

ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

REPORT
AND
SELECTED DOCUMENTS
OF THE
THIRTY-THIRD SESSION
TOKYO, JAPAN
(17-21 January, 1994)



THE AALCC SECRETARIAT

ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

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Prepared & Published by
The AALCC Secretariat
27, Ring Road, Lajpat Nagar-IV, New Delhi-110024

Preface

The Thirty-third Session of the Asian-African Legal Consultative Committee (AALCC) was held in Tokyo (Japan) from 17th to 21st January 1994. The Session was attended by Ministers and high ranking officials from the Member States of the AALCC. Observer delegations from non-Member countries also participated in the session. The representatives of the United Nations, its subsidiary bodies, the specialized agencies and various other international and regional organisations actively participated in the deliberations.

The Tokyo Session received a message from the United Nations Secretary-General Dr. Boutros-Boutros Ghali which was read out by Dr. Gerold Hermann, Secretary of UNCITRAL. The message lauded the role played by the AALCC in supporting the UN initiatives in such fields as human rights, question of refugees, the use of international waterways, the Law of the Sea, Environment and Development, Desertification, International Trade Law, the Agenda for Peace and the UN Decade of International Law.

The Government of Japan attached great importance to the work of the AALCC as was evident by the fact that it played host of the AALCC Session for the Fourth time. The Tokyo Session was held in the middle of the UN Decade of International Law which gave it special significance.

While in the 1970s the AALCC had made a significant contribution in the field of the 'Law of the Sea' it had recently played an active and constructive role in the context of the United Nations Conference on Environment and Development, the World Conference on Human Rights and in coordinating a concerted approach among the Member States at these conferences.

In the context of the ongoing trend of national economies turning towards a more market-oriented system, AALCC's initiative of organizing a Special Meeting on Privatization at the Tokyo Session had been considered as timely.

Most of the subject items on the Agenda were taken up for discussion at the Tokyo Session. The present Report gives in detail, the background information,

deliberations of the Thirty-third Session, the decisions adopted and the following selected studies prepared by the AALCC Secretariat for the Session:

1. Report on the Work of the International Law Commission at its Forty-fifth Session

At the Tokyo Session a report containing the progress made at the Forty-fifth Session of the Commission held from 3rd May to 23rd July 1993 was placed before the Committee. During that Session, there were as many as four substantive topics on the Agenda. All these items are at different stages of work. The topics are as follows:-

- (i) State Responsibility;
- (ii) Draft Code of Crimes Against the Peace and Security of Mankind;
- (iii) The Law of Non-Navigational Uses of International Watercourses; and
- (iv) International Liability for Injurious Consequences Arising out of Acts Not Prohibited by International Law.

2. Status and Treatment of Refugees

(i) AALCC's Model Legislation on Refugees:

The AALCC Secretariat and the Office of the United Nations High Commissioner for Refugees jointly organised a Workshop on International Refugee and Humanitarian Law in the Asian-African region from 24 to 26 October 1991. The Workshop had recommended that the AALCC should consider the possibility of preparation of a Model Legislation in co-operation with the office of the UNHCR, with the objective of assisting Member States in enacting appropriate national legislation on refugees.

In pursuance of the mandate received at the Thirty-first Session, the Secretariat prepared a preliminary study which analysed the shortcomings of the 1951 Convention and its 1967 Protocol. It also discussed whether the definition of "refugee" provided for in the 1951 Convention satisfies today's problems and conditions and whether this definition should be expanded to cover the areas dealt with in 1969 OAU Convention, the 1984 Cartagena Declaration and in the AALCC's Bangkok Principles of 1966. The Committee at its Thirty-second Session held at Kampala directed the Secretariat to continue to study the preparation of a Model Legislation in close cooperation with the UNHCR and the Organization of African Unity (OAU). The brief prepared for consideration at the Tokyo Session examines the complexities of a generally acceptable definition of

refugees and displaced persons with a view to further its work on the proposed model law.

(ii) Establishment of Safety Zones for displaced persons in their country of origin

The Thirty-first Session mandated the Secretariat not only to update its study on the establishment of Safety Zones but also to analyse the legal implications of recent attempts to establish such Zones in either war-stricken countries or areas of conflict compounded by natural calamities like drought. At the Thirty-second Session, the Committee decided to study further the concept of Safety Zones and to analyse the role played by the UN in general and the UNHCR in particular in the recent past in that regard. The brief prepared for the Tokyo Session seeks to fulfil that mandate.

3. The Law of International Rivers

The study on this topic proposes to examine two aspects of freshwater resources: one, its limited availability and the extensive uses to which it is being put; second, the necessity to sustain freshwater resources in the light of its reckless use. In order to achieve this contrasting objectives, the study proposes certain ideas which are basically drawn from the normative approaches inherent in the various international legal conventions and municipal legislative measures. At the outset, the study draws its basic arguments from the principles and standards set by the Agenda 21 of the United Nations Conference on Environment and Development (UNCED).

4. Law of the Sea

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 Secretariat of the AALCC has continued to monitor the progress of work in the PREPCOM and presented reports to the successive sessions of the Committee. The report for the Tokyo Session contains a brief account on the progress of work at the last session of the Prepcom (22nd March — 2nd April 1993) held in Kingston, Jamaica, in which the draft provisional final report of the Commission was adopted. The list of the pending issues which are annexed to the provisional report indicates that the existing pattern of meeting would not be continued and instead, the focus will be on the informal consultations organised by the U.N. Secretary-General which are now open-ended. The Secretariat of the AALCC in compliance with its mandate has monitored the debates and the

developments in the Informal Consultations and has prepared a brief report on the progress and outcome of the three meetings held during the year 1993.

The report takes into account the contents of the Information Note of the UN Secretary-General dated 5th April 1993 and analyses the procedural approaches on reflecting any agreement that might be reached in the Informal Consultations in a legally binding manner to come into effect simultaneously with the entry into force of the Law of the Sea Convention. It also reviews the possible scenarios for the establishment of the International Sea-bed Authority and the draft texts governing the regime for deep sea-bed mining. The report refers to the different views on the decision-making and voting in the Council and the functions of the Enterprise during the Interim Regime and the Definite Regime.

5. United Nations Conference on Environment and Development (UNCED)- Follow-up

The Secretariat, while monitoring the progress of work in the PREPCOM of UNCED, took into account the ongoing parallel negotiations on the Climate Change and Biodiversity Conventions. At the Kampala Session (1993) the Committee directed the Secretariat to actively involve itself in the negotiations concerning elaboration of an International Convention on Combating Desertification.

The Commission on Sustainable Development, established pursuant to a recommendation made at the Rio Summit, held its first session in June 1993 in New York. The AALCC Secretariat prepared a Note containing a review of the progress in this session. This Note has been placed for consideration at the AALCC's Legal Adviser's Meeting in New York. The Secretariat updated this Note in the light of discussions at that Meeting as well as at the forty-eighth session of the General Assembly. This Note formed the background document for consideration at the Tokyo Session of the AALCC.

The Framework Conventions on Climate Change and Biodiversity were expected to come into force in early 1994. The AALCC Secretariat prepared short notes on the prompt start arrangements being pursued in the context of these two Conventions. The Inter-governmental Negotiating Committee (INC-D) established pursuant to General Assembly resolution 47/188 has been entrusted with the task of elaboration of an International Convention to Combat Desertification in those countries experiencing serious drought and/or desertification, particularly in Africa. During its last two substantive sessions the INC-D has made good progress in identifying the relevant issues and chartering the course of action for its future sessions. It is the intention to complete the elaboration of the Convention by June 1994. The AALCC Secretariat has prepared an overview of the progress

made at the two sessions. The AALCC Legal Advisers Meeting in New York considered this item and in the light of the views expressed, the Secretariat updated its Note and placed it before the Tokyo Session.

6. The United Nations Decade of International Law

In order to gather specific proposals for the programme for the Decade and on appropriate action to be taken, the Secretary-General of the United Nations was requested to seek the views of Member States, appropriate international bodies and non-governmental organisations and to submit a report thereon to the Forty-fifth Session of the General Assembly.

In the light of the proposals received, a working group of the Sixth Committee in the course of the Forty-fifth Session of the General Assembly was constituted and charged with the preparation of a generally acceptable programme for the United Nations Decade of International Law.

The General Assembly of the United Nations at its Forty-seventh Session, adopted a programme for the activities for the second term (1993-94) of the United Nations Decade of International Law. The Committee at its Kampala Session (1993) mindful of the U.N.G.A. resolution 47/32 of 25 November 1992 *inter alia* directed the Secretariat to continue its efforts towards the realization of the objectives of the United Nations Decade of International Law.

The brief prepared for the Tokyo Session includes the report of the AALCC Secretariat forwarded to the office of the Legal Counsel of the United Nations in pursuance of the above resolution.

7. World Conference on Human Rights : Follow-up

In view of the importance of the World Conference on Human Rights, the Committee, at its Thirty-first Session held in Islamabad in February 1992, decided to mandate its Secretariat to monitor the preparatory process of the Conference, focussed on the issues with legal implications and to make necessary studies.

At Kampala Session an open-ended Working Group was established to prepare a draft Declaration on Human Rights. The draft Declaration, entitled "Kampala Declaration on Human Rights", was formally adopted by the Committee on 6 February 1993, which was then submitted to the Fourth Session of the Prepcom for the World Conference.

While adopting the Kampala Declaration, the Committee further approved the Work Programme concerning the World Conference proposed by the Secretary-

General and decided to put the item "World Conference on Human Rights and its Follow-up" on the agenda of its Thirty-third Session.

For the consideration of the Committee at its Tokyo Session, the Secretariat prepared a comprehensive brief on the subject item. Deliberations on the item focussed on the assessment of the final outcome of the World Conference, *inter alia* its legal implication, including the promotion of the universal acceptance of international conventions on human rights, and on the major outstanding issues such as the creation of a High Commissioner for Human Rights.

8. International Trade Law

(i) Legal Aspects of Privatization

The AALCC had been taking up at each of its annual sessions Trade Law Matters in a Standing Sub-Committee on International Trade Law which usually met concurrently with the Plenary sessions. However, for the Tokyo Session the Trade Law Sub-Committee did not meet. In its place a Special Meetings on 'Developing Institutional and Legal Guidelines for privatization and post-Privatization Regulatory Framework' was convoked from 18 to 20 January 1994 as an integral part of the Tokyo Session in view of the topical importance of this subject for developing countries.

Special Meeting on "Developing Institutional and Legal Guidelines for Privatization and post-Privatization Regulatory Framework" 18 to 20 January 1994:

It had been proposed that the AALCC as a wider forum of Afro-Asian cooperation should take the initiative of arranging a Special Meeting on Privatization to provide the forum for interaction between the invited experts and legal advisers and other officials of the AALCC Member States handling privatization programmes in their respective countries. The aim was to develop legal and institutional guidelines for privatization and post-privatization regulatory framework so as to provide an added impetus to the process of privatization in Africa and Asia.

The work Programme of the Special Meeting was as follows:

1. Macro-economic and legal issues involved in privatization;
2. Privatization strategies and techniques;
3. Legal reform procedure for restructuring and privatization of public sector undertakings;
4. Post-privatization regulatory framework; and

5. Preparation of institutional and legal guidelines for privatization and post-Privatization regulatory framework.

At the Special Meeting a resolution was adopted which is reproduced in this chapter.

(ii) Legislative Activities of the United Nations and other International Organizations concerned with International Trade Law:

The Secretariat presented a report on the recent legislative developments in the field of international trade law. The purpose of preparing such reports is to keep the Member Governments abreast with the recent developments in the field of international trade law. The organizations covered include UNCTAD, UNCITRAL, UNIDO, UNIDROIT and the Hague Conference on Private International Law.

(iii) Debt Burden of Developing Countries

The study prepared for the Tokyo Session proposes to examine the recent developments in the area of debt reduction strategies and the appropriate plans needed for an efficient debt management programmes. The study, at the outset, looks into the roots of the debt burden problems, especially taking into account the economic and political realities of Asian-African countries, it also refers briefly to the outcome of the various international initiatives proposed by industrialized countries and other international agencies. In the overall context of the international economic relations, the study identifies the changing nature of strategies adopted for the alleviation of debt burden.

The emphasis in the work programme of the U.N. Decade of International Law has encouraged the AALCC to publish its studies on the basis of which the various topics are discussed and debated. To attain the objective of encouraging study, dissemination and wider appreciation of international law, the Committee has been bringing out the Study-oriented Reports of its annual session for the last few years.

It is the belief that this Report would be useful to the international lawyers and researchers all over.

New Delhi,
1st May, 1994

Frank X. Njenga
Secretary-General

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I. Asian-African Legal Consultative Committee

(i) Introduction

The Asian-African Legal Consultative Committee, an inter-governmental organization was constituted in November, 1956 by the Governments of Burma (now Myanmar), Ceylon (Sri Lanka), India, Indonesia, Iraq, Japan and Syria. The Committee has at present a membership of forty-four countries,¹ comprising almost all the major States from Asia and Africa. The Committee's annual sessions are attended by more than fifty observer delegations representing governments and international organizations from all regions consistent with the global impact of its work in a number of fields, every year. The aim of the Committee, as originally envisaged, was to serve as an advisory body to its member governments in the field of international law and as a forum for Asian-African co-operation in legal matters of common concern. Its activities have been broadened from time to time keep pace with the requirements of its member governments. The Committee as the only organization at governmental level embracing the two continents of Asia and Africa has also oriented its activities to complement the work of the United Nations in several areas. In the light of the Committee's growing involvement with the work of the United Nations, the General Assembly by a Resolution, adopted at its Thirty-fifth Session in 1980 decided to accord the Committee Permanent Observer Status at the United Nations; a distinction which it shares with many other inter-governmental organizations. The Committee holds its annual sessions in its member countries

1. Arab Republic of Egypt; Bahrain, Bangladesh; China Cyprus; Gambia; Ghana; India; Indonesia; Islamic Republic of Iran; Iraq; Japan; Jordan; Kenya; Democratic People's Republic of Korea; Republic of Korea; Kuwait; Libya; Malaysia; Mauritius; Mongolia; Myanmar; Nepal; Nigeria; Oman; Pakistan; Philippines; Qatar; Saudi Arabia; Senegal; Sierra Leone; Singapore; Somalia; Sri Lanka; State of Palestine; Sudan; Syria; Tanzania; Thailand; Turkey; Uganda; United Arab Emirates; and Republic of Yemen; Botswana is an Associate Member.
Australia and New Zealand have the status of Permanent Observers.

on the basis of invitations received. In addition, consultations and meetings are held throughout the year, in Working Groups or special meetings related to specific topics.

The Committee's Secretariat is located in New Delhi and is headed by an elected Secretary-General. He is assisted by Deputy Secretaries General and Assistant Secretaries General who are senior officers of Member Governments sent on secondment besides the regular staff of the Secretariat in professional and administrative categories. The Committee also maintains Permanent Observer Missions to the United Nations both at New York and at Vienna.

Membership of the Committee is open to Asian and African countries desirous of participating in the Committee in accordance with its Statutes and Statutory Rules. Any such government has to address a written communication to the Secretary-General of the AALCC intimating its desire to participate in the Committee as a full or an associate member and stating its acceptance of the Statutes and Statutory Rules. This communication is circulated among the Member Governments with a request for submission of their comments within a period of six weeks. Unless objections are received from not less than one-third of the total membership of the Committee, the government concerned is declared admitted as a member. The only distinction between full members and associate members is that the associate members have to pay a fixed contribution and can not participate in the policy or organisational matters.

Activities of the Committee

The Committee and its Secretariat work closely with its Member States particularly in the context of advisory role, resulting in frequent consultations between the Secretary-General of the Committee and the Member Governments.

During the first ten years of the Committee's establishment its main functions centered on consideration of international legal question referred to the Committee by its Member Governments. Some of the topics so referred were of considerable importance to the region where uniformity of approach was desirable. The subjects considered by the Committee during this period included Diplomatic Immunities and Privileges; Immunity of States in respect of Commercial Transaction; Extradition of Fugitive Offenders; Status and Treatment of Aliens; Dual or Multiple Nationality; Legality of Nuclear Tests and the Rights of Refugees.

Since 1968, the emphasis of the Committee's work has been on rendering assistance to the Member Governments to prepare themselves on some of the major international questions before the United Nations and especially those of

Plenipotentiary Conferences. In this connection, mention may be made of the Vienna Convention on the Law of Treaties and the Negotiations on the Law of the Sea spread over a period of eleven years. More recently, the Committee has actively been involved in the preparatory and follow-up work related to the United Nations Conference on Environment and Development, held in Brazil in June 1992 and the World Conference on Human Rights held in Vienna in 1993.

With the establishment of the Committee on a regular footing, the United Nations had evinced considerable interest in the Committee's activities and close collaboration has been developed not only through inter-secretariat consultations but also through the Committee's participation in a number of plenipotentiary conferences convoked by the United Nations. In the year 1960 the Committee entered into official relations with the International Law Commission (ILC) in pursuance of which the Commission is traditionally represented by its Chairman at the Committee's regular sessions. The Committee is also represented by its Secretary-General at the Annual Session of the ILC. In 1968 the Committee was accorded the status of a participating inter-governmental organization at the UNCTAD and in 1970 official relations between the Committee and UNCITRAL were established. In addition, the Committee has been working in close co-operation with the United Nations High Commissioner for Refugees (UNHCR), the United Nations Environment Programme (UNEP), the International Maritime Organization (IMO), the Food and Agricultural Organisation (FAO), International Atomic Energy Agency (IAEA) and various regional Economic Commissions of the United Nations. The Committee also maintains relations with the Commonwealth Secretariat, the Hague Conference on Private International Law, the UNIDROIT, the Organisation of African Unity (OAU), the League of Arab States, and other regional, inter-governmental organisations.

For a few recent years the Committee's activities have been devoted to the field of economic relations and trade law. In this area the Committee has been working closely with the UNCTAD and UNCITRAL as a participating inter-governmental organisation. In addition, special subjects of importance to Member Governments have been taken up such as preparation of Standard/Model Contracts for use in international trade transactions relating to commodities and model bilateral agreements on promotion and protection of investments, formulation of schemes for industrialisation and organization of dispute settlement system in economic matters through establishment of Regional Centres for Arbitration and development of national arbitral institutions. Three Regional Centres for Arbitration have so far been constituted under the auspices of the Committee which are located in Kuala Lumpur, Cairo and Lagos. The Committee also sponsored two ministerial meetings on regional co-operation in industry, one in Kuala Lumpur in 1980 and the other in Istanbul in 1981.