are of an advisory character, the Committee considered that the appropriate manner in which it could deal with this subject was to formulate the principles for avoidance of double or multiple taxation, and it would be up to each participant State to decide as to how it would give effect to the Committee's recommendations whether by entering into multilateral or bilateral arrangements or by incorporating the principles formulated by the Committee in their own municipal laws. In this view of the matter the Committee has formulated the general principles on the subject." [3]

Matters arising out of the work done by the International Law Commission

13. At the request of the President of the Committee, I made a statement on behalf of the International Law Commission in which I introduced the Commission's report on its nineteenth session.[4] After a general debate on the relations between the Commission and the Committee, the latter adopted resolution 14, which states, among other things, that "The Committee places on record its appreciation and thanks to the International Law Commission for its interest in this Committee's work and for sending a member of the Commission to represent it at the present session of the Committee, and expresses the hope of continued co-operation.... [It] directs the Secretary to take appropriate steps in consultation with the Liaison Officers for the Committee to be represented by an observer at the twentieth session of the Commission."

Law of treaties [5]

14. The rest of the debate was devoted exclusively to the Commission's draft articles on the law of treaties.

[3] These general principles are reproduced in annex B.

[4] This statement is reproduced in annex D.

[5] For the draft articles on the law of treaties, see *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, Part II, pp. 171-187.

The Committee had before it a report submitted by the Special Rapporteur appointed at the eighth session (Mr. Sompong Sucharitkul) and a brief prepared by the secretariat on the historical background to the articles. The Committee also had before it the views on the various draft articles expressed by the African and Asian members of the International Law Commission and by the African and Asian representatives in the Sixth Committee of the General Assembly. The draft articles were allocated to three Sub-Committees, whose report were examined at several meetings by the Committee as a whole. I was obliged to intervene in the debate on several occasions, at the Committee's request, to clarify certain points and explain why the Commission had decided to adopt one solution rather than another.

15. The Committee expressed appreciation for the Commission's work on the law of treaties, but had some comments to make on certain articles [6] and decided to transmit those comments to Member States.

It has generally been agreed that the Committee should indicate in a general manner the points which require consideration by the Conference of Plenipotentiaries and that it would refrain from suggesting any text by way of amendment to the articles as that would be really a matter for the Drafting Committee appointed by the Conference of Plenipotentiaries.

[6] These comments are reproduced in annex C.

Lastly, the following decision was taken:

The Committee decides that this subject be placed on the agenda of its next session as a priority item for its final consideration, particularly on the points that may arise in the course of deliberations in the Conference of Plenipotentiaries during its 1968 session, so as to enable the Committee to consider and recommend on those points for consideration of the Governments before the second part of the Conference of Plenipotentiaries is held in 1969. The Committee directs the Secretary, in consultation with the Liaison Officers, to take appropriate steps to nominate an observer on behalf of the Committee to attend the Conference of Plenipotentiaries.

16. In conclusion, I must express my admiration for the spirit which prevailed during the discussions of a very high standard which took place in the Committee, a spirit which sought to harmonize the legitimate aspirations of Africa and Asia with the need for a reasonable and balanced universal approach. I must also express my admiration for the studies made by the Secretary and his staff and for the valuable work produced during the session. I take 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 Mr. Nagendra Singh, member of the International Law Commission, and Mr. Krishna Rao, Legal Counsel of the Indian Ministry for Foreign Affairs, my sincere thanks for their kindness and civility.

ANNEXES

ANNEX A

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

[not reproduced]

ANNEX B

General principles recommended for adoption in international agreements for avoidance of double or multiple taxation of income

PART I

General

1. Relief against double taxation of the same income by two or more countries is given either unilaterally or by the countries concerned entering into bilateral or multilateral agreements providing for such relief.

2. Bilateral agreements which take care of the special relations between the two countries afford the most practical method for providing relief against double taxation.

3. The laws of the Contracting States should contain provisions empowering their governments to grant relief against double or multiple taxation unilaterally and also to enter into bilateral or multilateral treaties or agreements setting forth the principles for granting such relief on a reciprocal or non-reciprocal basis and to implement them.

4. The laws in force in each of the Contracting States will govern the assessment and taxation of income in that State except where express provision to the contrary is made in the agreement.

5. The agreements should cover the taxes on income and capital gains imposed under the law of each of the Contracting States.

6. The agreements should provide that they will also apply to any other taxes of a substantially similar character imposed in each of the Contracting States subsequent to the date of the agreements.

7. The Contracting States shall not impose upon the nationals of other countries more burdensome taxes than they impose upon their own nationals.

PART II

Definitions

8. The agreements should contain definitions of important terms used therein, such for example as "person", "company", "enterprise of a Contracting State", "resident of a Contracting State", "permanent establishment", etc.

9. The term "person" includes natural persons, companies and all other entities which are treated as taxable units under the tax laws of the respective Contracting States.

10. "Company" shall mean any body corporate or entity which is treated as a body corporate for tax purposes under the tax laws of the respective Contracting States.

11. "Enterprise of a Contracting State" shall mean an industrial or commercial enterprise or undertaking carried on in that Contracting State by a resident of that State.

12. The expression "resident of a Contracting State" shall mean any person who under the law of that State is a resident of that State for the purpose of taxation in that State and not a resident of the other Contracting State for the purpose of taxation in that other State.

13. A "company" shall be deemed to be a resident of the Contracting State in which its business is wholly managed and controlled.

14. (i) The term "permanent establishment" shall mean a fixed place of business in which the business of the enterprise is wholly or partly carried on and shall include a place of management, a branch, an office, a factory, a workshop, a warehouse, a mine, a quarry or other place of extraction of natural resources and a permanent sales exhibition.

(ii) An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if it carries on in that other State a construction, installation or assembly project or the like.

(iii) The use of mere storage facilities shall not constitute the place a permanent establishment; or the use of mere storage facilities or the maintenance of a place of business exclusively for the purchase of goods or merchandise and not the purpose of display or for any processing of such goods or merchandise in the territory of purchase shall not constitute a permanent establishment.

(iv) A person acting in one of the Contracting States for or on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the first mentioned State if—

(*a*) he has and habitually exercises in the first mentioned State a general authority to negotiate and enter into contracts for or on behalf of that enterprise, or

(*b*) he habitually maintains in the first mentioned State a stock of goods or merchandise belonging to that enterprise from which he regularly delivers goods or merchandise for or on behalf of the enterprise, or

(*c*) he habitually secures orders in the first mentioned enterprise wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.

(v) A broker of a genuinely independent status who merely acts as an intermediary between an enterprise of one of the Contracting States and a prospective customer in the other Contracting State will not be deemed to be a permanent establishment of the enterprise.

(vi) The fact that a company is a resident of a Contracting State and has a subsidiary company which is a resident of the other Contracting State or which carries on trade or business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company or shall not constitute either company a permanent establishment of the other.

PART III

Allocation of tax jurisdiction

15. Income from immovable property may be taxed by the State in which such property is situated.

16. Royalties and profits from operation of mines, quarries and of extraction and exploitation of other natural resources may be taxed by the State in which such mining or quarrying operations are carried on.

17. Profits derived by a resident of one of the Contracting States from operations of international shipping or flights may be taxed by the State in which the enterprise is registered or where its business is wholly managed or controlled unless the vessel or aircraft is operated wholly or mainly between places in the other Contracting State. In the alternative, if this allocation is considered disadvantageous to participating countries this source may be allocated exclusively to the taxing jurisdiction of the State in which the profits are earned.

18. Industrial and commercial profits of an enterprise of one of the Contracting States should be taxed in the other Contracting State only if that enterprise carries on trade or business in that other Contracting State through a permanent establishment situated therein. Such taxes should be levied only on such profits of that enterprise as are attributable to the permanent establishment situated in the taxing State.

19. Income from movable capital, such as dividends paid by a company, interest on bonds, loans, securities or debentures, issued by governments, local authorities, companies or other corporate bodies should be taxed in the country where the investment is made and not in the country of residence of the recipient of such income.[a]

20. Capital gains derived from the sale, exchange or transfer of a capital asset, whether movable or immovable, should be taxed only in the State in which the capital asset is situated at the time of such sale, exchange or transfer. For this purpose the situs of the shares of a company should be deemed to be the country in which the company is incorporated. (Capital asset would not include movable property in the form of personal effects like wearing apparel, jewellery and furniture held for personal use by the taxpayer or any member of his family dependent on him.)[b]

21. Remuneration, including pensions and gratuities, paid in one of the Contracting States for services rendered therein out of government funds or funds belonging to a local authority in the other Contracting State, should not be taxed in the first mentioned Contracting State.

22. Profits or remuneration for professional services (including services as a director) derived by an individual who is a resident of one of the Contracting States may be taxed in the other Contracting State only if such services are rendered in the territory of that other State.

23. A professor or a teacher from one of the Contracting States who receives remuneration for teaching during a period of temporary residence not exceeding two years at a university, college, school or other educational institution in the other Contracting State should not be taxed in that other State in respect of such remuneration.

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[a] The delegation of Japan stated that the principal taxing authority should be vested in the country of residence of the recipient of income and, therefore, the tax to be charged in the country where the investment is made should be restricted to certain limits.

[b] The delegation of Japan stated that capital gains in regard to movable property other than those pertaining to a permanent establishment or to a fixed base may be taxed in the country of residence of the alienator.

24. An individual from one of the Contracting States who is temporarily present in the other Contracting State solely as—

(*a*) a student at a university, college or school, or

(*b*) as a business apprentice, or

(*c*) as a recipient of a grant, scholarship or other allowance or award for the primary purpose of study or research, from religious, charitable, scientific or educational organizations,

should not be taxed in that other Contracting State in respect of remittances from abroad for the purposes of his maintenance, education or training, in respect of a scholarship and in respect of any amount representing remuneration from an employment which he exercises in that other territory for the purpose of practical training.

25. An individual from one of the Contracting States who is present in the other Contracting State solely as a student at a university, college or school in that other State, or as a business apprentice, should not be taxed in that other State for a period not exceeding three consecutive years in respect of remuneration from employment in such other State if the remuneration (*a*) constitutes earnings necessary for his maintenance and education and (*b*) does not exceed a certain sum to be settled by agreement between the Contracting States.

26. Royalties and profits earned as a consideration for the use of, or the right to use any copyright, patents, trade marks, trade names, designs, etc. will be taxable in the State in which such property is used.

PART IV

Miscellaneous

27. As a means of giving relief against double taxation of the same income the Contracting States may as far as possible adopt the method of exemption in preference to the tax credit method. Alternately they may use a combination of both the methods.

28. If the tax credit method is used in preference to the exemption method, the agreements should provide that special tax concessions which are given by way of incentive measures designed to promote economic development, such as tax holidays or development rebates, should not be taken into consideration in granting relief against taxation and full credit should be given for the tax which would normally have been payable but for such concessions.[c]

29. The Contracting States should exchange such information as is necessary for carrying out the provisions of the agreements. The information so exchanged should be treated as secret and should not be disclosed to any persons other than those concerned with the assessment and collection of taxes which are the subject of the agreement. No information should be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

30. If the action of the taxing authorities of one of the Contracting States results in double taxation contrary to the provisions of the agreement, any taxpayer may make representations to the competent authority of the Contracting States of which the taxpayer is a resident and that authority should be given the right to present his case to the appropriate authorities of the taxing State. Every effort should be made to come to an agreement with a view to avoiding double taxation and ensuring fair implementation of the agreement between the two States.

[c] The delegation of the United Arab Republic pointed out that the United Arab Republic tax laws grant certain exemptions on tax on profits of an industrial or commercial establishment in free zones and also on wages and salaries paid by such establishments in free zones to foreigners in their employment. The United Arab Republic delegation is of the view that such concessions also should not be taken into account in granting relief against double taxation.

ANNEX C

Comments on the draft articles prepared by the International Law Commission *

Participation in general multilateral treaties

The majority of the Committee considers that the right of every State to participate in general multilateral treaties is of vital importance to the progressive development of international law. General multilateral treaties concern the international community as a whole. If international law is to be in keeping with the real interest of the international community and if universal acceptance of the progressive development of this legal order is desirable, then the participation of every member of the community is essential. The majority of the Committee, therefore, considers that the articles on the law of treaties should contain a provision regarding participation in general multilateral treaties.

One member, however, holds that in view of the principle of freedom of contract and the existing practice of the international conferences held under the auspices of the United Nations and the possible complications that it may imply, it would be better for the draft articles to be silent on this point.

Article 5

The Committee is of the opinion that paragraph 2 of this article requires reformulation to include within its scope not only the units of a federation but all kinds of unions of States. It, therefore, suggests that paragraph 2 should incorporate the following principle:

"In case of union between States, the capacity of Member States as well as the capacity of the units of a Federal State to conclude treaties will be subject to the respective constitutional provisions of that union or the Federation."

Article 7

The majority of the Committee is of the opinion that this article should be amended so as to include a provision to the effect that confirmation of the act performed without authority should be made within a reasonable time. This is suggested with a view to reducing any possibility of abuse. The minority has, however, no objection to the retention of the present text of article 7 of the International Law Commission's draft.

Articles 10 and 11

The majority of the Committee considers that there is a lacuna in these provisions as no provision has been made to cover cases which do not fall either within article 10 or within article 11. It felt that such cases are considerable and that a provision should be made, if possible, by linking up the two articles to cover cases which are not covered by the present text of these articles.

The majority is also in favour of the deletion of the words "or was expressed during the negotiation" in article 10.1 (*c*).

The minority of the Committee is in favour of retention of the present text of the draft articles.

* For the draft articles on the law of treaties, see *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, Part II, pp. 177-187.

Article 15

The Committee considers this article to contain a new norm of international law which could be supported as progressive development of international law.

The majority of the Committee is, however, in favour of deletion of clause (*a*) of this article as in its view the object of a proposed treaty might not be clear during the progress of negotiations. Some of the delegations are of the view that a provision like clause (*a*) of this article may hamper negotiations for a treaty.

Some members, however, are in favour of the retention of the present text.

Articles 27 and 28

The Committee discussed the provisions of these two articles in great detail. There was some difference of opinion in the Committee in regard to how the question of interpretation of treaties should be approached. There were on the one hand those who considered the task of interpretation to be the elucidation of the text of a treaty and, on the other, those who held the discovery of the true intention of the parties to be the paramount function of interpretation. One view expressed was that the provisions of these articles do not sufficiently take into account that the main aim of interpretation is to look for the real intention of the parties and that these articles should be suitably modified to bring out that position. Another view was that "preparatory work" as a source of determination of real intention of the parties should be included in article 27 so as to make it a primary means of interpretation and that this source should not be assigned a secondary place in article 28. A suggestion was, therefore, made for assimilation of article 28 to article 27 as a new sub-clause (*d*) to clause 3 of article 27.

The majority, while appreciating that it is basic to the whole process of interpretation that the goal should be the ascertainment of the true intention of the parties, concludes that the primary emphasis should be placed on the intention as evidenced by the text, that is to say, the actual terms of the treaty, and that it would not be either necessary or desirable to state specifically in article 27 that the object of interpretation is the discovery of the intention of the parties. According to the majority view, this is manifest from the formulation of the general rule in clause (1) which is a succinct statement of the essential rule. They feel that by the further elaboration of what is meant by the expression "the text" in clause (2) and by the indication of additional sources of interpretation in clauses (3) and (4), the International Law Commission's draft has taken full account of the paramountcy of the element of intention. The majority, therefore, is of the opinion that the draft rules of interpretation as formulated by the International Law Commission are quite adequate to the ascertainment of intention and are an inherent body of rules emphasizing the unitary character of the interpretative process. The majority is also of the view that the distinction contemplated in articles 27 and 28 should be maintained. They feel that a formulation of the rule which does not stress sufficiently the primacy of the text in relation to the extrinsic sources of interpretation would tend to considerable uncertainty and that there should be no room for recourse to preparatory material if the textual reading establishes a clear meaning in accordance with the rules specified in article 27. The majority is further of the view that though no rigid distinction is possible and that a nexus exists between the several sources, it is unable to accord preparatory material a parity of status with the primary criteria mentioned in article 27 and is of the opinion that the two articles should be separate and distinct.

Articles 30, 31, 32 and 33

The Committee considered the provisions of this group of articles which deal with the rights and obligations of third States. The majority of the Committee is of the view that article 32 should be amended by deletion of the words "and the State assents thereto. Its assent shall be presumed so long as the contrary is not indicated" and substitution therefor of the words "and the State has expressly consented thereto". The majority is also of the opinion that article 30 should be amended by interpolation of the word "express" before the word "consent". The majority is of the opinion that as in the case of obligations, the express consent of such third State should also be a condition precedent to the creation of a right. Whatever may be the true position in regard to stipulations for the benefit of a third party in systems of municipal law, in international relations the express consent of such third State be required even in the case of the conferment of rights consistently with the principle of sovereign equality of States. The majority feels that such a requirement would also reduce any uncertainty in regard to the question whether a third State has assented to the conferment of the right, and insistence on such consent by the third State or States would in the case of multilateral treaties tend to ensure the effective participation of all States in treaties of a law-making character. The majority is also of the view that if express consent of the third State is stipulated as a requirement it would help to reduce the danger of the creation of rights which carry with them contingent obligations to which such third State may well be deemed to have assented by its silence.

The minority, however, is of the view that the draft articles as drawn up by the International Law Commission are adequate.

Article 37

A view was expressed in the Committee that the modifications contemplated in article 37 should be in writing so as to obviate any uncertainty. The majority, however, was in favour of the provision as it appears in the draft articles.

Article 38

A view was expressed in the Committee that this article should be deleted as subsequent practice was too vague and uncertain a criterion for modification of a treaty. Another view is that there could be no objection to accepting this article as in the present draft with the clarification that the "parties" in this article meant all the parties to a treaty. A third view was that there was no objection to the present text as in the International Law Commission's draft.

Article 39

The principles contained in this article were generally found to be acceptable to the majority. A delegation was, however, of the view that the word "only" in paragraphs 1 and 2 of this article should be deleted.

Article 43

The Committee considered the provisions of this article in some detail. The majority was in favour of retaining the article as it is. A view was however expressed that the provision of article 43 as drafted might lead to practical difficulties, and therefore should be brought in consonance with the principle embodied in Article 110 of the United Nations Charter. Moreover, it was suggested that if the Committee retains the principle adopted in article 43, the expression "constitutional law" should be substituted for the words "internal law".

Articles 46 and 47

One delegation was in favour of deletion of these articles as in its view their provisions introduce an element of doubt into legal security and order. In the view of that delegation the provisions of article 47 in regard to the concept of corruption were too vague.

Article 49

The majority of the Committee is in favour of the addition of the words "or by economic or political pressure" at the end of the article. The minority is, however, in favour of the retention of the article as in the draft.

Article 50

While the majority had no objection to the present draft being retained, one delegation expressed the view that this is one of the concepts which may cause dispute in its application. In the view of that delegation it was desirable to designate or establish a body which is invested with standing competence to pass objective and purely legal judgements upon such disputes when they have not been solved through diplomatic negotiations or some other peaceful means.

Articles 58 and 59

One delegation was of the view that these articles should be so formulated as to provide a safeguard against situations in which the destruction of the object or a change in the fundamental circumstances is brought about by the voluntary act of the party itself.

Article 60

The majority of the Committee is in favour of the addition of the words "suspension or" before the word "severance". A minority of one is of the opinion that the addition of these words is superfluous.

NOTE:

A general comment on the draft articles made by one delegation is that there are quite a few provisions in the draft articles which contain, as is admitted by the commentary of the International Law Commission, certain concepts which may cause disputes in their application. The delegation considered it desirable to designate or establish appropriate bodies or authorities invested with standing competence to resolve such disputes in a purely objective and legal manner.

ANNEX D

Statement by Mr. Mustafa Kamil Yasseen, observer for the International Law Commission, at the ninth session of the Asian-African Legal Consultative Committee

Mr. Chairman,

I should like to express my great pleasure at seeing you and my other friends in the Asian-African Legal Consultative Committee, whose eighth session I had the honour to attend in Bangkok in August 1966. I should also like to express to you my deep gratitude for the warmth of the welcome which I have received. The cordiality of the relations between this Committee and the International Law Commission is the result of the importance which both bodies attach to close co-operation between them.

I should lie to say a few words by way of introducing the report of the International Law Commission on the work of its nineteenth session,[a] in order to assist the Committee in its consideration. The principal content of the report is the draft articles on special missions and commentaries thereon, now finally adopted by the Commission and submitted to the General Assembly at its twenty-second session. Special missions are becoming an increasingly important means for the conduct of international relations in the modern world, and the Commission considered that their importance fully justified the regulation of their legal status, privileges and immunities by an international convention. Individuals engaged on missions on behalf of their countries should be entitled to a certain status compatible with their functions. The work on special missions is a continuation of the work already done by the Commission on diplomatic relations and consular relations, two topics on which conventions have been adopted by conferences and have been brought into force.[b] These conventions will be supplemented by a third convention dealing with special missions. In this connexion the Asian-African Legal Consultative Committee can perform important work by promoting a wider understanding of the draft among the governments of its members, thus enabling them to take positions in the future work on the topic. The General Assembly, by resolution 2273 (XXII), adopted on 1 December 1967, decided that the preparation of a convention on special missions should be undertaken by the General Assembly itself at its regular session in 1968, and thus your governments will have the opportunity of participating in this work in the Sixth Committee.

I should like to mention a few features of the draft articles prepared by the International Law Commission. In the first place, it may be remarked that the whole of the draft articles constitutes *jus dispositivum* and not *jus cogens*; that is, governments are free to make whatever arrangements they wish on the matters dealt with, and the articles apply only to the extent that such special arrangements have not been made. This element of flexibility results from the requirement of consent which governs the establishment of any special mission. The privileges and immunities provided may thus be expanded or contracted by special agreement in particular cases.

The element of flexibility thus provided allowed the Commission to deal very simply in draft article 21 with the problem of so-called "high level missions", which at some stages of its discussions gave rise to some difficulties. It would have been a rather delicate task to lay down detailed provisions concerning the different levels of special missions. Under the articles as adopted, the facilities, privileges and immunities to be accorded to special missions led by Heads of State, Heads of Government, Ministers and other persons of high rank are left to be settled either by special agreement between the States concerned or by customary international law.

The Commission found that it could in general follow the pattern of the Vienna Convention on Diplomatic Relations, and in many cases could take over the wording of that Convention. Some variations had to be made in view of the nature of special missions, and in a few cases there were improvements in drafting, either based on the later (1963) Vienna Convention on Consular Relations or newly worked out by the Commission. These variations, however, are of limited extent, and in general the 1961 Convention has been closely followed.

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[a] *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1.

[b] See United Nations Conference on Diplomatic Intercourse and Immunities, 1961, *Official Records*, vol. II, p. 82, and United Nations Conference on Consular Relations, 1963, *Official Records*, vol. II, p. 175.

This adherence to precedent should simplify the consideration of the draft articles by governments in preparation for and during the twenty-third session of the General Assembly. It is to be hoped that a convention will be adopted speedily and without difficulty.

The report of the International Law Commission on its nineteenth session also sets out the Commission's plans for future work, to which this Committee can also make an important contribution. As regards the topic of succession of States and Governments, which has already been on the agenda of the Commission for some years, it is intended to take up its consideration actively at the twentieth (1968) session. For this purpose the topic has been divided into three parts. The first of these parts is succession in respect of treaties, on which Sir Humphrey Waldock has been appointed Special Rapporteur. The second part, which covers many of the most difficult questions of the topic, is succession in respect of rights and duties resulting from sources other than treaties, and on this part the Commission has appointed as Special Rapporteur, Mr. Mohammed Bedjaoui, the Minister of Justice of Algeria. Both Sir Humphrey Waldock and Mr. Bedjaoui are expected to submit reports for discussion in 1968. The third part of the topic is succession in respect of membership of international organizations, which is closely related with other topics being considered by the Commission, and on which for the time being no Special Rapporteur has been appointed.

The second major topic to be considered is State responsibility, on which the Special Rapporteur is Mr. Roberto Ago. Mr. Ago will submit a report for discussion at the twenty-first session (1969).

It is hoped that progress can be made in 1968 on the topic of relations between States and inter-governmental organizations, on which the Special Rapporteur is Mr. Abdullah El-Erian, who has already submitted some draft articles to the Commission.

Finally, at its nineteenth session the Commission decided to begin work on a question which had been laid aside in the preparation of the draft on the law of treaties. This question is the most-favoured-nation clause, on which Mr. Endre Ustor of Hungary was appointed Special Rapporteur. Some interest was expressed in the General Assembly in the Commission's dealing with this topic, and work on it may also be useful in connexion with the activities in regard to international trade law which are to commence in 1968.

It is to be expected that the Commission at its twentieth session will be able to adopt a number of draft articles on more than one of the topics I have just mentioned. As you all know, the procedure of the Commission is first, provisional adoption of draft articles, which are then submitted to Governments for comments and are later revised and finally adopted in the light of the comments received. I hope that this Committee will find it possible to examine these provisional draft articles, and will inform the International Law Commission of its views. In this way the Committee will make an important contribution to the work of the Commission and to the codification and progressive development of international law, a cause which is of the highest importance and interest to us all.