

ECONOMIC, SCIENTIFIC AND TECHNICAL CO-OPERATION IN THE USE OF THE INDIAN OCEAN

The government of Sri Lanka by a reference made on the 29th May 1981, under Article 3(b)* of the Committee's Statutes, had requested the Committee to initiate a study on the Economic, Scientific and Technical Co-operation in the use of the Indian Ocean and to inscribe the item on the agenda of the Committee's twenty-third Session.

The background in which the proposed study was contemplated had been set out in the Explanatory Memorandum annexed to the Reference in the following terms:

"The Indian Ocean is an area in which, more than in any other, the interests of Asia and Africa converge. Lying as it does in tropical and sub-tropical latitudes, it unites the two continents. The littoral and hinterland States of the Indian Ocean share a common history of colonial exploitation and today include some of the world's least developed countries. It was in order to ensure to the Indian Ocean States the peace and security needed for their economic development that the idea of declaring the Indian Ocean a Zone of Peace was first conceived. While these efforts proceed under the auspices of the United Nations the Asian-African Legal Consultative Committee should carry out a study of the ways and means of promoting economic, scientific and technical co-operation for mutual benefit among Asian and African States, in the exploration, exploitation, conservation and rational use of the Indian Ocean and its resources. It is believed that a study of this nature would benefit not only the Indian Ocean States but AALCC's membership as a whole".

By way of elaboration on the objectives of the proposed study, it was stated that the Convention on the Law of the Sea, adopted by the United Nations Conference on 30th April, 1982 after nine years of protracted negotiations, had set in motion a new legal order for the oceans recognising exclusive rights and jurisdictions of the coastal states over the resources of the sea adjacent to their coasts and

* Revised Statutes, Article 4 (c)

extending to a limit of 200 nautical miles. Similarly, the Convention had recognised the right of each state in the resources of its continental shelf which may extend upto a limit of 350 miles or even beyond under certain circumstances. The immense resource potential, both living and non-living, if properly explored, exploited and conserved could help to bring about vast improvements to the economies of the countries bordering the Indian Ocean and the living standards of their people. Furthermore, in the areas of the ocean lying beyond national jurisdictions, the discovery of polymetallic nodules had given rise to mankind's hope of a common heritage in the wealth of the oceans in concrete terms.

It was pointed out that whilst national efforts must constitute the key in any programme for development, there would appear to be considerable need for evolving a system of co-operation and co-ordination of activities between the States of the region to reap the optimum benefit. In the first place, the geo-physical characteristics of the Indian Ocean made it practically impossible for any one State to take effective measures by itself to gather accurate data about the resources or for their conservation and protection as also in the matter of preservation of the marine environment. Furthermore, in the prevailing situation where the coastal states bordering the Indian Ocean are faced with the shortage of capital, skilled manpower and technology, it would be most conducive to evolve a system of co-operation in which pooling of information, avoidance of duplication and joint efforts on specific projects can be contemplated.

In accordance with the normal practice of the Committee, the item was included in the agenda of the Tokyo Session held in May 1983 and a preliminary study was prepared by the Secretariat for the purposes of discussion. A brief outline of the resource potential of the Indian Ocean, prepared on the basis of available estimates and data, was included in the preliminary study. Mention was also made in the study of the programme initiated during the past two decades by various United Nations Agencies in relation to the Indian Ocean and its resources such as in the fields of oceanography, fisheries and protection of marine environment. In this connection, the programme initiated by the Intergovernmental Oceanographic Commission (IOC), the Food and Agricultural Organisation (FAO), the United Nations Environment Programme (UNEP), the International Maritime Organisation (IMO), the Economic and Social Commission for Asia and the Pacific (ESCAP) as also the work of the Asian-African Legal Consultative Committee were set out for information of member governments. The preliminary study had also indicated the suggested modalities of approach for further study of the matter. As a first step in the process, it was suggested to

have a broad exchange of views between interested governments to identify on a tentative basis the field and areas where a system of co-operation might become possible in effective and practical terms. Further, it was pointed out that after the basic information has been collected, it would be possible for the interested governments to discuss in concrete terms the plans the modalities for co-operation. It was felt that research, survey, collection of data, and exchange of information will perhaps be the most important in the present stage of development and knowledge of the Indian Ocean since collection and exchange of information and data on a systematic basis would constitute a vital link in any plan for co-operation of training programme, joint action on management and conservation of the living resources may well be some of the matters on which co-operation might be envisaged during early states. Finally it was suggested that a special meeting might be convened at the invitation of a member government in co-operation with and assistance of the AALCC to give further consideration to the Indian Ocean Programme. Such a meeting may well serve the purpose of providing the initial contact between interested governments and facilitate exchange of views concerning practical feasibility of promoting co-operation between the Indian Ocean States as also the fields and areas where programme for co-operation are likely to be most conducive.

The Secretariat study was taken up for consideration by an Informal Working Group during the Tokyo Session held in 1983. The Working Group had expressed the view that it would be desirable to revise and elaborate the outline prepared by the Secretariat after consultations with the organs and agencies of the United Nations who are concerned in the field as a next step in the programme of study of the subject before a governmental meeting was contemplated. The main purpose of such consultations was to provide governments with a clearer picture about the plans and programmes undertaken or to be undertaken by the concerned offices and agencies of the United Nations, to obtain their views about the methods of implementation of such programmes and the needed government action for the purpose. It was felt that a good deal of the ground concerning the Indian Ocean and utilisation of its resources might well be covered through a systematic and co-ordinated effort to implement such programmes under the auspices of the United Nations. The recommendations of the Working Group were later generally endorsed at the Plenary by the delegations of Sri Lanka, India, Indonesia and Malaysia.

In accordance with the aforesaid recommendations, the Secretary-General consulted with the various United Nations Offices, organs and

agencies, namely the Inter-governmental Oceanographic Commission (IOC), the Food and Agricultural Organisation (FAO), the Economic and Social Commission for Asia and the Pacific (ESCAP), the United Nations Environment Programme (UNEP), the Ocean, Economics and Technology Branch (OETB), the United Nations Development Programme (UNDP), the United Nations Commission on Trade and Development (UNCTAD), the Economic Commission for Africa (ECA), the Office of the Legal Affairs and the Office of the Law of the Sea, at the United Nations Secretariat. A two day meeting was thereafter arranged at the United Nations Headquarters in New York on the 17th and 18th September 1984 for exchange of views on the subject at the invitation of the Secretary General of the AALCC. The meeting was attended by the representatives of the UNESCO, IOC, FAO, IMO, OETB, UNDP, the Office of the Legal Affairs and the Office of the Law of the Sea. After a general exchange of views, it was decided that the various offices and agencies participating in the meeting would send written memoranda about the programmes that are contemplated by the various agencies in relation to the Indian Ocean.

At the Kathmandu Session, in the course of the discussions on this topic, the delegate of Sri Lanka informed the Committee that his government following consultations with various United Nations agencies had decided to convoke an international conference on the Indian Ocean in Colombo in the middle of 1985. The first phase of the conference on Indian Ocean Co-operation in Marine Affairs was accordingly held in Colombo in July 1985.

This item was not included in the agenda of the Arusha Session. The delegation of Sri Lanka, however, while referring to the out come of the first phase of the Colombo conference expressed the hope that the Committee would continue its close association with the initiative taken by his Government.

LAW OF INTERNATIONAL RIVERS

INTRODUCTION

The subject "Law of International Rivers" had originally been taken up by the AALCC upon two references made by the Governments of Iraq and Pakistan under Article 3(b) of the Committee's Statutes*. Iraq's primary interest appeared to be related to two basic questions, namely:-

- i) Definition of the term "International Rivers;
- ii) Rules relating to utilization of waters of international rivers by the States concerned for agricultural, industrial and other purposes not connected with navigation.

Pakistan's primary concern also appeared to be with regard to the uses of waters of international rivers, and more particularly, the rights of lower riparians. One of the major issues which arose in the course of discussions at the Ninth Session of the Committee held in New Delhi in 1967, was how far the rules developed and practised by European nations would be applicable to the problems which arose in the Asian-African regions having regard to the different geophysical characteristics of the rivers and the needs of the people for varying uses of the waters.

The Committee, at its Tenth Session held in Karachi in 1969, took note of the views and opinions expressed by jurists and experts on various issues, the decisions of the Permanent Court of International Justice, national courts and arbitral tribunals as well as the work already done by such institutions and bodies as the International Law Association and the Institute of International Law. It also considered the relevant provisions of treaties and conventions with regard to international rivers in Asia, Africa, Europe and the Americas. A Sub-Committee was appointed to prepare a set of draft articles on the law of international rivers, "particularly in the light of experience of the countries of Asia and Africa and reflecting the high moral and juristic concepts inherent in their own civilizations and legal systems" for the consideration at the next Session.

* Revised statutes, Article 4 (c)

Thereafter the matter was discussed at the Eleventh Session (Accra, 1970), the Twelfth Session (Colombo, 1971), Thirteenth Session (Lagos, 1972) and the Fourteenth Session (New Delhi, 1973)*. At the New Delhi Session, the Committee decided to defer consideration of the item to one of its future sessions.

Subsequently, at the suggestion of the Government of Bangladesh, the subject was placed on the agenda of the Twenty-third session of the Committee held in Tokyo in May 1983. The matter for consideration at the Tokyo Session was whether the topic should be taken up by the Committee for further study and, if so, what should be the scope of its work taking into account the progress made by the International Law Commission (ILC). In the course of the general debate, a view was expressed that the resumption of the work by the Committee on this topic would not in any way hamper the progress of the work in the ILC or in any other forum. It was felt that the Committee should avoid any duplication of work. A suggestion was made that the Committee might prepare some guidelines for a regional system agreement for discussion at the next session. At the conclusion of the discussions it was agreed that a preliminary study should be prepared by the Secretariat for further consideration at its next Session. It was also indicated that the preliminary study should be undertaken with a view: (i) to identify the areas which were not likely to be covered by a work of the ILC and where it was deemed desirable that the Committee should undertake a study; (ii) to examine the provisions of the Articles provisionally adopted by the ILC and (iii) to submit a tentative programme of work for consideration of the Committee.

At its Kathmandu Session, the Committee considered the Preliminary Report and an outline on tentative programme of 'work' prepared by the Secretariat. The Preliminary Report had *inter-alia* included a summary of the progress of work in the International Law Commission; some general comments on the Draft Articles contained in the second report of the then Special Rapporteur, Mr. Evensen; and had indicated the areas not covered by the International Law Commission and had listed five areas wherein work might be undertaken by the Committee viz.

- i) An examination of the draft articles after they are adopted by the ILC and to furnish comments thereon for consideration of the

* For details see reports of the Eleventh, Twelfth, Thirteenth and Fourteenth Sessions of the Committee, published by the AALCC Secretariat.

Sixth Committee and possibly for a Diplomatic Conference;

- ii) Development of norms and guidelines for the legal appraisal of the validity or otherwise of any objection that may be raised by one watercourse State in relation/regard to projects sought to be undertaken by another watercourse State;
- iii) Study of the matter relating to navigational uses of, and timber floating in, international watercourse;
- iv) Study of other uses of international rivers such as agricultural uses* economic and commercial uses** and, domestic and social uses***, and
- v) Study of the State practice in the region of user agreements and examining the modalities employed in the sharing of waters of such watercourses as the Gambia, Indus, Mekong, Niger and Senegal.

During the general debate there were few suggestions for the future course of the work of the Committee on this topic. A view was expressed that the Committee should decide its course of work on the subject keeping in view the exercise of the International Law Commission in this respect and that a study of the navigational uses of international rivers be made. On the other hand one delegation was of the view that the rules relating to the navigational uses of international watercourses were already well established and recognised and proposed that the Secretariat of the Committee should render its assistance to the International Law Commission for completing its study. Yet another delegation suggested that the Secretariat should undertake the preparation of a study based on certain principles including, *inter alia*, the equitable apportionment of waters; prohibition against activities causing appreciable harm to other riparians; environmental protection and the pacific settlement of disputes. Another suggestion was for the preparation of a study on the State practice in the region of user agreements and the modalities

* Irrigation, Drainage, Waste Disposal Aquatic Food Production, Development of Fisheries.

** Energy Production/Power Generation (Hydroelectric, mechanical and nuclear); other than Navigation; Waste Disposal; and Extractive.

*** Consumptive (Drinking, Cooking, Washing, Laundry etc; Waste Disposal; Recreational (Swimming, Sports; Fishing, Boating etc),

employed in the sharing of international watercourses in Africa and Asia. One delegate was of the view that the Committee should defer its work on the subject until after the International Law Commission had concluded its work on the draft articles on the Non-navigational uses of International Watercourses. At the end of the debate there was, however, no clear decision in regard to the future work of the Committee.

For the Arusha Session, the brief prepared by the Committee was restricted to monitoring the progress of work in the ILC. In the course of the discussions a view was expressed that it would be appropriate to reconsider the subject of international rivers in the light of the progress registered in recent years. It was pointed out that whilst the ILC had considered the subject from the viewpoint of the bilateral and multilateral agreements for non-navigational uses of international rivers, recent practices reveal the creation and functioning of international commissions and organisations for the sharing of water resources of such international rivers as the Senegal, Niger, Rio Beni and La Plata.

One delegation proposed that the Committee could undertake preparation of studies in the following areas:

- i) Some guidelines for a regional and sub-regional agreement concerning the establishment of International commissions and the organisations for non-navigational uses of international rivers in Asian-African region;
- ii) Some characterisation, and if possible, revision of the provision of the texts of ILC Part II of Draft Articles on the Law of Non-Navigational Uses of International Watercourses provisionally adopted by ILC in its work programme;
- iii) Some comparative exposition of law of international commissions and organisations concerning non-navigational uses of international rivers.

A view was expressed that the historic rights of a State to the waters of an international watercourse and the principle of apportionment according to a special agreement were non-controversial principles. Another view was that it was for the co-riparian states to negotiate and

agree upon what was beneficial to all of them.

At the close of the discussion, it was decided that the Committee's Secretariat would continue monitoring the progress of the work in the International Law Commission.

STATUS AND TREATMENT OF REFUGEES

INTRODUCTION

The item "Status and Treatment of Refugees" was originally taken up by the Committee at the request of the Government of Egypt in 1964. The deliberations at the Committee's Sessions in Cairo (1964) and Baghdad (1965) culminated in the formulation of a set of AALCC's recommendations concerning the treatment of refugees. These Principles known as "Bangkok Principles" adopted at the Bangkok Session in 1966, have been widely applied in the practice of States and have also formed the basis of the UN Declaration on Territorial Asylum in 1967. Further, at the Accra Session in 1970, the Committee adopted an Addendum to the Bangkok Principles.

The item was again placed on the agenda of the Tokyo Session in 1983 at the suggestion of the United Nations High Commissioner for Refugees (UNHCR). At that Session, after a general exchange of views, it was decided that the AALCC Secretariat should prepare a preliminary study on the principles of burden-sharing and state responsibility in relation to the problems of refugees concentrating on the legal aspects of the matter. Accordingly, the Secretariat prepared a study and submitted it for consideration at the Kathmandu Session.

During the general debate several delegations recognised that the refugee problem was an international issue and it required efforts at the international level to solve it. It was felt that the international community should not only give humanitarian assistance in this regard but also strive towards an approach to the fundamental resolution of the problem and to prevent new exodus of refugees in any part of the world. It was stressed that due regard had to be given to alleviate the burden on the host state so as to avoid international disputes and strains. It was suggested that voluntary repatriation could contribute towards a durable solution of the problem. It was, however, pointed out that as a prerequisite, conditions of peace and security must be created in the country of origin to enable expeditious return of refugees to their hearths and homes in peace and honour. A view was expressed that burden sharing being a practical expression of the principle of

international solidarity had become the spring-board for international action in favour of refugees. Another view was that the elaboration of the concept of State responsibility might positively contribute to the final solution of the problem of refugees. It was suggested that while considering the question of State responsibility a distinction should be drawn between refugees as such and those who were forcibly expelled from their homeland ignoring humanitarian norms and in violation of the 1966 Covenant on Civil and Political Rights.

Finally, a suggestion was made to examine the legal framework for safety zones that could be created in the home of origin so as to encourage voluntary return of refugees.

At the close of the discussions, a consensus was reached that the Secretariat should prepare another addendum to the Bangkok Principles and submit the same for consideration at the next session.

For the Arusha Session, the Secretariat accordingly submitted a further study dealing with burden sharing and a set of principles which could be considered for adoption as an addendum to the Bangkok Principles. Another topic which had been included in the agenda of the Arusha Session in the context of the discussion on refugees was a review of the international conference on the situation of Refugees in Africa held in Arusha in 1979 and the follow-up measures taken thereon.

In the course of the general discussions, the Representative of the UNHCR stated that the work of the Committee, especially in the development and strengthening of the "Bangkok Principles" concerning treatment of refugees had been of great importance in the promotion and development of international law. He considered that the 1979 Arusha Conference on Refugees was a landmark particularly in the progressive development of norms and principles relating to the treatment of refugees and in the dissemination of awareness of the special problems and needs of refugees. He said that several follow-up actions had been undertaken by the OAU in consultation with the UNHCR. In his view, the 1979 Arusha Conference and its follow-up measures provided an example of a "regional approach" to refugee problems. He felt that the approach, which had been successful in Africa, could also be undertaken in Asia. Further, on the question of international solidarity and burden sharing, he recognised that from the practice of States it was obvious that the international burden sharing applied to all aspects of the refugee situations and took place at the bilateral, regional and global levels. He stressed that such a practice was firmly established and States should be called upon to continue

and indeed improve their efforts in that respect.

Some delegations held the view that the status and treatment of refugees was a complex issue with both political and legal dimensions. Moreover, the massive exodus of refugees not only imposed heavy economic and social burden on the international community and the third world countries in particular, but also destabilised the international situation.

One delegation drew attention to the problem of mass exoduses caused by the natural and manmade factors. While recognising international solidarity as a necessary condition for solving the escalating refugee problem it was, however, stressed that international solidarity and its two underlying concepts of State responsibility and burden sharing would yield the desired result only when earnest efforts were made to identify and tackle the root causes of the refugee problem. In his view the adherence to regional and international covenants on human rights, respect for sovereignty and territorial integrity of other States and implementation of various United Nations resolutions against racial discrimination and violation of human rights were some of the measures to prevent the arising of the refugee situations. He felt that there was no need to create new organs to deal with situations producing mass exoduses and the better alternative would be to enhance the capability of the UNHCR in that respect.

Another delegate emphasised that the solution to refugee problem could be found only when its source and adverse effects were identified first. In his view, the term "solidarity" had to be given a broad interpretation, and should include economic assistance, non-intervention in the internal affairs and concerted move to deal with the racist regimes.

One delegation suggested that the AALCC Secretariat should consider the problem of State responsibility and prepare a comprehensive study of the subject. Furthermore, it should also examine the difference between the legal status of those who had become refugees through their own volition and those who had been illegally expelled from their country. In his view, elimination of the root causes of the problem of refugees such as presence of alien forces, racism, zionism, *apartheid* and State terrorism was of great importance.

Another delegation while recognising the need to devise institutional arrangements to implement principles of international solidarity and burden sharing urged the AALCC Secretariat to study matters concerning the proper forum and the modalities in that context.

One delegation drew attention to the specific problem of involuntary or forced situations of large inflow of refugees and suggested that the Secretariat should study the legal issues concerning this problem.

Another delegate stressed the need for evolving such principles which might result in effective burden sharing by the international community and the international organisations in a manner of self-working procedure of rendering assistance to the refugee receiving states.

One delegation suggested that the Secretariat should prepare a study on the establishment of safety zones for refugees or displaced persons in their country of origin. It was felt that such safety zones would create a lesser burden for the international community than the exodus of refugees to neighbouring countries and their resettlement in third countries. It was suggested that the Secretariat in initiating its study might take into account the following general guidelines: Firstly, circumstances under which safety zones might be established in the home country of refugees or displaced persons? Secondly, who would control the safety zones? Should it be under the management of international organisations? Thirdly, what regime should be applied to the safety zones? The minimum standard should be neutralized zone where any kind of fighting must be prohibited.

The Secretary-General, while summing up the discussions, said that the Committee had completed consideration of the topic "Burden Sharing" and a draft report on the same would be submitted for consideration. The draft report, however, could not be finalised at the Arusha Session and its adoption was deferred until the next Session. As regards the topic of State Responsibility and the proposal concerning the establishment of safety zones it was decided that the Secretariat would prepare further studies for consideration at the next session.

VIII. MUTUAL ASSISTANCE FOR THE SERVICE OF PROCESS, ISSUE OF LETTERS ROGATORY AND THE TAKING OF EVIDENCE BOTH IN CIVIL AND CRIMINAL MATTERS
