

proceedings outside the Hague. It may be recalled that arbitrations under the Court at present are held at the Hague, which is not always the most convenient venue for many member States, particularly from Asia and Africa. As a follow-up measure the Secretary-General of the Asian-African Legal Consultative Committee intends to write to the Secretary-General of the Permanent Court of Arbitration as well as the Directors of the Regional Centres for Arbitration currently functioning under the auspices of the AALCC to initiate such agreement or agreements as may be necessary to facilitate such co-operation.

Progressive Development of International Law and its codification

One of the roles of the Asian-African Legal Consultative Committee is to articulate the view of the developing countries in order to strike a balance in the process of progressive developing and codification of international law. If the rule of law is to prevail, the formulation of principles and norms must go hand in hand with the process of implementation. The Thirty-first Session of the AALCC held at Islamabad (1992) furnished three instances of the inputs, which the Committee had made to the progressive development and codification of International Law.

The first of these relates to International Economic and Trade Law. The AALCC recognising the importance of relationship between economic development and harmonization of legal regimes concerned with international trade through sharing of accumulated experiences among Member States of the Committee have established a Data Collection Unit at its Headquarters in New Delhi. It is expected that once the unit acquires sufficient expertise in collecting and analysing the necessary data and develops the requisite expertise, an autonomous Centre for Research and Development of Legal Regimes applicable to the Economic Activities in Developing Countries would be established. The Data Collection Unit has already acquired the requisite hardware and is in the process of preparing the software necessary to achieve its objectives. The Unit has approached the Member States of the Committee as well as relevant international organisations to make available to the Unit the requisite data in this regard.

The second input was made in the course of deliberations on the Report of the International Law Commission at its Forty-fifth Session when the Committee at its Thirty-first Session (Islamabad, 1992) *inter alia* urged the International Law Commission to consider the inclusion in its programme of work an item entitled "Progressive Development of the Concept of Reservation for Peaceful Purposes with Regard to the High Seas, the International Sea-bed Area, and Marine Scientific Research."

Environment is the Common Concern of all mankind and in this sphere too the Asian-African Legal Consultative Committee has made an effort to contribute to the progressive development of International Environmental Law. The Secretary-General of the Committee was an active member of the Group of Legal and Technical Experts convened by the UNEP to formulate the principles relating to Liability and Compensation for Damages Arising from the Transboundary Movement of Hazardous Wastes. The Secretary-General of the Committee also participated in the meeting of the Group of Senior Environmental Law Experts on the Progress Made on the 1981 Montevideo Programme and Preparation for the Second Meeting on Development and Periodic Review of Environmental Law. The AALCC's Thirty-first Session had requested the International Law Commission to take up as a priority item the subject "Legal Aspects of the Protection of the Environment of Areas not Subject to National Jurisdiction (Global Commons)."

The Secretariat of the Committee has also made a modest contribution to assist the Member States of the Committee in preparing for the United Nations Conference on Environment and Development (UNCED). To this end the Committee's Secretariat has been represented at most of the meetings of the PREPCOM of the UNCED; the International Negotiating Committee on the Framework Convention on Climate Change as well as the International Negotiating Committee for a Convention on Biological Diversity. In the course of its Thirty-first Session the Committee adopted a Statement of General Principles of International Environmental Law which were circulated among the Working documents of the final Session of the PREPCOM of UNCED held in New York between 2 March, 3 April, 1992 as Doc. No. A/CONF. 151/PC/WC. III/5 dated 5 March, 1992.

Encouraging the Teaching, Study, Dissemination and Wider Appreciation of International Law

In connection with the objective of encouraging, study, dissemination and wider appreciation of International Law, the Committee continues to print the Reports of its annual sessions. The Committee also published a book entitled "International Refugee and Humanitarian Law" containing the Report of the Workshop, organized conjointly by the AALCC and the UNHCR, Back-ground papers and Universal and Regional Instruments Relating to Refugees which have been given wide publicity in the region. It is also intended to publish regularly selected studies prepared for the annual sessions, which have a direct bearing on current topics of international law.

The Secretary-General had been invited to participate in a symposium

on teaching, study, dissemination and wider appreciation of international law in developing countries convened by the People's Republic of China in Beijing in August 1992.

Finally, the Secretariat continues to liaise with the United Nations and its specialised agencies and other international and regional organizations such as the Commonwealth Secretariat and the Organization of African Unity. To this end, a co-operation Agreement between the AALCC and the OAU has recently been signed by the Secretaries General of the two Organizations. The Secretary-General of the AALCC and the Executive Director of UNEP signed a Memorandum of Understanding between the Asian-African Legal Consultative Committee and the United Nations Environment Programme, to enhance co-operation on environmental law.

III. Status and Treatment of Refugees

(i) Introduction

The topic 'Status and Treatment of Refugees' was taken up for consideration by the AALCC at the reference of the Government of Arab Republic of Egypt in 1963. In its Memorandum, Egypt indicated the legal issues for consideration and stated that apart from humanitarian concerns, the status and rights of refugees raised several issues of mutual interest to the member states of the AALCC and the AALCC's views would be invaluable in understanding the refugee problem.

This topic has regularly been studied and discussed at various sessions of the Committee. At its eighth session held in Bangkok (1966) the AALCC adopted certain principles concerning the status and treatment of refugees known as the 'Bangkok Principles', which were taken into consideration while formulating the basis for the UN Declaration on Territorial Asylum adopted in 1967. An "Addendum to the Bangkok Principles" was adopted at the eleventh session in Accra (1970). In continued efforts to improve upon the Bangkok Principles, at its twenty-sixth session in Bangkok (1987) the AALCC adopted the Burden Sharing Principles as an additional set of Principles to Supplement the Bangkok Principles'. The AALCC prepared a study on the rights and duties of refugees in the first country of asylum for the thirtieth session held in Cairo (1991). The AALCC was directed to prepare a further study on the same subject with particular emphasis on the principle of non-refoulement. Accordingly the Secretariat prepared a study evaluating the principle of non-refoulement under the 1951 Refugee Convention as well as the Bangkok Principles of 1966 and the 'OAU Convention governing Specific Aspects of the Refugee Problem in Africa' of 1969 and placed it before the Islamabad Session in 1992. Also for the Islamabad Session, two more studies had been prepared: (i) The Establishment of Safety Zone in the country of origin for the displaced

persons, and (ii) Report of the AALCC-UNHCR Workshop on International Refugee and Humanitarian Law in the Asian African Region.

The Principle of non-refoulement was discussed both as a generally recognised principle of law and as state practice. The study on Safety Zone analyzed the status of the persons seeking asylum in the safety zones, the issue of domestic jurisdiction and the Status of Safety Zones in practice. The Report of AALCC-UNHCR Workshop contained the proceedings and outcome of the workshop held in New Delhi in October 1991. According to the Workshop, one recommendation was to prepare model legislation in cooperation with the UNHCR to assist member States in enacting appropriate national legislation on refugees. The second one urged the Asian-African States to move further by considering adherence to the 1951 Convention relating to the Status of Refugees and/or the 1967 Protocol.

After due deliberations, the thirty-first session mandated the Secretariat to commence preparation of such a draft model legislation. The topic was taken up at the Thirty-second Session held in Kampala (1993). The studies prepared according to the above mandate, were presented for consideration of the session.

Thirty-second Session: Discussions

At the Thirty-second Session, the Deputy Secretary-General, Mr. Minoru Hirano introducing the topic stated that in keeping with the mandate given at the Islamabad Session of the Committee, the Secretariat had prepared two studies, namely (i) AALCC's Model Legislation on Refugees: A Preliminary study" (Doc. No. AALCC/XXXII/Kampala/93/3) and (ii) 'Establishment of Safety Zones for the Displaced Persons in the Country of Origin" (Doc. No. AALCC/XXXII/Kampala/93/4).

Referring to the first study, the Deputy Secretary-General stated that this was of a preliminary nature and advanced suggestions to enlarge the definition of the term 'refugee' in the Asian-African region in the context of the AALCC's Bangkok Principles of 1966 and the Cartagena Declaration of 1984 which had cumulatively expanded upon the scope of the definition of the term 'refugee' as employed in the 1951 UN Refugee convention and the 1969 OAU Refugee Convention. Comparative study of the definitions incorporated in the abovementioned instruments necessitated the expansion of the scope of the term 'refugee' to conform to the contemporary developments. He emphasized in this regard the particular attention which would require to be given to the refugee women and children since they were more vulnerable to the hardships arising from displacement.

He further stated in this regard that a comprehensive framework legislation which could benefit Member States desirous of enacting a national legislation on refugees aimed at safeguarding their rights with special reference to particular vulnerable sections would require to incorporate the following elements:

Definition, Procedure for Refugee status determination, Principle of family unity and dependency status, The basic principles of refugee law including (i) state sovereignty, (ii) non-refoulement, (iii) non-discrimination and (iv) standard of treatment.

Administrative measures: Rights of refugees, Duties of refugees, Assistance to refugees, Burden sharing, International monetary assistance to the country of origin while taking back its citizens. Punishment for violation of local laws, Freedom of association, Exclusion clauses, etc.

He requested Member Delegations to give due consideration to the abovementioned elements as their interventions and comments would contribute substantially to the proposed legislative formulations and the commentaries thereon.

Referring to the second study on the Establishment of Safety Zones, the Deputy Secretary-General pointed out that recent developments had made the question of establishment of such zones topical. Referring to the difficulties faced by the internally displaced persons, particularly in the absence of any international protection, he stated that those persons have normally been denied the status of refugees and therefore measures were needed to alleviate the plight of such persons within their own country. The study referred to the contemporary practice in various conflict areas as one way of reducing refugee exodus to other States.

The *Representative of the UNHCR* considered the study on Model Legislation as an important document which would enable the elaboration of an appropriate, refugee legislation. The AALCC document presented among other things, the evolution of refugee law at regional as well as at universal level. It pointed with precision the shortcomings and inadequacies of the currently existing International Refugee Instruments. The document highlighted the difficulties faced by refugees due to such inadequacies. It was the belief of the UNHCR that the problems which were being faced by the refugees were not only due to inadequacies or lacunae in refugee instruments but also because of lack of effective implementation in many countries of the existing internationally established rules for the treatment of refugees.

The initiative taken by the AALCC in preparation of a model legislation on refugees certainly would contribute to the effective implementation of

refugee law particularly at this juncture when over 18 million refugees were facing deplorable situations in many parts of the world. The incorporation of international standards for treatment of refugees into national law through domestic legislation would indeed be the most appropriate method and in certain legal systems the only method. Such a Model Legislation would undoubtedly enable African and Asian States to enact appropriate domestic legislations on refugees. It would be useful to recall that in 1979 during the Arusha Conference on African Refugees, the African States had recommended that the OAU in co-operation with UNHCR should elaborate a national legislation to serve as a guideline for African States. UNHCR would be ready to assist the AALCC in the elaboration of such a Model Legislation on refugees.

Regarding establishment of Safety Zones for the displaced persons in the country of origin, the Secretariat paper presented the plight of the internally displaced persons in many Parts of the world. There was no particular international organisation entrusted with the responsibility of caring for the internally displaced persons, nor was there a clearly defined international legal instrument which dealt with the problems of the internally displaced except for the Geneva Conventions applying in times of war or armed conflicts. UNHCR on an *ad hoc* basis, had been requested on a number of occasions by the UN General Assembly or the Secretary General to assist certain groups who were in refugee like situation or intermingled with refugees or returnees.

On the proposed Safety Zones the current position of UNHCR was similar to that expressed at previous sessions. The main principles to be kept in mind were as follows:

1. The Safety Zone proposal undoubtedly has a place as a further contribution to increasing important endeavour to avert new flows of refugees by responding to the problems within countries of origin.
2. Caution should remain concerning the proposal which should not undermine the institution of asylum or conflict with basic principles of refugee protection.
3. Fundamental principles of human rights, refugee and humanitarian law, as well as principles guiding sovereign states need to be taken into account and indeed reconciled in any serious elaboration of the Safety Zone.
4. There would seem to be greater scope for Safety Zones in relation to persons fleeing conflict and generalised violence than to persons fleeing persecution where the State is either unwilling or unable to provide protection.

This would require appropriate studies and investigation. The institution of asylum should be fully protected while appropriate mechanism should be developed to take care of the plight of the internally displaced persons. The thirteen principles presented by the AALCC concerning Safety Zones should be considered as the basic conditions for establishment of such zones. Provisions contained in principle No. 1 and No. II certainly cover the main concerns of the UNHCR and conformed with guidelines in the UN General Assembly resolution 46/128 of 17 December 1991 as cited in the Secretariat study.

The Delegate of Egypt stated that there was no denying of the humanitarian attraction of the Safety Zone concept. But there were certain legal aspects which remained unresolved, such as:

- (i) In the case of the absence of a Central Government, or a representative Central Government which could validly give state consent, how would such zones be established.?
- (ii) The criteria by which the Security Council should recommend the establishment of safety zones were unclear.
- (iii) The concept of Safety Zones as an application of the International Humanitarian Law could be misused for not purely humanitarian reasons or at least be applied in a selective manner.

He felt that this item needed to be given more attention specially after the end of cold war. He hoped that the UNHCR would guide the Committee in further study of the topic.

The Representative of OAU pointed out that Africa was host to over 6 million refugees, and over 12 million displaced persons within or outside their borders. The vulnerable groups suffered the most. These included children, women and the aged. The root cause of such outflows were civil strifes, inter-State-conflicts, human rights abuses, economic hardships and persistent drought and famine. He gave statistics of the refugee population in Africa. To deal with the problem the OAU had formed a Committee of 15 Ambassadors resident in Addis Ababa and also a co-ordinating Committee on Assistance to refugees. This served as an Advisory body to the Committee of 15. The latter UNHCR, UN Agencies and NGOs were all working together in the Committee.

In order to deal with the problem it was necessary to address the *root causes* of the influx of the refugees. Apart from the 1969 OAU Convention it should be noted that the African Charter gave an individual fleeing persecution the right not only to seek but also to receive asylum (Art 12). He felt that it was necessary for countries who had not ratified the OAU

Convention Governing the Specific Aspects of the Refugee Problems in Africa and the African Charter on Human and Peoples Rights to do so at the earliest possible moment. The remaining ratifications to the two Instruments were ten and two respectively.

The *Delegate of China* stated that the world study of refugee problem was of vital importance. In the recent years with efforts of the United Nations some regional conflicts had been solved which was beneficial to the settlement of the refugee problem. But still the situation was far from satisfactory as continuing conflicts and worsening of the world economy and damage to natural environment were causing refugee problem. The Chinese Government afforded fundamental rights to refugees and had acceded to the 1951 Convention and 1967 Protocol in 1982. The Government had helped about 280,000 refugees. It had played a positive role in guaranteeing refugee rights and safeguarding peace and stability. The burden sharing principle propounded by the AALCC was an important basis of dealing with refugees. The principle of non-refoulement was very well established. The topic of Safety Zones was a complex matter which needed further cautious study. The actual solution to the problem of refugees lay in sending them back to the country of origin after peace had returned to the area.

The *Delegate of Tanzania* stated that since the 1951 Convention and 1967 Protocol came into being, tremendous changes had taken place and hence there was a need for improving on the definition of refugees. Africa had hosted a number of Conferences to deal with the issue. Ironically the poor countries of Asia and Africa which were heavily indebted were bearing the heaviest burden of refugees. In this regard it was necessary to address the basic causes which created the problem. Violation of human rights needed to be stopped. It was necessary to create atmosphere conducive to minimizing the influx of refugees. The economic situation needed to be improved. Ratification of Conventions was important. There was an urgent need for incorporating International Laws into national legislations. Tanzania recommended that another International Conference on Refugees be convened before the adoption of the Model Legislation. The work being done by the UNHCR was highly commendable. The topics of Model Legislation and Safety Zones should therefore be studied further.

The *Delegate of Japan* stated that the refugee problem was a humanitarian one and it was an international obligation to extend a helping hand to the suffering refugees who had escaped fighting or oppression and were deprived of human needs for food, shelter and clothing. It was essentially a political issue affecting the peace and security of the region. The neighbouring countries receiving refugees were often faced with social tension in addition

to economic burdens. Assistance to refugees could have as important effect in alleviating the difficulties and contributed to maintenance of peace and security in the region.

There were a variety of problems which were often beyond the control of neighbouring countries. International Law in this field was not comprehensive and fell behind the dramatic evolution of the situation. It was necessary to maintain political and economic security in the world. It was necessary that all States became parties to the Refugee Convention. The Committee could help countries enact appropriate national legislations. Japan had enacted a national legislation in 1982 which respected the principle of non-refoulement. As the 1951 Convention did not cover all refugees it might be useful to formulate a more comprehensive framework to deal with refugees. The establishment of Safety Zones could lessen the burden of refugees on the neighbouring States, but further study was required on the topic.

The *Delegate of Thailand* stated that his country had been harbouring refugees from neighbouring countries for a very long time out of humanitarian concern and had accorded asylum more than 45,000 Vietnamese refugees. He was of the view that International Law only imposed stringent obligations on receiving States whereas the countries of origin remained unaffected. It was necessary that the "cessation clauses" were elaborated in a more pragmatic manner. UNHCR had helped immensely in repatriating Cambodian refugees but there could be another outburst. The solution of the refugee problem lay in addressing the root causes by the country of origin. The establishment of Safety Zones could help a lot in lessening the burden on neighbouring countries. If such zone were created the refugees could be repatriated without waiting for peace to return to the area. But such a zone should only be created with the consent of the country of origin and respecting its sovereignty fully. Thailand was fully supportive of the 13 points proposed by AALCC.

The *Delegate of Iraq* pointed out that Iraq had a national legislation on refugees and it fully complied with the principle that a refugee could not be repatriated if his life and freedom was threatened in the country of origin. Iraq gave a monthly income to the refugee families, they enjoyed free electricity, water and education. Even though some of them had gone back due to the economic blockade still many remained. But it was sad that no international organization had assisted them.

Iraq did not support the idea of Safety Zones as it was undue interference with the sovereignty of the country of origin. Refugees were persons who had crossed an international border. The UNHCR had strong reservations

on the topic as it was in contradiction with Art 2 para 7 of the UN Charter. This concept should not be studied any further and should be removed from the Agenda.

The *Delegate of Nigeria* was of the view that it was essentially the political will of States which would bring about a solution to the refugee problem. The basic problem was of providing protection to refugees. There had to be a tangible role played by the UNHCR. Safety Zones should only be created with the consent of the country of origin. Recent past had shown that there could be no legal solution until human rights were respected. Unless human rights were respected it was futile to create Safety Zones.

The *President* at this juncture pointed out that it was important that international law grew with time. What was legal today could be illegal tomorrow and vice versa.

The *Delegate of the Republic of Korea* stated that there was a necessity for wider adherence to the 1951 Convention and its Protocol as it was essential for solving refugee problems. The Republic of Korea had ratified the Convention and the Protocol on 3 December 1992. This ratification was fundamental and he hoped that other Member States would do so. The topic of Safety Zones was a new initiative which needed careful analysis.

The *Delegate of India* was of the view that there were two main issues of concern to the AALCC. One was the call for model legislation and the other was the factual situation regarding creation of Safety Zones. Regarding the first he referred first to the Bill of Rights and the Refugee Convention as a result of the second World War. The 1951 Convention and the 1967 Protocol were still the basic instruments dealing with the refugee problem. What needed to be done was to expand the refugee definition so that it covers the aspects of the OAU Convention and the Cartagena declaration. The AALCC should not only deal with the new categories of refugees but also ensure that the minimum standards of treatment should remain the same as enshrined in the 1951 Convention and the 1967 protocol. Regarding the Safety Zone concept there were only three incidents which had brought out this phenomenon. It was for the meeting to decide whether it should be considered adequate. Could the AALCC as a legal body consider this topic and what was the role of law?

The *Delegate of Jordan* stated that his country had been witnessing serious condition of the Palestinian refugees since 1949. The Palestinian refugees were being given free education, medical facilities since then and their status was similar to that of the Jordanian citizens. This disaster was repeated in 1967 and doubled the burden of refugees for Jordan but still they looked after them well. The refugees had been living in poor tents and

were suffering from serious living conditions. In such a situation where were the regulations of international law? It was the duty of the international community to look after the Palestinians and to do something for them.

The *Delegate of Palestine* was of the view that there were three main reasons for refugee flows: natural catastrophes, wars and civil strife. Here the establishment of Safety Zones came into the picture. The affluent countries saw this as an opportunity to interfere in the internal affairs of poor countries. The creation of Safety Zones was basically a political decision. Here lay the application of double standards. It was appropriate to ask what the international community was doing for the Palestinian refugees? Safety Zones were not a matter of international law but a political matter.

The *Delegate of Kuwait* stated that the refugee problem was basically humanitarian in nature. Even though they were not a party to the 1951 Convention and the 1967 Protocol they had done all they could to look after refugees within Kuwait. He praised the activities of the UNHCR which had done a lot for Iraqi refugees. It was the duty of sovereign States to stop the flows of refugees all over the world.

The *Delegate of Uganda* pointed out that in his country nearly all the refugees had come back to Uganda and only a few had stayed away mainly for economic reasons. He paid a tribute to the UNHCR for its commendable role. He endorsed the view expressed by the Ugandan President that the need of the hour was to deal with the root causes of the refugee situation. He mentioned that the President of Uganda had personally travelled to Somalia to attempt the reconciliation of warring parties and that Uganda had also sent a contingent to join the peace keeping force there.

The initiative of Safety Zones was worth further study. Uganda has had an experience where they were able to provide with analogous concept since safety zones for many citizens, who were displaced from their homes in the North and North-Eastern parts of the country as a result of insurgency. The exercise was possible since there was no general breakdown of law and order in the country.

Finally, the committee adopted the following decision incorporating minor amendments to reflect the role of the Organization for African Unity (OAU).