

**ASIAN-AFRICAN LEGAL
CONSULTATIVE
COMMITTEE**

THIRTY-FIRST SESSION

ISLAMABAD, 25 JANUARY TO 1 FEBRUARY 1992

PROCEEDINGS AND WORKING PAPERS



THE AALCC SECRETARIAT

ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

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PREFACE

The Thirty-first Annual Session of the Asian-African Legal Consultative Committee (AALCC) was held in Islamabad (Pakistan) from 25 January to 1 February 1992. It was attended by high-level delegations from 35 of the Member States of the AALCC and observer delegations from 12 non-Member States. In addition thereto, the United Nations, the International Court of Justice, the International Law Commission, Office of the United Nations High Commissioner for Refugees, the International Institute for the Unification of Private Law (Unidroit), Saudi Fund for Development and International Ocean Institute were also represented.

The substantive items on the agenda of the Islamabad Session were : (i) Work of the International Law Commission; (ii) Status and Treatment of Refugees; (iii) the Law of International Rivers; (iv) Law of the Sea; (v) Deportation of Palestinians in Violation of International Law; (vi) Responsibility and Accountability of former Colonial Powers; (vii) Preparations for the United Nations Conference on Environment and Development (UNCED) in June 1992; (viii) Debt Burden of Developing Countries; and (ix) Trade Law Matters. The 'Trade Law Matters' included : (i) Legislative Activities of the United Nations and other International Organisations concerned with International Trade Law; (ii) Legal Aspects of Privatization; (iii) Establishment of a Data Collection Unit as an integral part of the AALCC Secretariat; and (iv) Progress Report on the AALCC's Regional Centres for Arbitration. The item 'Preparations for the UNCED' was the subject-matter of a two-day Special Meeting on Environment and Development convened during the Islamabad Session.

Although all the agenda items, with the exception of the one relating to the Debt Burden of Developing Countries, were discussed at the Islamabad Session, this publication covers the proceedings and the working papers presented by the Secretariat only on the following topics : (i) United Nations Decade of International Law; (ii) Status and Treatment of Refugees; (iii) Deportation of Palestinians in violation of International Law; (iv) Responsibility and Accountability of former Colonial Powers; (v) The Law of International Rivers; (vi) Debt Burden of Developing Countries; (vii) Legal Aspects of Privatization; (viii) Establishment of a Data Collection Unit within the AALCC Secretariat; and (ix) Environment and Development. The items relating to the Work of the International Law Commission (ILC) and the Law of the Sea have not been included in the publication because the role of the AALCC is at the moment confined to monitoring the work of the ILC and the PREPCOM for the International Sea-bed Authority and Tribunal for Law of the Sea. On the other hand, although the topic of Debt Burden of Developing Countries was not discussed at Islamabad, it is covered in the publication on account of its importance for the developing countries.

on the proceedings and decisions taken at the annual sessions. The research papers and studies prepared by the Secretariat which served as the bases of discussions at the annual sessions were seldom included. The circulation of these research materials had hitherto been restricted to governments and organizations participating in the annual sessions. Of late, criticism was noticed to be growing amidst the legal and academic community in the Afro-Asian region at their being deprived of any access to the research work done by the Secretariat which was an important source of evidence of the Afro-Asian State practice in the field of International Law. This is particularly important during the U.N. Decade on International Law.

It is with a view to meeting this criticism, that the present publication shifts the focus to the research briefs and studies presented by the Secretariat to the Islamabad Session on the basis of which the various topics on the agenda of that session were discussed and debated. In the future, it is intended to follow this pattern. It is believed that this innovation would be welcomed not only in the legal and academic circles in the Afro-Asian region but also by the Member Governments of the AALCC.

New Delhi

1st August, 1992

Frank X. Njenga

Secretary-General, AALCC

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PUBLIC INTERNATIONAL LAW

I. UNITED NATIONS DECADE OF INTERNATIONAL LAW

(i) INTRODUCTION

1. The General Assembly of the United Nations by its resolution 44/23 adopted on 17 November 1989 declared the decade of the nineties as the United Nations Decade of International Law for the realisation of the following objectives :

- To promote acceptance of and respect for the principles of international law;
- To promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice;
- To encourage the progressive development of international law and its codification; and
- To encourage the teaching, study, dissemination and wider appreciation of international law.

2. In order to invite specific proposals for a programme on the Decade and appropriate action to be taken, the Secretary-General of the United Nations was requested to seek the views of the member States, appropriate inter-governmental and non-governmental organisations and to submit a report thereon to the forty-fifth session of the General Assembly.

3. Since the Asian-African Legal Consultative Committee (AALCC) whose very *raison d'être* is the progressive development and codification of international law, had also been invited to submit its views and observations towards finalizing a programme for the Decade and the action to be taken in that regard, including the possibility of holding of a Third International Peace Conference at the end of the Decade, it decided to address itself and respond to the substance of the General Assembly Resolution 44/23.

4. The matter was, therefore, included in the agenda of the twenty-ninth session of the AALCC held in Beijing in March 1989 and discussed there on the basis of a preliminary note presented by the Secretariat. The preliminary note spelt out the role which the AALCC could possibly play during the decennium towards realising the objectives set for the Decade. The Beijing Session mandated the Secretariat to prepare a comprehensive study. After the Beijing Session, the Secretariat prepared and forwarded to the Office of the UN Legal Counsel its observations and views on the matter which were reproduced in the Report on the UN Secretary-General on the United Nations Decade of International Law. (Doc. No. A/45/430 of 12 September 1990). This report served as the basis of discussions in the meetings of the

Working Group on the United Nations Decade of International Law constituted during the forty-fifth session of the General Assembly to prepare generally acceptable recommendations for the Decade. On the basis of the recommendations made by the Working Group, the General Assembly at its forty-fifth session adopted a programme of activities to be commenced during the first term (1990-92) of the Decade and requested the Working Group to continue its work during the forty-sixth session in accordance with its mandate.

5. At the thirtieth session of the AALCC held in Cairo (April 1991), the Secretariat presented a further study (AALCC/XXX/Cairo/91/4). This study, *inter alia*, enumerated the initiatives which the Secretariat had undertaken in the fulfilment of the mandate entrusted to them. The study also included the observations and views which the Secretariat had prepared and forwarded to the Office of the UN Legal Counsel, reproduced in Doc. No. A/C.6/45/WG/CRP.2 of 26 October 1990. At the Cairo Session, the AALCC, while directing the Secretariat to continue its efforts at making contributions to the success of the Decade, decided to place the item on the agenda of its next session.

Discussions and Decisions taken at the Islamabad Session

6. The thirty-first annual session of the AALCC was held in Islamabad (Pakistan) in January-February 1992. At this session, the item was further discussed in the light of a Report on the UN Decade of International Law presented by the Secretary-General (Doc. No. AALCC/XXXI/Islamabad/92/6). The Report, *inter alia*, outlined the initiatives undertaken by the Secretariat since the last session of the AALCC held in Cairo.

7. The *Assistant Secretary-General* (Mr. Mostafa Foroutan) introducing the Secretary-General's Report briefly explained the developments that had taken place during the last one year. He listed the matters of common concern for the developing countries which included, *inter alia*, the sustainable development, human rights violations, sharing of burdens on the basis of equity, technology transfer and the settlement of disputes including institutional developments. He suggested that the UN agencies, regional organisations and States should organise seminars, symposia, training courses, lectures and meetings and undertake studies on various aspects of international law. He also referred to the area of the resolution of international economic problems, particularly those involving developing countries.

8. The *Chairman of the Working Group on the United Nations Decade of International Law* (Mr. Justice Aftab Farrukh), in the course of his address, reported on the progress made in the Working Group during the forty-sixth session of the UN General Assembly towards the realisation of the primary objectives set for the Decade.

On the first objective of promoting acceptance of and respect for the principles of international law, he pointed out that the Working Group was apprised of the different modalities used in different countries regarding the publication of the lists and the texts of multilateral treaties to which

they were parties. In response to the request that the United Nations bring out a compendium of the multilateral treaties deposited with it indicating the participation of each State in those treaties so as to assist the States, particularly the developing countries, in making their own decisions on whether to become parties to those Conventions, the Secretariat informed the Working Group that the data relating to the status of the multilateral treaties deposited with the United Nations would be transferred from the word processor currently used to modern software for on-line access by all in the coming biennium. The Working Group was also informed that the data in the UN Treaty Series was under a verification process for accuracy and completeness and was expected to be completed by the end of 1993. That data would also be made available for on-line access by delegations, public entities as well as private individuals.

On the second objective of peaceful settlement of disputes between States, several suggestions were made in the Working Group regarding enhancement of the role of the International Court of Justice, particularly concerning the acceptance of its compulsory jurisdiction. On the proposal that the Secretary-General of the United Nations be authorised to request the advisory opinion of the Court, there was a divergence of views. With regard to the question of publication of the judgements and advisory opinions of the Court for wider circulation, the Working Group was informed by the UN Secretariat that it would soon bring out the summaries of the judgements and advisory opinions from 1949 to 1990 in all the official languages of the United Nations and keep on updating them in subsequent years.

As for the third objective of progressive development of international law and its codification, the Working Group expressed its satisfaction with the detailed information received from the international organisations on their activities relevant to this aspect.

On the fourth and final objective of encouraging the teaching, study, dissemination and wider appreciation of international law, it was proposed that the United Nations system of organisations, regional organisations including the AALCC and States should consider organising seminars, symposia, training courses, lectures and meetings and undertake studies of various aspects of international law. Students, professors, judges and lawyers of international law and personnel from the Ministry of Foreign Affairs should be given scholarships in international law in various universities.

The world political situation, in his view, had never been so conducive for the promotion of greater respect for the principles and the enhancement of the role of international law. However, matters of concern for the developing countries that needed immediate attention, according to him, included : (i) common concern of mankind in areas beyond the limits of national jurisdiction; sustainable development with special reference to the special needs of developing countries and environmental protection; (ii) global commerce and sharing the burden on the basis of equity, international cooperation and technology transfer; (iii) human rights and environmental protection including the right