vention itself not only fails to support the petitioner's view but is contrary to it.'' Moreover, it is

> particularly inappropriate for a court to sanction a deviation from the clear import of a solemn treaty between this nation and a foreign sovereign, when, as here, there is no indication that application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories.

The relevant materials concerning the intent of the parties to the convention showed that the general purpose of the treaty was not to assure complete and strict equality of tax treatment—''a virtually impossible task in light of the different tax structures of the two nations''—but rather to ''facilitate commercial exchange through elimination of double taxation resulting from both countries levying on the same transaction or profit; an additional purpose was the prevention of fiscal evasion.'' Neither of these purposes ''requires the granting of relief in the situation here presented.''

Methods other than that employed by the Court in *Maximov,* by the Circuit Courts as in *D.C. National Bank,* by the *Restatement* in Section 147, and by the majority decision in the *U.S.-Italy Aviation Arbitration,* would be quite unrealistic. Not only does the use of the treaty or legislative language as the departure point for the interpretative process give proper weight to the rôle of the parties at their important point of engagement. It also saves time and energy, enabling easy cases to be handled without turning them into exhaustive and exhausting inquiries where every conceivable ''participant,'' or ''value,'' or ''interest,'' or ''objective,'' or other conceivable checkpoint on a checklist, has to be examined minutely, though its relative significance is small or quite obvious. At the same time, this common-sense interpretative method which *starts* with the legislative or treaty language but is in no sense limited thereto, and which does not consider interpretative guidelines to be rigid rules, assists in the task of giving proper weight to all the evidence of the intention or expectation of the treaty countries, which is the ultimate task of the treaty interpreter.

STANLEY D. METZGER

A DECADE OF LEGAL CONSULTATION: ASIAN-AFRICAN COLLABORATION

While the attention of international legalists in general tends to center upon the International Law Commission, and particularly at the present time upon that body's work on the law of treaties, it would seem appropriate to draw attention to other agencies whose efforts are relatable to such work. One such agency is the Asian-African Legal Consultative Committee. At first called the Asian Legal Consultative Committee (with members nominated by the governments of Burma, Ceylon, India, Iraq, Japan and Syria, respectively), it came into existence as from November 15, 1956. Its statutes were broadened with effect from April 19, 1958, to

https://doi.org/10.2307/2197352 Published online by Cambridge University Press

permit African states to participate. By 1965 Indonesia, Pakistan and Thailand had begun to take part, three African states (Ghana, Morocco and Sudan) had joined, and still other entities (Cameroons, Malaysia, Tanzania and the Arab League) had observers at the 1965 Session. The Secretariat is at New Delhi. At each annual session the Committee elects a President from among members attending in a representative capacity. The Committee has contacts with, and is reported as receiving documents from, various international agencies.[1] Annual meetings take place, by a plan of rotation, at the capital cities of the member states.

The Consultative Committee is still in a relatively early stage of its work. Any broad evaluation of its activities would perhaps be premature. This need not preclude, however, a general view of its beginnings and the directions of its efforts. For purposes of a brief comment it may be appropriate to consider (1) the Committee's stated objectives; (2) its working methods and illustrative topics which have appeared on its agenda; and (3) its liaison with other international bodies.

The very wide range of subjects which were likely to come before the Committee became apparent early in its history. A participating government might refer "any legal problem" for consideration, together with a memorandum setting out the questions on which views of the Committee might be sought.[2] By a separate paragraph of its statutory rules the body might "on the motion of any of the members take up for consideration any legal matter of common concern" and might express such views or make such recommendations as it saw fit. There was a general authorization to the Committee to consider, *inter alia,* matters before the International Law Commission of the United Nations. The Committee is not restricted, however, to consideration of what may be before that Commission. Among the topics to which it has given attention or on which it has received reports are those pertaining to diplomatic immunities, extradition, ionospheric sovereignty, foreign decrees in matrimonial matters, property rights of aliens,[3] and international legality of nuclear tests in time of peace.[4] Per-

[1] By the time of the 1964 session, the Committee had come to have relations with, and was apparently receiving documents from, the United Nations, Specialized Agencies, the International Law Commission, the Organization of American States, the Arab League and the International Institute for Unification of Private Law. International organizations invited to have observers had come to include the Organization of African Unity; the Committee authorized its Secretary to invite any agency of the United Nations. Report of Sixth Session (Cairo, 1964), pp. 3, 4. The Committee has also decided to enter into consultative arrangements with the Hague Conference on Private International Law.

[2] Report of the First Session (New Delhi, 1957), p. 11.

[3] See note 5 below.

[4] Factual, scientific and medical aspects of the last-mentioned subject received consideration, along with the question of whether a state holding territory in trust, or one in charge of a non-self-governing territory, had a legal right to use such territories for purposes of nuclear tests. Report of Sixth Session (Cairo, 1964), pp. 12, 37–39. The report of the Committee, comments and background material comprise 245 pages. The conclusions of the Committee on this general subject (reprinted in 59 A.J.I.L. 721 (1965)) are "referable to all test explosions of nuclear weapons other than underground test explosions."

https://doi.org/10.2307/2197352 Published online by Cambridge University Press

haps one of the most controversial, as it touches the broad principle of the responsibility of states, has been that relating to compensation for alien-owned property that is expropriated.[5] Other subjects include the law of the territorial sea, the law of outer space, and the recognition and enforcement of foreign judgments.[6]

On some of the topics that have engaged the attention of the Committee there have been extensive reports, as, for example, that of legal aid to nationals of countries co-operating through the Committee.[7] At the Sixth (Cairo) Session the United Arab Republic referred, for preliminary discussion, the subject of the rights of refugees [8]—a subject which seems likely to come under further discussion in the light of events in the Middle East in 1967. There has been, for the purpose of comparison, consideration of matters which touch not only the practice of states that co-operate through the Committee, but also that of other countries.[9] At the 1965 meeting there was a listing of nine subjects that had been "finalized" and a listing of others in which considerable progress had been made.[10]

The broad wording of the Statutes of the Committee has made it natural for the Asian-African body to look to the work of other agencies that have for their object the clarification of law and practice on many matters of common concern. Realization that these matters present problems for the international community in general, and the possibility of mutual benefit through interchange of materials and comparison of views have provided occasion for such relations as the Asian-African group has had with outside bodies. Methods of such collaboration have been worked out over several years. The means have included, in particular, the sending of observers to the meetings of the International Law Commission, and the Asian-African group's receiving observers from the International Law Commission. This practice has provided opportunity for the Committee's spokesmen to make known its views on matters that are of special concern to legalists in Asia and Africa. Illustrative of the general outlook of the Committee are the remarks of the observer for the Asian-African Committee (Mr. Sabek) at the Sixteenth Session of the International Law Commission, as summarized in the Commission's records:

> . . . the [Asian-African Legal Consultative] Committee had greatly appreciated the presence at its fourth, fifth and sixth sessions of observers from the International Law Commission. It had also welcomed the Commission's discussion at its fifteenth session on co-

[5] See "Principles Governing Admission and Treatment of Aliens," Report of Fourth Session (Tokyo, 1961), pp. 46–180.

[6] See "The Recognition and Enforcement of Foreign Judgments . . . Report of the Committee and Background Materials." The report was adopted at the 1965 (Baghdad) session.

[7] Report of the Fourth Session (Tokyo, 1961), Part II, pp. 199–374.

[8] Report of Seventh Session (Baghdad, 1965), pp. 23–31.

[9] See, for example, the attention given to the practice of states other than member states of the Committee, as well as to states that are members, in the Final Report of the Committee on the Status of Aliens, in Report of Fourth Session (Tokyo, 1961), pp. 43–180.

[10] Report of Seventh Session (Baghdad, 1965), p. 10.

https://doi.org/10.2307/2197352 Published online by Cambridge University Press

> operation between the two bodies, which had stressed the need for a more regular and complete exchange of documents.
>
> The progressive development of international law was of particular interest to Asian and African countries, which in the past had been unable to make their views known, having long suffered under imperialism and inequitable treaties concluded without regard to their interests and needs. They were anxious to eradicate all vestiges of colonialism and foreign domination. One of the reasons for the Asian-African Legal Consultative Committee was to consider questions under examination . . . and to assist in the development of law and its adjustment to the requirements of a world-wide community. The Committee appreciated the way in which the Commission took account of the views of Asian and African countries.
>
> At its last session the Committee had held a general discussion on the law of treaties and had decided to take up the question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations. It had also considered the problem of refugees and hoped that its recommendations would prove to be a practical contribution towards the legal protection of their rights. That subject was to be taken up again . . . together with the right of asylum, repatriation and compensation.[11]

Continuing, and referring to broader international matters, the speaker noted with satisfaction that there had been a General Assembly resolution in 1963 on the matter of equitable representation in the Security Council and in the Economic and Social Council. It was believed, he pointed out, that the time had come to review the Charter in accordance with its Article 109, since many new states had not taken part in its negotiation, so that it could not reflect the consensus of opinion of the present Members of the United Nations.[12]

At the same session of the International Law Commission a member of that body (Eduardo Jiménez de Aréchaga) who had attended, as an observer, the Cairo meeting of the Asian-African Committee, made reference to the high level of deliberations, the importance of the resolutions adopted, and the expeditious manner in which that Committee had conducted its discussions.[13]

Following his attendance at the Baghdad meeting of the Asian-African group, the Chairman of the International Law Commission (Roberto Ago) reported that he had been greatly impressed with the Committee's serious approach to its work and had been glad to note that the Committee desired to co-operate closely with the International Law Commission. As one of the items on the Committee's agenda was the law of treaties, he had recommended transmission of comments on that topic to the Commission, since the latter had a special interest in knowing the views of the many new countries represented on the Committee.[14]

Any adequate evaluation of the work of the Asian-African Committee must await developments—perhaps effort over many years. From the record of the first decade it seems clear that what the agency has undertaken

[11] 1964 I.L.C. Yearbook (I) 139–140.
[12] *Ibid.*
[13] 1964 I.L.C. Yearbook (II) 122.
[14] 1965 *ibid.* (I) 1.

https://doi.org/10.2307/2197352 Published online by Cambridge University Press

to do, and what it has so far accomplished should be especially useful to the principal United Nations body which currently seeks to state and to clarify international law on selected subjects. The Committee has not failed to note the fact of some divergence in thinking and in practice as between the newer states and the older members of the family of nations on certain questions,[15] and some of its records have particularly reflected this fact. This, however, has not precluded it, while it gives some priority to matters of special concern to Asian and African states, from co-operating constructively, through a system of observers and through exchange of records, with world agencies, and especially with the particular one of these agencies which currently has principal responsibility for statement of international law on such a basic subject as that of treaties.[16]

ROBERT R. WILSON

THE "EFFECTS" DOCTRINE OF JURISDICTION

As John M. Raymond mentioned in his "A New Look at the Jurisdiction in ALCOA," in the April, 1967, issue of this JOURNAL,[1] the ALCOA case contains the classic statement of the "effects" doctrine of territorial jurisdiction of a state. Judge Learned Hand there stated that it was "settled law" that "any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the state reprehends."[2]

Mr. Raymond acknowledges that this doctrine "has been religiously followed by our courts in antitrust cases" (*loc. cit.* at 559). He believes however, that "sound legal principles" call for a "limitation" of the doctrine, one which he candidly states has "never been suggested before." The limitation he urges is that territorial jurisdiction based upon conduct

[15] On the general subject, see Judge Philip C. Jessup, "Diversity and Uniformity in the Law of Nations," 58 A.J.I.L. 341–358, at 357 (1964); R. P. Anand, "Rôle of the 'New' Asian-African Countries in the Present International Legal Order," 56 *ibid.* 383–406 (1962). See also G. M. Abi-Saab, "The Newly Independent States and the Rules of International Law: An Outline," 8 Howard Law Journal 95–121 (1962); P. Chandrasekhara Rao, "Wider Appreciation of International Law," 4 Indian Journal of International Law 323–328 (1964).

[16] Sir Humphrey Waldock, who was Special Rapporteur on the Law of Treaties for the International Law Commission from 1961 to 1966, has stressed that Commission's search for solutions that would be in the best interest of the international community as a whole. "By 1962," he points out, "the Commission had been enlarged to provide for a wider representation of the new states, and its constant aim was to find solutions which might so far as possible reconcile the points of view, on the one hand, of the old states and the new and, on the other, of states of differing political alignments. The readiness of members to look for common ground rather than to maintain a national point of view or to give up a personal conviction on a point of doctrine in deference to the convictions of others unquestionably owed much to their consciousness that the Commission's drafts must be such as would have a good prospect of obtaining the general assent of world legal opinion at a diplomatic conference." "The International Law Commission and the Law of Treaties," 4 UN Monthly Chronicle 69–76, at 72 (1967).

[1] 61 A.J.I.L. 558 (1967).

[2] United States v. Aluminum Co. of America, 148 F. 2d 416, 443 (2d Cir., 1945).

https://doi.org/10.2307/2197352 Published online by Cambridge University Press