

(d) Tehran Regional Centre for Arbitration

During the Arusha Session (1986), the Delegate of the Islamic Republic of Iran had proposed the establishment of a Regional Centre for Arbitration in Tehran under the auspices of the AALCC, on the same pattern as the existing Centres. After examination of the proposal in the Secretariat, it was felt that such a Centre could in due course prove to be a viable project, particularly in relation to oil arbitration. After consultations held between the Secretariat and the competent authorities in Tehran, a draft agreement (to be concluded between the Government of the Islamic Republic of Iran and AALCC) was submitted by the AALCC Secretariat to the Government of the Islamic Republic of Iran, for consideration. On 3 May 1997, the Agreement was concluded between the Iranian Government and the AALCC, for the establishment of a Regional Centre for Arbitration in Tehran.

The Agreement, among other things, provides that the Centre would function under the auspices of the AALCC. The Government of Islamic Republic of Iran would respect the independent functioning of the Centre, and have conferred certain privileges and immunities to the Centre, as may be necessary for the purpose of executing its functions. The Centre would be administered by a Director who shall be a national of the Islamic Republic of Iran and would be appointed by the Government in consultation with the Secretary General of the AALCC. Until such time that the Centre becomes financially independent, the Government would make available premises and make an annual grant for the purposes of the functioning of the Centre. The Agreement concluded between the AALCC and the Government of the Islamic Republic of Iran has been placed before the Parliament (Majlis) for Approval.

(V) Publications

The AALCC Secretariat has been bringing out a Quarterly Bulletin regularly for the last twenty-two years. The Bulletin has served as a tool for wider dissemination of information about the activities of the AALCC and the developments in field of international law. In order to enhance its legal academic character so as to render better service in relations to issues, it has been felt that the Bulletin should also include some research articles and papers contributed

mainly by the that the Bulletin should also include some research articles and papers contributed scholars from the Asian and African region. Against this background from the year 1997, instead of bringing it quarterly, the Bulletin is being published half yearly and it has been renamed as "AALCC Bulletin". The first issue (volume 21) was brought out in 1997. The Secretary General hopes that the Member Governments would encourage scholars in their respective Universities and academic institutions to contribute articles for the Bulletin.

Two recent publications include: The Report of the Special Meeting on the Inter-related aspects between the International Criminal Court and International humanitarian Law and the report of the Manila Seminar to Commemorate the 30th Anniversary of the Bangkok Principles on the Status and Treatment of Refugees. The publication "Report and Selected Documents of the 36th Session held in Tehran (3-7 May 1998) the Islamic Republic of Iran has been brought out and widely distributed. The report contains most of the research studies prepared by the Secretariat during the year along with the background information and the decisions adopted. It has been commended as a great contribution towards achieving the objectives of the UN Decade of International Law.

II. LAW OF THE SEA

(i) Introduction

The subject Law of the Sea was initially taken up, at the initiative of the Government of Indonesia in 1970 and has remained a priority item at successive Sessions of the AALCC. Initially conceived as a programme of rendering assistance to Asian-African governments to prepare themselves for the Third United Nations Conference on the Law of the Sea (hereinafter called UNCLOS - III) through preparation of background papers and provision of opportunities for in depth discussions, the AALCC gradually emerged as a useful forum for a continuing dialogue on some of the major issues of this subject. The subject matter is one in which all the Member States of the AALCC are deeply interested and it has also been the subject of discussion at inter-sessional and Working Group Meetings.

Following the adoption of the United Nations Convention on the Law of the Sea, 1982 (hereinafter referred to as the Law of the Sea Convention, 1982 or simply the Convention) the AALCC at its 23rd Session held in Tokyo in 1983, approved the future work programme on this subject. This included a comprehensive set of issues among which were : (i) the encouragement of taking steps towards ratification of the Convention (ii) 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; (iii) assistance to Governments in regard to the work of the Preparatory Commission; and (iv) the examination of the question of promoting regional or subregional co-operation taking into account the interests of landlocked and geographically disadvantaged States.

The item was also considered at the 36th Session of the AALCC held in Tehran in May 1997. The study prepared for that session inter alia, furnished an overview of developments since the entry into force of the Law of the Sea Convention including the Meeting of the States Parties to the Convention; the work of the International Seabed Authority (hereinafter referred to as ISBA); and the establishment of the International Tribunal for the Law of the Sea. It

had also contained an overview of the 1996 Global Programme of Action for the Protection of the Marine Environment from Land based activities.

At this session the AALCC, *inter alia*, urged its Member States, who had not already done so, to consider ratifying the Convention on the Law of the Sea. The AALCC also urged the full and effective participation of the Member States in the International Seabed Authority (ISBA) so as to ensure and safeguard the legitimate interests of the developing countries and for the progressive development of the principle of the Common Heritage of Mankind.

The AALCC at its 36th session reiterated its call to the member States to give consideration to the need for adopting a common policy and strategy for the interim period before the commercial exploitation of the deep seabed minerals becomes feasible. To this end, the AALCC urged member States to adopt an "initial function" of the Authority so as to make the International Seabed authority useful to the international Community and the developing countries during this initial period.

It directed the Secretariat to continue to cooperate with such international organizations as are competent in the field of ocean and marine affairs and to consider assisting Member States in their representation at the ISBA. The AALCC at that Session *inter alia* decided to inscribe on the agenda of its 37th Session an item entitled "implementation of the Law of the Sea Convention, 1982" The brief for the thirty seventh session seeks to furnish an overview of some recent developments in the matters relating to the Law of the Sea.

Thirty Seventh Session : Discussion

Introducing the item the Assistant Secretary General Mr. A. Dastmalchi stated that the item had been on the agenda of the AALCC since 1970 and been considered at successive sessions. The item was last considered at the 36th Session of the Committee held in Tehran and that the brief of documents for the 37th session listed the developments since then and was progress report based on documentation available with the Secretariat. This document sought to furnish an overview of recent developments in the matters relating to the

law of the sea, in particular with respect to: (i) the consideration, by the General Assembly of the item relating to the Law of the Sea and Ocean Affairs; (ii) the meeting of the States Parties to the UN Convention on the Law of the Sea; (iii) the work of the International Seabed Authority; (iv) the International Tribunal for the Law of the Sea; and (v) the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities. It also provided an overview of the Special Session of the General Assembly or the Review of the Implementation of Agenda 21.

He recalled that the United Nations Convention on the Law of the Sea 1982, entered into force on November 16, 1994 and the 52nd Session of the General Assembly had expressed satisfaction at the increase in number of States Parties to the Convention and the Agreement relating to the implementation of Part XI of the Law of the Sea Convention. In order to achieve the goal of universal participation the General Assembly Resolution 52\26, *inter alia*, had renewed its call to all States that had already not done so to become parties to the Convention and the Agreement Relating to the Implementation of Part XI of the Convention. The General Assembly called upon State to harmonize legislation with the provisions of the Convention and to ensure consistent application of those provisions. The General Assembly also reaffirmed its decision to undertake an annual consideration and review of the overall developments pertaining to the implementation of the Convention and other developments relating to the Law of the Sea.

He further stated, that the General Assembly at its recently concluded session had welcomed the establishment of the Commission on the Limits of the Continental Shelf during the course of the Sixth Meeting of the States Parties to the Convention. It also expressed satisfaction at the progress of work in the International Seabed Authority including the approval, during the third session of the Authority in 1997, of the Seven Plans of work for exploitation in the Area. The AALCC Secretariat, he said, did not have access to the detail of these plans of work during the time of preparation of this brief of documents and hence were therefore not reflected therein.

The General Assembly at its 52nd Session, he said, had also expressed satisfaction at the progress being made by the legal and technical commission

towards the formulation of a Draft Mining Code. The brief of documents prepared by the Secretariat provided an overview of the Draft Mining Code. The Committee during the current session, he said, might wish to consider mandating the Secretariat to make a concerted study of the draft Mining Code and to this end approve of the representation of the AALCC Secretariat at the meetings of the International Seabed Authority. The Secretariat had in the past been represented at the Sessions of the PREPCOM.

The Assistant Secretary General recalled that by its resolution 51\189 the General Assembly had endorsed both the Washington Declaration on Protection of Marine Environment from land based Activities and the Global Programme of Action for the Protection of Marine Environment from Land Based Activities. More recently it had called upon States to implement that resolution (Resolution 51\189) and to strengthen the implementation of the existing international and regional agreements on Marine Pollution.

Finally, he said that at the instance of the UNESCO the General Assembly had declared the year 1998 as the year of the Oceans and committee would perhaps consider the role of the AALCC in the course of the year ahead.

The Delegate of Egypt expressed the view that the subject Law of the Sea had been important since its adoption of the convention in 1982. At present the subject matter had changed to the establishment by International Sea Bed Authority of different commissions, which would implement the convention. He was of the view that within the stipulated 5-10 years period when the sea bed mining would actually start, the developing countries would find their position to be very different from the developed countries, therefore it was of paramount importance that the AALCC Member States joined hands to get to co-ordinated stances, this would be possible by an exchange of their experiences, and for this task the AALCC was the required and desired forum.

The Delegate of People's Republic of China was pleased to note that the Law of the Sea Convention had been broadly accepted by the international community, especially developing countries. The Convention with its comprehensive provisions, had founded a new regime of International Law.

i.e. the International Seabed Authority, the International Tribunal for the law of the Sea and the Commission on the limits of the Continental Shelf. He then briefly outlined the role of these bodies.

He informed the meeting that China had actively participated in the codification process of the Convention and had become a Party to the Convention on 15 June 1996 and was involved in the recent developments of the Law of the Sea. The Chinese candidate, Prof. Zhao Lihai, was elected as a Judge of the Tribunal. Three experts from China were elected as Members of the Legal and Technical Commission, the Financial Commission of the International Seabed Authority and the Commission of the Outer Limits of the Continental of developing countries had been emphasised.

He stated that his Government had taken significant steps on domestic legislation on the law of the Sea in an effort to establish a national legal system, compatible with the convention. It had also adopted the Law on the Territorial Sea and the Contiguous Zone on 25 February, 1992.

He concluded by stating that the Law of the Sea issues, are, deeply connected with the interests of all the countries, cooperation among relevant states on these issues, needed to be stressed and strengthened, especially, in the fields of maritime scientific research, maritime environment protection, fishery activities on the high sea, utilisation of resources of international seabed etc. for the developing countries of Asian and Africa, the AALCC in his view provided a proper forum for discussing co-operation and legal issues arising from this field.

The Delegate of India recalled that important matters concerning Law of the Sea have been on the agenda of the AALCC with the ensuing discussions always proving useful to the Member States. A case in point, he said was the Third UN Conference on the Law of the Sea. He expressed his appreciation to the Secretariat for preparing an excellent and comprehensive report on the topic.

He said the initiation of the operational phase of the International Sea Bed Authority (hereinafter ISBA) with the approval of the Plans of Work of

seven Registered Pioneer investors according to Part XI of UNCLOS was landmark achievement. Speaking on the substantive work of the ISBA, he said it is presently confined to the work of the Legal and Technical Commission in the preparation of the Draft Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, also called the Draft Mining Code. In this regard, he further stated that during the fourth session of the ISBA, a Working Group of the Group of 77 had been established to examine the Draft Code. The complex issues to be dealt in this Code, he averred, were those relating to the protection and preservation of marine environment, confidentiality and the terms of contract which the ISBA will have to enter with the Registered Pioneers Investors, whose Plans of Work have already been approved.

As regards, the role AALCC could play, he expressed the view that it may like to examine the Draft Code, as the Code is related not only to registered pioneer investors or potential investors, but also to states who had tremendous opportunities to realise the benefits from the Convention, especially in areas pertaining to the establishment of suitable offshore and onshore facilities, transportation and technology development. He felt that it was necessary to understand the scope of the Mining Code, and the extent of the area beyond the limits of national jurisdiction, viewed in context with other provision of the UNCLOS. In this regard, he said the UNCLOS contains provisions which enable states to delineate the continental margin, even beyond the 200 nautical mile Exclusive Economic Zone, by fulfilling certain geographical criteria, besides prescribing a 10 year time limit, from the date of ratification of UNCLOS, by the concerned State. He felt that, as the area beyond national jurisdiction would begin from the outer edge of the continental margin, there would be a time gap which would create uncertainty as to which area may fall under national jurisdiction or within purview of ISBA. Bearing in mind that the area beyond 60 degree South latitude is governed by the Antarctic Treaty, certain jurisdictional areas where the Mining Code would be applied, need to be examined and further harmonised.

Furthermore, recalling the decision to declare 1998 as the "International Year of the Oceans" by the General Assembly, he felt that Member States who have not yet ratified UNCLOS, should consider doing so. Hailing UNCLOS as the constitution of oceans, he expressed the desire that the

presence of a number of other ocean related conventions, called for a issue based study, relating to the difficulties encountered by States in their implementation of ocean related conventions.

Dwelling on the disputes settlement mechanism provided in UNCLOS, he said apart from the International Tribunal for the Sea, arbitration and conciliation were also provided for. As states had the option to appoint conciliators and arbitrators in the panel maintained by the UN Secretary General, he felt Asian-African States could play a vital role in the area conflict resolution. In this regard he spoke of the dispute between St. Vincent and Grenadines Vs. Guinea, relating to vessel "M. V. Saiga" - the first case that came up before the Tribunal.

Finally commenting on the suggestions to commemorate the International Year of the Oceans, he said these included converting another UNCLOS at the turn of the century or creation of new institutional bodies. In this regard, he expressed the view of his delegation that the UNCLOS being product of lengthy negotiations, must not be diluted.

The Vice President summed up the item, stating that 1998 had been declared the "Year of the Oceans" Keeping the relevance of the topic in mind he felt that the Committee mandated the Secretariat to continue to study the subject and explore areas of interest to the Member countries and report to the next session.

(ii) Decision on "The Law Of The Sea"

(Adopted on 18.4.98)

The Asian African Legal Consultative Committee at its thirty-seventh Session

Having considered the Secretariat Brief of Documents on "The Law of the Sea", Document AALCC\XXXVII\New Delhi 198\S.6

1. **Notes** with great satisfaction that the United Nations Convention on the Law of the Sea entered into force on 16 November 1994;

2. **Notes also** the work of the International Seabed Authority on the formulation of the Regulations on Prospecting and Exploration of Polymetallic Nodules in the Area;

3. **Notes with satisfaction** the reference of a dispute to the International Tribunal for the Law of the Sea;

4. **Urges the Member States** which have not already done so to consider ratifying the Convention on the Law of the Sea;

5. **Reminds** Member States to give timely consideration to the need for adopting a common policy and strategy for the interim period before the commercial exploitation of the deep seabed minerals becomes feasible, and for this purpose urges Member States to take an evolutionary approach especially to the "initial function" of the International Seabed Authority so as to make the ISBA useful to the international community and developing countries;

6. **Urges** the full and effective participation of the Member States in the ISBA so as to ensure and safeguard the legitimate interests of the developing countries, and for the development of the principle of the Common Heritage of Mankind;

7. **Also urges the Member States** to consider making written

declarations choosing from among the means concerning the settlement of disputes listed in article 287 of the United Nations Convention on the Law of the Sea ;

8. **Urges** Member States to cooperate in regional initiative for the securing of practical benefits of the new ocean regime;

9. **Directs the Secretariat** to consider assisting Member States in their representation at the ISBA and monitor the progress of work of the International Seabed Authority on the Formulation of the Regulations on Prospecting and Exploration of Polymetallic Nodules in the Area and to report thereon at the next session of the Committee ;

10. **Directs** the Secretariat to continue to cooperate with such international organizations as are competent in the fields of ocean and marine affairs; and

11. **Decides** to inscribe on the agenda of its thirty-eighth-Session an item entitled "Implementation of the Law of the Sea Convention, 1982".