

taken up the subject of immunity of States in 1978 and has considered the topic of jurisdictional immunities of States over a period of eight sessions.

Whilst the subject was pending consideration of the International Law Commission, a legislation was enacted in the United States in 1976 known as the Foreign Sovereign Immunities Act which came into force in 1977. Legislation on the same subject was also enacted in the United Kingdom in 1978 followed by similar legislations in Canada, Pakistan, Singapore and Australia. At the Tokyo session of the Committee held in May 1983 a great deal of concern was expressed by several delegations over the interpretation and application of the U.S. Foreign Sovereign Immunities Act by the courts in the United States and especially the exercise of 'long arm jurisdiction' by the courts under that legislation. This matter was referred to the meeting of Legal Advisers and was duly considered by them in November 1983 in New York. At that time the Legal Advisers had felt that the Committee would be in a better position to make its recommendations after the International Law Commission had concluded its work and that the matter should be placed before the next Session of the Committee. The topic was thereafter generally discussed at the Committee's Kathmandu, Arusha, Bangkok and Singapore Sessions but no indepth consideration was possible due to lack of time.

The main issue which the Legal Advisers would need to consider is: Now that the International Law Commission has concluded its work, what position might appropriately be adopted by member governments in regard to jurisdictional immunities of States having regard to divergence of views expressed in the Sixth Committee and the existing State practice.

## 2. Non-Navigational Uses of International Watercourses

The subject "Law of International Rivers" was first taken up by the Committee in 1968 following upon references made by Governments of Iraq and Pakistan and substantial progress was registered in the work thereon. The item remained under active consideration until the Fourteenth Session of the Committee, held in New Delhi in 1973. The subject, thereafter, could not be taken up at any of the subsequent sessions due to the heavy work load connected with the preparations on the Law of the Sea and matters related to economic cooperation. Furthermore it was felt that it would be more

fruitful for the Committee to take up the matter after substantial progress had been made on the subject by the International Law Commission.

Following a reference made by the Government of Bangladesh the subject was placed on the agenda of the Twenty-third Session of the Committee held in Tokyo in 1983. Following consideration of the matter 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, the item was discussed at the Kathmandu (1985) and Arusha (1986) Sessions of the Committee. At the Arusha Session it was decided that the Committee defer its consideration until the ILC had made some progress in its work on the subject. With the progress made by the Special Rapporteur (Stephen MacCaffrey) in the course of the Fortieth and Forty-first Sessions of the ILC. This item, it was felt, would require to be reactivated and placed on the agenda of the next session.

## 3. Basel Convention on Transboundary Movement of Hazardous Wastes, 1989

During the Twenty-eighth Session of the Asian-African Legal Consultative Committee, it was strongly felt that the AALCC should play an active role on the question of the control of the disposal of hazardous wastes in the territories of member States. In that connection, the Secretary-General was directed to participate in the Conference of Plenipotentiaries on the Global Convention on the Control of Transboundary Movements of Hazardous Wastes which was scheduled to be held in Basel, Switzerland from 20th to 22nd March, 1989. In fulfilment of this mandate the Secretary-General participated at the above Conference.

The Draft Convention had been prepared by an *Ad Hoc* Working Group of Legal and Technical Experts composed of about 50 member States and several international organizations who had been meeting for the previous 18 months. The final fifth preparatory meeting preceding the Conference which produced the fifth draft of the Convention concluded its meeting on the 20th March, 1989. It, therefore, meant that for the other member States which had not participated in the drafting of the final draft, they had only the three days within which to consider and adopt the final Convention on the subject.



Since these countries had not participated in the drafting of the Convention as the *Ad Hoc* Working Group was not open-ended, there was strong feeling on the part of many participants that the time available for the adoption of the Convention was far too brief. Many participants were of the view that there was excessive pressure exerted by UNEP Secretariat to have the Convention adopted at that Session without adequate discussion and they considered that this was not fair. As a consequence most of the time of that Conference was held in closed discussion sessions among interested groups in the attempt to make the draft Convention acceptable and very limited time was available for open negotiations.

Consequently, though at the end of the Conference a Convention entitled Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal was adopted, by consensus, only 35 participating countries were in a position to sign the Convention and the majority left their final position to be decided after consultation with their home governments and respective regions before they could indicate whether they could sign and subsequently ratify the Convention. Thus, of the 110 participating States only 35 signed the Convention while 11 (among whom were 8 African States) indicated their opposition in their statements in explanation after adoption. The African countries indicated that they would only sign the Convention after a common position was adopted by the Organization of African Unity whose position substantially differed from the approach adopted by the Convention.

The Convention will come into force ninety days after ratification or approval by twenty States. There are certain critical problems that remain unresolved by the Convention with respect to the transboundary movements of hazardous wastes.

However the majority of member States of the AALCC and the OAU favour the banning of this highly dangerous threat from toxic substances. The Convention is aimed not at banning of traffic of poisonous substances but at regulating such movement from one jurisdiction to another. Further while the Convention is based on obligations arising from territorial transfer of hazardous wastes it does not address itself to possible transfer or transit problems across or to the marine environment. Although Article 4 of the Convention provides a list of general obligations under this Convention which *inter alia* include the prohibition of export and import of hazardous wastes not consistent with the Convention provisions these obligations, however, do not have compulsory enforcement measures.

It will be necessary to make a concerted and exhaustive review of the Basel Convention so as to evolve a common position on its possible improvement when it comes up for review.



## II. Law of the Sea

### (i) Introduction

The subject "Law of the Sea, including questions relating to the sea-bed and ocean floor lying beyond the limits of national jurisdiction" was included in the programme of work of the AALCC at the initiative of the Government of Indonesia and had been under its active consideration since its Colombo Session (1971).

In the initial stages the role of the AALCC was to assist its member governments through preparation of studies and arranging in-depth discussion. Later, however, the AALCC emerged as a global forum for a dialogue between the developing and developed countries through participation of observers at the AALCC's Session. The participation of high level experts from all over the world during a period of ten years enabled the AALCC to play a major role. Some of the Concepts which found place in the finally adopted Convention had originated in the deliberations of the AALCC, namely, the exclusive economic zone and archipelagic States.

The AALCC had followed the progress of negotiations before the United Nations Sea-bed Committee and later at the UNCLOS III itself. It had first devoted itself to the consideration of issues such as territorial waters, passage through straits used for international navigation, the exclusive economic zone, the continental shelf, the archipelagic States and fishery resources, since 1976, however the AALCC mainly focussed on issues pertaining to the regime for the international sea-bed area.

After nine years of protracted negotiations the United Nations Convention on the Law of the Sea was adopted on 30th April, 1982. It was opened for signature on 10 December, 1982. The Convention



will enter into force twelve months after its ratification or accession by sixty States.

At the Tokyo Session held in 1983, the Law of the Sea was one of the main items on the agenda. The discussions centred on a general assessment of the 1982 United Nations Convention on the Law of the Sea and its future implementation. The AALCC Secretariat had prepared a comprehensive Note analysing the implications of the various provisions of this Convention. In the course of the debate several delegations stressed the need to ensure that the Convention entered into force as early as possible. It was also pointed out that the Convention constituted one integrated whole and did not admit of any partial or selective application. Some delegations emphasised that pending entry into force of the Convention, States which had signed it were expected to act in a manner that would not defeat its object and purpose. A view was expressed that certain principles or rules incorporated in the new Convention should be considered as binding as customary or conventional rules of international law on all States including those which did not ratify or accede to the Convention. The other view, however, was that the Convention could neither have general application after its entry into force nor imply any binding effect before its entry into force. It was explained that, to the extent the Convention codifies the existing international law, it could loosely be said to be binding on non-parties, not because such rules were contained in the Convention but because it was already part of customary international law.

Some delegations expressed their dissatisfaction over certain provisions of the Convention. The delegations from landlocked States were particularly unhappy with the stipulations on their rights and interests in the Exclusive Economic Zone. A few others expressed their concern regarding Part XI of the Convention relating to the Area. It was suggested that the AALCC should involve itself in assisting its member States for implementation of the Convention in the areas such as exchange of information and formulation of modalities and standards.

At the conclusion of the discussion, the Committee approved the future work programme under the following broad heads :

- i) Steps towards ratification of the Convention;
- ii) Assistance to Governments;

- iii) Undertaking of studies from time to time on specific matters or issues of practical importance to member governments for the purposes of the implementation of the Convention.
- iv) Assistance to governments in regard to the work of the Preparatory Commission (Hereinafter the PREPCOM).

In addition, the Committee also decided that its future work would include the question of practical implementation of the provisions of the Convention on landlocked States both in regard to the right of access (Article 124 to 132) as also their rights and interests in the living resources of the exclusive economic zones (Article 69 to 72) on the proposal of the delegation of Nepal.

Following the recommendations of the Tokyo Session, the Secretariat drew a programme of work which included preparation of studies on the following topics :

- i) Matters relatable to the work of the PREPCOM;
- ii) Delimitation of the Exclusive Economic Zone and the Continental Shelf;
- iii) Right of Transit for Landlocked States; and
- iv) Determination of the Allowable Catch in the Exclusive Economic Zone.

All the four topics had been placed on the agenda of the Bangkok, Kathmandu and Arusha Sessions and discussed in detail thereat, detailed account of which has already been given in the last report of the Committee.

#### MATTERS RELATABLE TO THE WORK OF THE PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

The item, "Matters relatable to the Work of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea" (hereinafter called the PREPCOM) has been on the agenda of the annual Session of the Asian-African Legal Consultative Committee (AALCC) since its Twenty-fourth Session held in Kathmandu (Nepal) in 1985. The Secretariat of the AALCC has thereafter continued to monitor the progress of work in the PREPCOM and report the same to the successive sessions of the Committee; i.e., Bangkok, Singapore, Nairobi, Beijing and Cairo.



During the Thirtieth Session of the AALCC at Cairo, while considering this item, the Secretariat was *inter alia* mandated to continue its efforts to ensure the entry into force of the Convention on the Law of the Sea at an early date, particularly by member States of the AALCC and report the progress of work at the PREPCOM to the Thirty-first Session of the Committee. In this regard some member States cautioned that unless the developing countries continue to actively participate in the work of the PREPCOM, whatever concessions and benefits the Convention offered to developing countries may be lost when the PREPCOM completes its work. Some others viewed the efforts to amend the Convention before its coming into force a step backwards and contrary to the interests of developing countries.

The PREPCOM was established when the United Nations Convention on the Law of the Sea was adopted in 1982. It was entrusted, *inter alia*, with the task of elaborating rules and regulations for the various organs of the proposed International Sea-Bed Authority which was to organise and control activities in the International Sea-Bed Area, described as the "Common Heritage of Mankind". The PREPCOM was also given the mandate to pave the way for the early, efficient establishment of the Enterprises—the Sea-bed mining arm of the Authority; to draw and adopt a mining Code; to study and tackle the problems of land-based producer States likely to be most seriously affected by the sea-bed production; and to formulate regulations for the International Sea-Bed Tribunal. All these tasks are carried out in various organs of the PREPCOM including the General Committee, the Plenary and the four Special Commissions.

During the Seventh Session of the PREPCOM 1989, a target date of Summer 1991 for completion of its work was approved. The main objective was to ensure that the remaining work would be completed before the entry into force of the Convention. This target date however has not been met, but important steps have been taken towards the completion of the work of the PREPCOM as well as further increases in the number of ratifying States. In other areas of the work also major developments have been achieved under resolution II relating to pioneer activities. The facts that two new pioneer investors, China and a group of east European countries plus Cuba have either registered or applied for registration as pioneer investors and committed themselves to the required financial and other obligations and the setting up of a training panel to administer the

training programme are very important and positive developments which have taken place. The progress is not as fast as the developing countries expect, but it is not insignificant. Prolongation of the work of the PREPCOM on which the developing countries are concerned is however the result of the slow pace of the ratification by the same States.

It is however important to note that so far fifty one States<sup>1</sup> have ratified the Convention and there are only nine more ratifications or accessions required for the entry into force of the Convention. Moreover, there are certain countries who intend to be among the first sixty countries ratifying the Convention and are persuading other developed countries to join in their efforts to expedite its ratification. Hence there seems to be a good chance that the Convention may come into force in two years time.

It may be stated here that the Secretary General of the AALCC was invited to participate at the Pacem In Maribus XIX which was held in Lisbon from 18th to 21st November 1991. The main objective of the Conference was to examine the mechanisms of sustainable development in the ocean and ocean governance in the 21st century. The issues related to ocean governance, at the national, regional and global levels were extensively discussed. The Secretary General of the AALCC, besides chairing four sessions of the meeting, dealing with the issues related to ocean governance at the regional level, contributed a paper on "The significance and cost of ratification of the Law of the Sea Convention 1982".

During the course of the meeting there was a general feeling of support for the proposal to establish a new global forum within the United Nations framework, where all ocean issues can be discussed periodically with the participation of all relevant international institutions. On sustainable development it was pointed out that third world approach on this issue was not sufficiently looked at. The concept of sustainable development in deep sea mining is reflected in the Law of the Sea Convention and it should be universally accepted.

1. The Convention has been ratified or acceded to by Fiji, Zambia, Mexico, Jamaica, Namibia, Ghana, Bahamas, Belize, Egypt, Cote d'Ivoire, Philippines, Gambia, Cuba, Senegal, Sudan, St. Lucia, Togo, Tunisia, Bahrain, Iceland, Mali, Iraq, Guinea, United Republic of Tanzania, Cameroon; Indonesia, Trinidad and Tobago, Kuwait, Yugoslavia, Nigeria, Guinea-Bissau, Paraguay, Yemen, Cape Verde, Sao Tome and Principe, Cyprus, Brazil, Antigua and Barbuda, Zaire; Kenya; Somalia, Oman, Botswana, Uganda, Angola, Grenada, Federal States of Micronesia.



The conclusions and recommendations of the Conference *inter alia* stressed that ocean governance as a global concern should be examined as a possible pattern for the governance of other global concerns such as energy, food, atmosphere, outer space, environment and climate, and for science and technology. Further, it was recommended that the emerging institutional framework including establishment of adequate systematic ocean observations as part of the ocean procedure, for the sustainable development of ocean space and resources which are the common heritage of mankind within its mandatory binding system for a peaceful settlement of disputes must be a part of, and could be model for, global, regional and national governance in the 21st century. At national level, efforts should be made to complete legislation in a manner that harmonizes it with the provisions of the U.N. Convention on the Law of the Sea 1982.

During the year 1991, the PREPCOM held its ninth Session in Kingston (Jamaica) from 25th January to 22nd March and resumed its summer meeting from 12th to 30th August 1991 in New York. The AALCC was represented by Mr. Mostafa Foroutan, Assistant Secretary-General at that Session and was updated with the progress of work in different organs of the PREPCOM.

## (ii) Decisions of the Thirtieth Session (1991)

### Agenda item "Law of the Sea"

The Asian-African Legal Consultative Committee at its Thirtieth Session having taken note of the briefs of documents (Doc. No. AALCC/XXX/91/6 and AALCC/XXX/91/7) and having heard the comprehensive introductory statements made by the Secretary General and the Assistant Secretary-General.

- Expresses its appreciation of these documents.
- Expresses its appreciation to the International Ocean Institute for collaborating with the Secretariat of the Committee in preparing the document on Alternative Cost Effective Models on Joint Ventures in Deep Sea-bed Mining, Transfer of Technology and Training and for the organization of a joint Seminar in New York thereon.
- Expresses its gratitude to the International Ocean Institute for facilitating the preparation of the brief of documents on the significance and cost of ratification of the Law of the Sea Convention, 1982 (AALCC/Doc. No. XXX/91/7).
- Commends the Secretariat for allaying the fears of member States as to the cost of ratification and implementation of the Law of the Sea Convention, 1982.
- Urges the Secretariat to continue its efforts to ensure the entry into force of the Convention on the Law of the Sea at an early date, particularly by member States of the Committee.