

## **(ii) Co-operation Between the United Nations and the Asian-African Legal Consultative Committee**

The General Assembly, at its thirty-fifth session, accorded permanent observer status to the Asian-African Legal Consultative Committee and invited the Committee to participate in its sessions and work in the capacity of observer. In February 1981, AALCC established a permanent observer mission to the United Nations. On the occasion of the Commemoration of the Committee's twenty-fifth anniversary, the Assembly, at its thirty-sixth session, requested the Secretary-General of the United Nations to carry out consultations with the Secretary-General of AALCC with a view to further strengthening and widening the scope of the co-operation between the two organisations. A co-operative framework was subsequently established and was noted with deep satisfaction by the Assembly at its thirty-seventh session. At its thirty-eighth session, the Assembly requested the Secretary-General of the United Nations to continue to take steps to strengthen the co-operation between the United Nations and AALCC in the field of progressive development and codification of international law and other areas of common interest. At its thirty-ninth session, the Assembly commended AALCC for orienting its programme to strengthen its supportive role to the work of the United Nations in wider areas. At its fortieth session, the Assembly took note of the study on the strengthening of the United Nations prepared by AALCC (A/40/726 and Corr. 1, annex), as well as the study on the role of the International Court of Justice (A/40/682, annex) and other efforts of AALCC in the continuation of its programme of support to the work of the United Nations. At its



forty-first session the Assembly noted with appreciation the continuing efforts of the Committee towards strengthening the role of the United Nations and its various organs, including the International Court of Justice, through programmes and initiatives undertaken by it. The General Assembly appreciated the commendable progress achieved during the past five years towards enhancing co-operation between the two organisations in wider areas.

In May 1987, following a series of consultations and meetings between the officials of the United Nations and the then Secretary-General of the AALCC a programme of Co-operation was drawn up which identified nine specific areas viz., Co-operative framework; Representation at Meetings and Conferences; Sixth Committee Matters; Law of the Sea Matters; Question of Refugees; Efforts towards strengthening the Role of the United Nations through Rationalization of Functional Modalities; Illicit Traffic in Narcotic Drugs; International Economic Co-operation for Development and Zone of Peace and International Co-operation.

### **1. Co-operative Framework**

The co-operative framework initiated in 1981 and subsequently further developed has now become a regular feature. Consultations have been routinely conducted on matters of common interest between AALCC and the competent offices and organs of the United Nations, in particular, regarding representation at meetings and sessions and exchange of documentation and information, as also in the identification of areas where the supportive role of AALCC might be most productive. These consultations have enabled AALCC to orient its work programme and to accord priority to matters that are of current interest to the United Nations. At the same time, AALCC has also undertaken important initiatives with a view to strengthening the role of the United Nations. Its activities in these areas have not been confined to its own membership, they have involved all interested Member States of the United Nations. Furthermore, the areas of co-operation have also been enlarged to cover matters in the economic and humanitarian fields in addition to progressive development and codification of international law.

### **2. Representation at Meetings and Conferences**

The Asian-African Legal Consultative Committee was represented at various meetings and conferences held under the auspices of the

United Nations and its organs and agencies during the period under review. These included the regular sessions of the General Assembly, the International Law Commission, the United Nations Commission on International Trade Law (UNCITRAL), the Economic and Social Council, the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, the UNCTAD VII, the International Maritime Organisation, the United Nations Industrial Development Organization (UNIDO) and the International Conference on Drug Abuse and Illicit Trafficking held in Vienna in June 1987.

The Twenty-sixth session of the AALCC, held in Bangkok in January 1987, was attended by the Chairman of the International Law Commission, officials representing the International Court of Justice, the office of the United Nations High Commissioner for Refugees, the office of the Special Representative of the Secretary-General for the Law of the Sea, ESCAP, IMO and the UNCITRAL.

The twenty-seventh Session of the AALCC held in Singapore in March 1988, was attended by the Chairman of the International Law Commission, officials representing the UNCITRAL and the office of the United Nations High Commissioner for Refugees.

### **3. Efforts Towards Strengthening the role of the United Nations through Rationalization of Functional Modalities**

As a part of its contribution to the commemoration of the fortieth anniversary of the United Nations, the AALCC secretariat prepared a study on "Strengthening the role of the United Nations through rationalization of functional modalities with special reference to the General Assembly". The study presented an overall assessment of the functioning of the United Nations over the past 39 years, focusing attention on certain specific matters and issues. An open-ended meeting under the auspices of AALCC was convened in September 1985 at the United Nations Headquarters to discuss the modalities for consideration of the suggestions made in the study. Pursuant to the consensus arrived at that meeting and at the request of 52 delegations drawn from all regional groups, the study was circulated as a document of the General Assembly (A/40/726 and Corr.1, annex). Subsequently, a Working Group of the Whole was established; it met in New York during April and June 1986 and prepared a set of recommendations on the improvement of the functioning of the General Assembly. The



Secretary-General of AALCC thereafter held informal consultations on those recommendations with a number of interested delegations from all regional groups. That set of recommendations was made available to the Group of High-level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations, and was later circulated as a document of the General Assembly at its forty-first session (See A/41/437, annex). The AALCC is continuing to follow-up the implementation of the resolutions relating to strengthening of the role of the United Nations through rationalization of its functional modalities as well as the Progress on various other related proposals.

It will be recalled that the Legal Advisers of the Member States of AALCC, at a meeting in New York in November 1983, had prepared an informal paper on the rationalization of the work of the Sixth Committee, which was also circulated as an official document during the thirty-eighth session (A/C.6/38/8) and generated considerable interest at the thirty-ninth and the fortieth sessions of the General Assembly. Informal discussions on this matter will be held at a meeting of the AALCC member States scheduled to be held during the next session of the General Assembly.

#### 4. Promoting Wider Use of the International Court of Justice

During the fortieth session of the General Assembly, an AALCC study on the question of possible wider use of the International Court of Justice by a *compromis* when the parties so agree, was submitted and circulated to Member States (A/40/682, annex). The study focussed attention on the advantages to be obtained by using the Court or its Special Chamber in preference to using *ad hoc* arbitral tribunals, and, apparently, attracted considerable interest.

As a further follow-up to the AALCC study, a colloquium on the future role of the Court in disputes referred to it by Member States by means of special agreement was held at the United Nations Headquarters. The then President of the Court, Judge Nagendra Singh, chaired the meeting. The purpose of the colloquium was to provide opportunities for in-depth explanation of the available procedures under the revised rules of the Court for resolving disputes in matters referred under special agreements, with special reference to hearing of cases by a chamber of the Court at the request of the parties.

#### 5. Measures Designed to Further the Work of the Sixth Committee

Pursuant to its programme of rendering assistance to its member governments for active participation in the work of the General Assembly, the AALCC has, since 1982, prepared notes and comments on items before the Sixth Committee, including the report of the International Law Commission. In addition, consultations are arranged from time to time during the General Assembly session between the representatives of member States of AALCC and other interested Governments to provide opportunities for an exchange of views on those matters. The Committee's Secretariat had prepared notes and comments on the agenda items before the Sixth Committee during the Forty-second Session of the General Assembly. An Informal Consultation of the AALCC Member States to consider the agenda items allocated to the Sixth Committee was held in New York on 17 September, 1987.

Following its established practice, the AALCC Secretariat has prepared notes and comments on the agenda items that are likely to be taken up by the Sixth Committee during the forty-third session. An informal Consultation of the AALCC Member States will be held in the first week of October to consider these matters.

AALCC has continued to maintain its traditional links with the International Law Commission. It has included in its work programme the question of non-navigational uses of international watercourses and jurisdictional immunities of States—two subjects that are under consideration in the International Law Commission.

As regards the topic of Jurisdictional Immunities of States and their property, the AALCC held general discussions at its Kathmandu (1985), Arusha (1986) and Bangkok (1987) Sessions. Pursuance of the decision at the Bangkok Session, an Informal Meeting was convened in New York on 4th and 5th November 1987 for exchange of views on this topic. The Report of the meeting was considered at the Singapore Session of the AALCC.

Close collaboration has continued between AALCC and UNCITRAL. The UNCITRAL Model Law on International Commercial Arbitration was recommended for favourable consideration of its member Governments. At the Singapore Session, another recommendation was made for the wider acceptance of the United Nations Convention on Limitation Period in the International Sale of Goods, 1974; the United Nations Convention on Contracts for the International Sale of Goods, 1980; and the United Nations



Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules) which had been elaborated by UNCITRAL.

## **6. Measures for the Promotion of Ratification and Implementation of the United Nations Convention on the Law of the Sea**

At the AALCC session at Arusha, consideration was given to the question of delimitation of the exclusive economic zone and continental shelf, the question of right of access for land-locked States to the living resources of the exclusive economic zone and the question of transit through coastal States, together with the question of encouraging and facilitating the ratification of the Convention by its member States. AALCC adopted a recommendation urging its member Governments signatories to the Convention to ratify it in order to allow its early implementation. It also made an appeal to all other States to consider ratifying or acceding to the Convention at the earliest possible date. At the Arusha session, the AALCC Secretariat was requested to prepare model legislation to facilitate the process of ratification and implementation of the Convention. At its Bangkok and Singapore sessions, the AALCC discussed the matters relating to the work of the PREPCOM. It is envisaged that there will be further Inter-Secretariat Co-operation between the AALCC and the UN Law of the Sea Office on matters relating to implementation of the Law of the Sea Convention particularly in regard to national legislation on marine affairs.

## **7. International Economic Co-operation for Development**

Since the eleventh special session of the General Assembly in 1980, AALCC has devoted its attention to the question of international economic co-operation for development and to this end it has participated in the sessions and meetings of the Economic and Social Council, UNCTAD, UNCITRAL and UNIDO. Various suggestions have been put forward for consideration by Governments. It has also prepared model bilateral agreements for promotion and protection of investments, so as to generate a wider flow of capital and technology to the developing countries of the Asian-African region. At its Kathmandu Session, AALCC finalized its recommendations on this topic and approved the model agreements drawn up by expert groups. Steps are now being taken for promoting wider appreciation of the models among the governments of the Asian-African region.

Another initiative taken by AALCC in this context is the preparation of Legal Framework for Industrial Joint Ventures. The AALCC Secretariat will undertake this work in stages. The first step will be compilation of the relevant information as extensively as possible. Thereafter, it will prepare a Legal Guide on Joint Ventures similar to the one prepared by UNCITRAL on Drawing up of International Contracts for Industrial Works.

AALCC had earlier formulated a scheme for settlement of disputes in economic and commercial transactions, drawing its inspiration from the debates on commercial arbitration in UNCITRAL. Two Regional Centres for Arbitration under the scheme located at Kuala Lumpur and Cairo, have been established, one of whose major functions is to help in the promotion and implementation of the UNCITRAL arbitration rules. At its Arusha session AALCC considered the possibility of the establishment of such regional centres in other locations within the Asian-African region with a view to promoting stability and confidence in economic relations with and between the countries of the region. Negotiations concerning the establishment of a regional arbitration centre in Tehran intended primarily for oil arbitrations is in an advanced stage. The Federal Government of Nigeria have also accorded approval for the establishment of a regional arbitration centre in Lagos.

At its Arusha Session in 1986, the AALCC took up the item "Debt burden of Developing Countries" as a priority item. Later an Expert Group Meeting was held in New Delhi in November 1986 which *inter alia* recommended for preparation of a study on Legal Aspects of International Loan Agreements. Various issues relating to the solution of the debt problem were discussed at the Bangkok and Singapore Sessions of the AALCC.

## **8. Question of Refugees**

In co-operation with the Office of the United Nations High Commissioner for Refugees (UNHCR), AALCC has, since 1964, been actively engaged in the study of refugee law and refugee problems. Its work on these subjects led to the adoption of its Bangkok Principles in 1966 and an addendum thereto in 1970. This pattern of co-operation was reactivated following the adoption by the General Assembly of its resolution 36/38 of 18 November 1981 and the AALCC decision at its Tokyo Session in 1983 to place the item of refugee on its agenda once again. The deliberations at that session paved the way



for closer co-operation between AALCC and UNHCR. At its Kathmandu and Arusha sessions, AALCC gave detailed consideration to the "principle of burden-sharing", and a consensus was reached that the concept of burden-sharing had become through practice of States "a principle of humanitarian refugee law".

At its Bangkok Session, the AALCC adopted another addendum to its Bangkok Principle of 1966 which elaborated the concept of burden sharing. AALCC is also studying the question of State Responsibility in regard to refugees. At the Arusha Session, the AALCC was asked to examine the concept of safety zone for displaced person in the country of origin. At the Bangkok and Singapore Sessions, the AALCC had general discussion on this matter. Broadly, the discussion centered on the legal status of such a safety zone and the circumstances under which a safety zone could be established in the home country of refugees or displaced persons. Currently, the AALCC Secretariat is engaged in preparation of a study elaborating the concept and its legal status in the context of international law relating to refugees.

#### 9. Zones of Peace and International Co-operation

At its Kathmandu session, AALCC had taken up for consideration the concept and the legal framework of a zone of peace in the context of a proposal made by Nepal on the basis of a preliminary study prepared by the Secretariat. The study focussed attention on the efforts made within the United Nations on such matters as the elimination of foreign military bases in Asia, Africa and Latin America—which was first discussed in the General Assembly at its twenty-first session, in 1967—the United Nations efforts on denuclearization of Latin America, leading the conclusion of the Treaty of Tlatelolco<sup>6</sup>, and the efforts towards promoting denuclearized zones in Africa, the Middle East, South Asia and the South Pacific. The matter was further discussed at the Arusha Session and it was decided that an expert group would consider the contents and implications of various proposals on the establishment of peace zones made within and outside the United Nations. At the Bangkok Session, a Working Group was constituted to consider the matter in depth.

6. United Nations, *Treaty Series*, Vol. 634, No. 9068, p. 326.

At the request of Mongolian Government, the AALCC has also included in its work programme a topic entitled "Elements of a legal instrument on friendly and good neighbourly relations of States in Asia and Pacific". At its Bangkok Session the AALCC held preliminary discussion on this topic. It was however, decided to widen the geographical scope of the topic to include the African region as well. It was also decided to appoint the delegate of Mongolia as the Rapporteur. At the Singapore Session, the discussion centered on the Report submitted by the Rapporteur. At the close of the discussion, the Rapporteur had been requested to prepare a substantive report on the first cluster of principles on the basis of replies to be received from the Member Governments and the views expressed at the Singapore Session. These principles include: Principle of sovereign equality of States; non-use of force or threat of force; peaceful settlement of disputes; respect for territorial integrity and inviolability of frontiers; the principle of promotion of collective security and disarmament and State responsibility (some aspects).

#### 10. Illicit Traffic in Narcotic Drugs

Pursuant to a decision taken at the Kathmandu Session, the AALCC Secretariat prepared a study entitled "ways and means to deal with drug trafficking through the efforts of the United Nations". This study was submitted to the General Assembly on the occasion of the Fortieth Anniversary of the United Nations. The AALCC was represented at the International Conference on Drug Abuse and Illicit Trafficking held in Vienna in June 1987.

#### 11. Other Issues Currently Before the AALCC

At the initiative of the Government of the Syrian Arab Republic, the AALCC at its Singapore Session included an item on agenda entitled "Criteria for the distinction between Terrorism and the People's Struggle for Liberation". Following a short brief discussion, it was decided that the AALCC Secretariat will prepare a study on the subject, taking into consideration the work of the Sixth Committee of the United Nations.

At the Singapore Session of the AALCC, an item entitled "Deportation of Palestinians as a Violation of International Law, particularly the 1949 Geneva Convention" was included in the agenda of the Session. The AALCC Secretariat is



preparing a study which will be submitted for consideration at its next session.

## CO-OPERATION BETWEEN THE UNITED NATIONS AND THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMIT- TEE

### The General Assembly

*Recalling* its resolutions 36/38 of 18 November 1981, 37/8 of 29 October 1982, 38/37 of 5 December 1983, 39/47 of 10 December 1984, 40/60 of 9 December 1985 and 41/5 of 17 October 1986.

*Having considered* the report of the Secretary-General on the state of co-operation between the United Nations and the Asian-African Legal Consultative Committee.<sup>7</sup>

*Having heard* the statement of the Secretary-General of the Asian-African Legal Consultative Committee on the steps taken by the Committee to ensure continuing, close and effective co-operation between the two organizations.

1. *Takes note with appreciation* of the report of the Secretary-General;
2. *Notes with appreciation* the continuing efforts of the Asian-African Legal Consultative Committee towards strengthening the role of the United Nations and its various organs, including the International Court of Justice, through programme and initiatives undertaken by the Committee;
3. *Notes with satisfaction* the commendable progress achieved towards enhancing co-operation between the United Nations and the Asian-African Legal Consultative Committee in wider areas;
4. *Requests* the Secretary-General to submit to the General Assembly at its forty-fourth session a report on co-operation between the United Nations and the Asian-African Legal Consultative Committee;
5. *Decides* to include in the provisional agenda of its forty-fourth session the item entitled "Co-operation between the United Nations and the Asian-African Legal Consultative Committee".

7. A/43/7

### (iii) Meetings of Legal Advisers of the AALCC

The proposal for the periodic meetings among the Legal Advisers of the member States of the AALCC for exchange of views on current problems and issues was initiated and approved at the Committee's Tokyo Session held in 1974. The first meeting of the Legal Advisers was held in 1978 followed by another in 1979 both of which were devoted to exchange of views on the organization of legal advisory services in member governments.

Thereafter at the Tokyo Session held in May 1983, at the initiative of Bangladesh, it was decided to revive the project and a meeting of Legal Advisers was held in New York in November 1983 for the consideration of a number of matters. These included, *inter alia*, Jurisdictional Immunities of States; Improvements of Modalities of Work before the Sixth (Legal) Committee of the United Nations General Assembly; Promoting the wider use of the International Court of Justice; and the question of Implementation of Multilateral Conventions adopted under the auspices of the United Nations.

Thereafter a meeting of the Legal Advisers was held in New York in November 1987 for the consideration of draft articles on the Jurisdictional Immunities of States as adopted by the International Law Commission on first reading at its Thirty-eighth Session.

#### 1. Jurisdictional Immunities of States

The item was considered by the Committee at its Colombo Session in 1960 and certain recommendations were made therein. In view of divergence of State practice, the International Law Commission had