

ASIAN-AFRICAN LEGAL
CONSULTATIVE
COMMITTEE

REPORT
AND
SELECTED DOCUMENTS
OF THE
THIRTY-SIXTH SESSION
TEHRAN, ISLAMIC REPUBLIC OF IRAN
(3-7 MAY, 1997)



THE AALCC SECRETARIAT

Preface

The present volume 'Report and Selected Documents of the Thirty-sixth Session of the AALCC held at Tehran, the Islamic Republic of Iran from 3 to 7th May 1997 is being published in the series of the annual printed reports brought out every year. The research papers prepared by the Secretariat of the AALCC on selected agenda items have been reproduced alongwith the background notes and the decisions adopted during the session in this volume. The research-oriented studies have been considered to be useful by international lawyers, researchers, professors, Government officials and institutions alike.

The Session was well attended and the following Member States: Bahrain, Bangladesh, People's Republic of China, Cyprus, Egypt, Ghana, India, Indonesia, Islamic Republic of Iran, Iraq, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Malaysia, Mongolia, Myanmar, Nepal, Nigeria, Oman, Palestine, Philippines, Qatar, Senegal, Singapore, Sri Lanka, Sudan, Syrian Arab Republic, Tanzania, Thailand, UAE, Uganda and Yemen participated. Non Member States such as Australia, Colombia, Croatia, Cuba, France, Holy See, Hungary, Italy, Morocco, Norway and Russian Federation also attended. The United Nations, UNHCR, UNIDROIT and ICRC were among the important organizations that attended the session. The Regional Centres of Arbitration were represented by their Directors.

In his inaugural address, H.E. Dr. Hassan Habibi, the First Vice-President of the Islamic Republic of Iran observed that "the AALCC in past forty years has provided opportunities for the Member States to participate at its annual meetings and to benefit from advisory views of the Committee's secretariat on new developments affecting international law and to put forward new issues on their international agenda. The complexity of international relations in recent years has made the need for prevalence of the rule of law in international relations more clear to all. The Committee is obliged to provide its Member States advisory services and consultative views on those legal matters that emanate from these developments. Among the more

complicated and troublesome issues of the current century is the displacement of millions of people due to social, political and economic reasons. The dimensions of this problem in Asia and Africa are especially far-reaching, making the Committee more resolute in including the question of refugees in the past three decades in the agenda of its annual meetings". He further added that "the World has regrettably witnessed some cases of extension of the jurisdiction of certain states beyond their territory. This kind of mentality and behaviour have prompted opposition and objection of the international community, due to their contravention with universally recognized principles of international law." He therefore suggested that the Committee may include the subject "Extra-territorial Application of National Legislation" Sanctions Imposed Against third Parties in the agenda of this Session.

Most of the subject-items on the agenda of this session, have been taken up in different chapters in this report except the following ones on which brief notes are given below:

(i) Status and Treatment of Refugees

A Seminar to commemorate the thirtieth anniversary of the Bangkok Principles was jointly organised by AALCC and UNHC in Manila (Philippines) from 11 to 13 December 1996. A Report of this Seminar has already been issued as a separate publication. A brief infortmatory write-up on the Seminar, its aims, objectives and recommendations are given below:

The Seminar to Commemorate the Thirtieth Anniversary of the Bangkok Principles, held in Manila, Philippines, 11-13 December 1996.

Following a proposal by the representative of UNHCR, the Committee at its thirty-fifth session (1996) mandated the Secretariat, "to organize in collaboration with the financial and technical assistance of the UNHCR, a seminar in 1996, on the Status and Treatment of Refugees to commemorate the 30th Anniversary of the Principles of Refugees adopted by the AALCC at its 8th Session in Bangkok in 1966".

Accordingly a Preparatory Meeting, was held at New Delhi on 19-20 September 1996, to finalize the agenda for the commemorative meeting.

The Preparatory Meeting agreed that the Seminar should be held from 11 to 13 December 1996 at Manila, Philippines, on the understanding that the commemorative event would aim at the promotion of the knowledge of these Bangkok principles; and their re-examination in the light of developments in law and practice in the Asian-African region since 1966, with a view to recommend further action. The following four subjects were identified for indepth study: definition of refugees; asylum and standards of treatment; durable solutions; and burden-sharing

Commemorative Seminar at Manila

The Seminar, held at Manila, from 11 to 13 December 1996, was inaugurated by H.E. Mr. Teofisto T. Guingona, Secretary of Justice, Government of Philippines, and the President of the AALCC for the thirty-fifth session. Others addressing the Seminar included the Secretary-General of the AALCC and Mr. Dennis Mc Namara, Director of International Protection, UNHCR. The Seminar was attended by representatives of 26 Member States, 2 Observer States and the officials of the AALCC Secretariat and the Office of UNHCR. The deliberations were carried out in four working groups, each headed by a Moderator who guided the discussions on the subjects as identified earlier.

Following deliberations, the Working Groups adopted a report on the respective subjects, which was then presented to the Plenary Session. The reports of the Working Groups as adopted by the Seminar, are briefly stated below.

A. Definition of 'refugees': On the definition of refugees, there was a wide consensus that "nationality" could usefully be introduced as an additional ground for persecution alongside race, colour, religion, political belief or membership of a particular social group. Secondly, it was acknowledged that an implicit expansion of the original Bangkok definition, covering situations of foreign domination, external aggression or occupation, is included in Addendum I to the Bangkok Principles of 1970, paragraph 1. It was felt that it would be useful to consolidate this implicit expansion into the AALCC definition.

As to the most appropriate way of ensuring that the AALCC definition covers the refugee situations which the world is facing nowadays, differing views had emerged. This therefore, was deemed to be an area in need of further research and examination by the AALCC.

B. Asylum and Standards of Treatment: As regards the provisions on asylum in the Bangkok Principles, changes were suggested to reflect the right of a State to grant asylum commensurate with its international and domestic obligations. The principle of *non-refoulement* has been reformulated to form an independent provision. As regards the minimum standards of treatment for refugees, it was felt that the phrase, "treatment in no way less favourable than that generally accorded to aliens" could be retained. To facilitate future development on the minimum standards, it was agreed that the wordings, "with due regard to basic human rights as recognized in generally accepted international instruments", could be incorporated in the text.

C. Durable Solutions: The Seminar has agreed that 'voluntary repatriation' is not just one durable solution, it is indeed the ideal permanent solution to refugee problems. Any updating of the AALCC Principles on Status and Treatment of Refugees must incorporate the appropriate references to this ideal solution. Though some positive experiences can also be drawn upon in the area of 'local integration' the sense of the meeting, however, was that the international climate was not ripe for a formal inclusion of this solution in the AALCC principles. 'Third-country resettlement' was not a solution for the vast majority of refugees in the Afro-Asian region. Yet, it was felt that the resettlement option, needs to be left open.

In final analysis, the Seminar recognized the importance of 'comprehensive approaches' including a mix of solutions, and involving all concerned States and relevant international organizations in the search for, and implementation of, durable solutions to refugee problems.

D. Burden sharing: Reiterating the importance of the norm of burden-sharing, the Seminar agreed that Articles I, II, III, and IV as contained in paragraph 5 of the Addendum to the Status and Treatment of Refugees, 1987 may be incorporated into the Bangkok Principles, 1966 to constitute new Article IX.

The Seminar also recommended that that the Chairman and Secretary-General of the AALCC submit the final report and conclusions of this Seminar to the thirty-sixth session of the AALCC to be held in Teheran in 1997, and the working documents, presentations and reports and recommendations of the Seminar be published, under the auspices of AALCC and UNHCR.

(ii) Deportation of Palestinians in violation of International Law particularly the fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in the occupied territories.

The Committee decided in the 34th Session of the AALCC held in Doha, that this subject should be considered in conjunction with the question of 'Status and Treatment of Refugees'.

The Secretariat in its study on the subject has exposed to the AALCC Member States the current serious developments in the occupied territories which could likely lead to a deterioration of the situation in the region and to a resumed cycle of tension and violence, thereby endangering peace and security not only in the Middle East but throughout the world. There is, therefore an urgent need to reach a final settlement of the question of Palestine that would allow Palestinian people to attain their legitimate rights, in keeping with international law and with the fundamental principles established at the Madrid Conference and in the Oslo and subsequent agreements and ensure security for all the region.

(iii) Extradition of Fugitive Offenders

The item was considered at the 35th Session of the AALCC held in Manila in March 1997 whereat a brief of documents on the "Extradition of Fugitive offenders" prepared by the Secretariat was tabled. In the course of the brief consideration of the item the Delegate of Thailand proposed the addition of a sub-item, entitled "Cooperation in the Execution of Penal Sentences", to the agenda item on extradition. The AALCC at its Manila Session, however, urged the Member states to consider the draft articles and send their comments thereon to the Secretariat. It also requested the Secretary-General to explore the possibility of convening an inter-sessional meeting to finalize the draft articles on the item. It may be stated that in the

period since the Manila Session it has not been possible to convene an inter-sessional meeting for the purposes of considering and finalizing the draft articles on extradition.

At the Thirty-sixth Session, the Deputy Secretary General, Dr. Kamil while elaborating on the item 'Inter-related aspects of International Criminal Court and, the International Humanitarian Law' in the Special Meeting held at the Tehran Session, invited attention of the delegations to the matter of 'Extradition of Offenders' and referred to the need to promote mutual cooperation in judicial assistance and to take cognition of the Secretariat brief of documents prepared on the subject.

While preparing this volume for publication, an honest effort has been made to make it as useful and informative as possible, enabling it to be an international legal reference tool. The encouraging response it has received from the legal community all over, compels us to follow the same format.

Well, these are a few of the thoughts I wanted to share with you. At AALCC, the Convention has been that the experts from within the two regions of Asia and Africa and outside sit down and discuss important legal issues and we are glad to provide the platform with the necessary research inputs. I am convinced that once we make a determination of what best we can do and how we can do it, we will make great inroads.

Now, I would like to record my appreciation for my colleague Mr. Asghar Dastmalchi, the Assistant Secretary General, for the expertise shown in the process of preparation, editing and finally publishing of this volume and also for Mrs. Neelam V.Mathur for her meticulous handling of the job as compiling proofreading and source checking of the text of this Report.

(Tang Chengyuan)
Secretary General

New Delhi
1st March 1998

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