

work. As a result of these arrangements, the AALCC is invited to be represented at all conferences and meetings convened by the United Nations or its agencies in the field of law. The representatives of those bodies also attend the AALCC sessions from time to time.

Apart from the United Nations and its agencies, the AALCC also maintains official relations with various regional organisations and certain specialized inter-governmental organisations. These include the League of Arab States, the Commonwealth Secretariat, the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (UNIDROIT), the Latin American Economic System (SELA), the Inter-American Juridical Committee of the OAS and the European Committee on Legal Co-operation of the Council of Europe.

#### Resume of work done by the AALCC

One of the functions assigned to the AALCC at its inception was the examination of questions that were under consideration of the International Law Commission and to arrange for the views of the AALCC to be placed before the Commission. The International Law Commission had a large number of topics included in its programme of work embracing a variety of issues. It was considered important to place before that body the Asian-African viewpoints so that such views could be taken into account in the course of deliberations of the Commission which would ultimately lead to the codification and progressive development of international law.

An equally important task entrusted to the AALCC was to consider legal problems referred to it by any of its member governments and to make such recommendations to governments as it thought fit. This advisory role of the AALCC was particularly important in its early years as the newly independent States in the Asian-African region were faced with many difficult problems having an international legal content and were anxious to take a concerted approach on those issues and for this purpose were keen to be guided by the views of

an expert body composed of the leading jurists of the region. As a result, at its inception there were as many as twelve different subjects which the member governments wanted the AALCC to consider. These included questions concerning Restrictions on the Immunity of States in respect of Commercial Transactions; Extradition of Fugitive Offenders; Status and Treatment of Aliens including the question of Diplomatic Protection and State Responsibility; Dual Nationality; Law of the Sea; Reciprocal Recognition and Enforcement of Foreign Judgments in Matrimonial Matters; and Legal Aid.

By the time the AALCC held its third session in Colombo in 1960, it was already in a position to make its recommendations on the question of Diplomatic Immunities and Privileges on which a United Nations Conference of Plenipotentiaries was due to convene the following year. The AALCC's recommendations on this subject not only dealt with the draft articles prepared by the International Law Commission, but included certain draft formulations of its own. At the United Nations Conference on Diplomatic Relations held in Vienna in 1961, the AALCC's recommendations on the subject were officially circulated as a conference document, and some of its recommendations were incorporated in the Convention that was adopted at that conference.

For the next seven or eight years beginning with its Tokyo Session held in 1961, the AALCC's programme of work followed a uniform pattern. It continued to meet annually for a period of two weeks with the participation of eminent jurists from member countries and was able to make substantial progress on the subjects referred to it by the member governments. The AALCC's recommendations on several of these subjects were finalised and reports submitted. Among the various subjects dealt with by the AALCC during this period, particular mention may be made of its recommendations on the question of the Legality of Nuclear Tests adopted at its Cairo Session held in 1964; the Principles concerning the Status and Treatment of Aliens finalised at the Tokyo Session in 1961; and the Principles concerning the Rights of Refugees, adopted at its Bangkok Session in 1966, which paved



the way for the United Nations Declaration on Territorial Asylum the following year. The AALCC's recommendations on nuclear tests, which were in the nature of a pioneering work, attracted the attention of the United Nations and later of the International Court of Justice in the complaint filed before it by Australia and New Zealand against France. Recommendations were also finalised on the question of Immunity of States in respect of Commercial Transactions; Principles for Extradition of Fugitive Offenders; Free Legal Aid; Arbitral Procedure; Dual Nationality; Reciprocal Enforcement of Foreign Judgments, the Service of Process and the Recording of Evidence among States, both in Civil and Criminal cases; and Relief against Double Taxation. In addition, the AALCC at its New Delhi session held in 1967 discussed the merits of the judgment of the World Court in the *South-West Africa Cases* and the status of South-West Africa. The AALCC also examined the International Law Commission's work on the Law of Treaties; the Law of International Rivers; the Revision of the United Nations Charter; Codification of the Principles of Peaceful Co-existence; and the Law of Outer Space.

A major change in the AALCC's programme of work and the method of its functioning came about in 1969 when it was decided that the AALCC should, in addition to its advisory role to its member governments, assist its member States in the preparations for international conferences of plenipotentiaries convened by the United Nations. The initiative in this respect came from Dr. T.O. Elias, the then Minister of Justice of Nigeria and now a Judge of the International Court of Justice, during the Vienna Conference on the Law of Treaties. That was the first major law-making conference which was attended by a large number of delegations from the newly independent States of Asia and Africa. Dr. T.O. Elias, who was the Chairman of the Committee of the whole at that Conference and also the Chairman of the Afro-Asian Group, suggested that the AALCC should prepare a study on some of the important questions and arrange for a meeting which would enable the Asian and African delegations to have full and frank exchange of views on the crucial issues on the

subject. The Karachi Session of the AALCC held in 1969, on the eve of the second session of the Vienna Conference on the Law of Treaties, was utilized for this purpose and the discussions at that session paved the way for the settlement of the outstanding issues and the successful conclusion of the Convention on the Law of Treaties.

In December, 1970, the United Nations General Assembly decided to convene the Third Conference on the Law of the Sea. A suggestion was made that the AALCC should take up this subject with a view to assisting its member governments and other governments of the region in the preparations for the proposed conference, having regard to the significant role played by the AALCC in connection with the Conference on the Law of the Treaties. From then onwards, the Law of the Sea has continued to remain a priority item on the AALCC's programme of work as well as the agenda of its annual sessions beginning with the twelfth session held in Colombo in 1971. The AALCC Secretariat has assisted its member governments and other governments in the region by preparing useful studies and discussion papers. Apart from this, inter-sessional consultations on a regular basis have been carried on through meetings of its sub-committees and working groups.

Almost at the same time as the AALCC addressed itself to the consideration of the Law of the Sea, it was felt that it should also include in its programme of activities consideration of legal questions in the field of international trade and development in view of the establishment of UNCTAD and UNCITRAL which were expected to take up on a long-term basis the formulation of the international law and practices relating to such matters. Official relationships were established with these two bodies and a section in the AALCC Secretariat was created to deal with international trade law matters.

Since the legal rules governing international trade had been a product primarily of the industrial nations of Western Europe and consequently oriented to safeguard the interests of their trading communities, it became necessary for the Asian and African States to take an active role in the examination and formulation of such rules under the auspices of



the specialized bodies of the United Nations. This was particularly so in the fields of shipping legislation, international commercial arbitration and formulation of uniform laws in regard to international trade transactions. The AALCC's work had, therefore, to be directed towards preparation of studies and papers to assist the countries of this region to play an effective role in the deliberations of organs and bodies like UNCITRAL and UNCTAD as also in conferences of plenipotentiaries that were being convened to draw up conventions or codes of conduct regulating trade law matters. Work of this nature dealt with by the AALCC and its Secretariat has been in relation to the Convention on a Code of Conduct for Liner Conferences adopted in 1974, the Convention on the Carriage of Goods by Sea and the Convention on Contracts for the International Sale of Goods which have been adopted at the Plenipotentiaries Conferences held at Hamburg and Vienna in 1978 and 1980, respectively. Preparatory work in respect of the Convention on Liner Conferences had been undertaken by UNCTAD and in respect of Carriage of Goods by Sea and Contracts for International Sale of Goods by UNCITRAL.

Following a proposal that the AALCC should also take up specific issues relating to questions which were of special interest to the region, the AALCC undertook the formulation of model or standard contracts for use in international transactions in regard to commodities and raw materials which are primarily exported from the countries of the region. It was found that most of the transactions in regard to such commodities continued to be made on terms and conditions drawn up by trading associations and institutions in London and some of the leading centres in Western Europe. Such terms and conditions were heavily weighted in favour of the European buyers and needed to be reviewed in order to have more balanced contractual provisions which would effectively take care of the interests of both the buyer and the seller. After five years of consultations with the governments and trading organisations of the region and the United Nations agencies like the UNCITRAL and ECE, the AALCC was able to evolve two standard contracts, one based on F.O.B. and

the other on F.A.S. terms, applicable in respect of such commodities. The C.I.F. model contract form was finalized after another couple of years of efforts in 1980 at the AALCC's Jakarta Session and C&F model contract form is nearing finalization. Steps are now being taken to promote the use of these model contracts so that they can gradually replace the outmoded standard forms drawn up by private trading associations.

As regards formulation of other standard contracts suited to the needs of the region, the AALCC has entrusted its Secretariat with the task of the preparation of drafts in respect of the following :—

- (a) Consultancy agreements, particularly those relating to the preparation of feasibility studies, engineering design and supervision of execution of projects;
- (b) Construction contracts, particularly those relating to plant and machinery;
- (c) The transfer of technology and know-how licensing agreements; and
- (d) Contracts for grant of concessions in regard to exploitation of natural resources and mineral deposits.

Another question of very great importance to this region was to find ways and means by which disputes of a commercial nature arising out of trading and other types of private law transactions could be settled expeditiously and through adoption of fair procedures. It was noted that most of the contracts governing such transactions between Asian-African parties including governments and governmental corporations and the parties in other regions provided for settlement of disputes by arbitration under the auspices of chambers of commerce or arbitral institutions located in Western Europe. It was found that the procedures adopted by some of these institutions at times worked inequitably for the developing countries, but their weaker bargaining positions left them with no option but to accept such arbitration clauses. The AALCC



has made certain important recommendations in this regard which include adoption of a protocol to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards to provide for the non-enforcement of awards which are made under procedures which do not work fairly to one of the parties, as well as the establishment of two regional centres for commercial arbitration, one in Asia and the other in Africa. Pursuant to these recommendations two Regional Centres for Commercial Arbitration have been established, one in Kuala Lumpur and the other in Cairo.

The establishment of these Centres represents an unprecedented landmark in the system of settlement of disputes in the Asian-African region. These Centres are the first of their kind and are unique in the sense that they represent an effort on the part of a group of countries at an inter-governmental level, to provide for the first time a machinery for settlement of disputes on an integrated pattern in regard to international transactions of a commercial nature. The Centres are not merely envisaged to provide facilities for arbitration under their own auspices but their principal functions will include several broad-based objectives such as co-ordination of activities of national institutions within the region served by the Centre, providing facilities for *ad hoc* arbitration as also in arbitrations held under the auspices of other institutions; and rendering of assistance in the enforcement of awards. The Kuala Lumpur Centre has started making its impact and a number of agreements have since been signed that provide for settlement of disputes under the auspices of that Centre. Formal agreements have also been signed with the World Bank's International Centre for Settlement of Investment Disputes (ICSID) for mutual co-operation and assistance between these Centres and ICSID.

Since its Jakarta Session held in 1980, the AALCC has embarked on one of the most significant of its ventures i.e., the development of a legal framework for co-operation amongst the member countries in the field of industries in the context of materialization of the New International Economic Order. It was felt necessary to identify the contents as well

as the areas in which such co-operation was feasible before developing a legal framework. As a follow-up of the Jakarta Session, a Ministerial-level meeting followed by an Expert Group meeting was held in December 1980 at Kuala Lumpur. In this meeting, besides identification of areas of co-operation like downstream petro-chemical industries, steel etc., the importance of issues relating to investment promotion and protection were highlighted. A recommendation was made for the development of a model investment protection agreement indicating its important elements. A model investment promotion and protection agreement was accordingly, prepared and the same was considered at the AALCC's Colombo Session held in 1981. Another Ministerial meeting was held in Istanbul in September 1981. This meeting considered the model investment protection agreement and the observations made at the Colombo Session of the AALCC and recommended the expeditious finalization of the model agreement. Besides, the meeting made a number of recommendations including a programme for exchange of information amongst the member countries in respect of industrial policies, plans, investment laws, areas with prospects for joint ventures with other member countries and training facilities in managerial and technical fields. The Secretariat pursued this programme vigorously. Summarised information in these areas in respect of ten or eleven member countries has already been prepared by the Secretariat and circulated to Member States.

#### Current and future programme of work

The current programme of work of the AALCC includes the Law of the Sea, and also matters like optimum utilization of the resources of the Exclusive Economic Zones, Environmental Law, Reciprocal Assistance in regard to Prevention and Investigation of Economic Offences, State Succession in respect of matters other than Treaties, Draft Conventions on International Bills of Exchange and Cheques, Transfer of Technology, Regional Co-operation for Industrial Development including Protection of Investments, Joint Ventures, Programme for Exchange of Information etc. The other subjects which



are pending consideration of the AALCC on which research work will be undertaken in the future include :

1. Status and Treatment of Aliens;
2. Law relating to International Rivers;
3. Rights of Refugees;
4. Law of Outer Space;
5. Revision of U.N. Charter;
6. Codification of the Principles of Peaceful Co-existence;
7. Questions concerning the Service of Process, Issue of Letters Rogatory and the Recording of Evidence;
8. Questions concerning Transportation of Goods by Air;
9. State Responsibility; and
10. Transnational Corporations.

#### **Publications**

The AALCC Secretariat publishes a report on the proceedings of each of its annual sessions, and in addition the Secretariat has brought out five special reports on the following subjects :

1. The Legality of Nuclear Tests;
2. Reciprocal Enforcement of Foreign Judgements, the Service of Process and the Recording of Evidence, both in Civil and Criminal Cases;
3. The Right of Refugees;
4. Relief against Double Taxation and Fiscal Evasion; and
5. The South-West Africa Cases, 1966.

The AALCC had also published two voluminous studies on the Constitutions of Asian and African States, respectively in 1968 and 1972. Since many of the Constitutions have either been abrogated or amended, publication of supplements to these compilations is contemplated.

The AALCC Secretariat had undertaken publication of a quarterly bulletin from January 1976. The bulletin initially contained current information in respect of the following matters : (i) work of the AALCC during the preceding quarter; (ii) important conferences and meetings in the field of international and trade law; (iii) agreements, treaties and conventions of interest to member governments; and (iv) national legislations and proclamations of interest to member governments. The coverage of the bulletin has since been expanded to include developments in the field of international law and trade law including treaties and conventions entered into by them, index of legislation and summaries of judicial decisions which have a bearing on current international law and practice.

The AALCC also intends to bring out special issues of the bulletin which will be devoted exclusively to the following matters :

- (a) Index of treaties and conventions entered into by Asian-African countries during the past five years with summaries;
- (b) Brief notes on judicial decisions on international legal questions rendered by superior courts and tribunals during the past ten years; and
- (c) Summaries of economic laws of member countries and other Asian African countries.

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## II. LAW OF THE SEA

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## LAW OF THE SEA

### Introductory

The item "Law of the Sea, including questions relating to the sea-bed and ocean floor" was included in the programme of work of the AALCC at the initiative of the Government of Indonesia and has been under its active consideration since the twelfth session of the AALCC held in Colombo in 1971. The AALCC's work on this subject was in the initial stages organized and carried out with a view to assisting member governments and other Asian-African governments in their preparations for the Third United Nations Conference on the Law of the Sea. However, as the Conference advanced from one session to the other, the AALCC's work was oriented to encourage and facilitate the search for compromise solutions to the unresolved questions before the Conference. Since 1974, the AALCC has undertaken, with this objective in mind, a series of initiatives at its annual sessions, meetings of the Sub-Committee and special meetings of experts.

The AALCC's deliberations at the Colombo, Lagos, New Delhi and Tokyo Sessions held from 1971 to 1974 focused largely on the issues before the Second Committee of the Conference on which, at that time, the Conference was sharply divided, especially those relating to the breadth of the territorial sea, the exclusive economic zone, straits used for international navigation, archipelagos and the questions relating to the rights of access of landlocked States to the high seas and the resources of the exclusive economic zones of neighbouring coastal States, marine pollution and scientific research. Even at that early stage considerable work was done on the issues relating to the exploitation of the mineral resources of the international sea-bed area, although the more significant contributions of the AALCC in regard to these issues were made during more recent years.